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It may be legal, but is it ethical? Questions surround payments Collier developers made to federal panther protection agency

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A bargain between a federal agency and a group seeking to develop homes and mine in Florida panther habitat has startled and dismayed observers in and outside of Florida.

Between 2016 and late 2020, the 11-member Eastern Collier Property Owners group paid the U.S. Fish and Wildlife Service \$287,827, a group spokeswoman told The News-Press Friday.

The public agency took payments from the private sector group to offset time and staffing for that group's complex application. The problem? The federal agency oversees development proposals that affect federally listed species such as the panther – and environmental groups say that's a conflict of interest.

The money covered the gap created when a permanent staffer was pulled off to work on the developer's plan. Though the area's underlying zoning would allow it to be developed in 5-acre chunks, the 11 landowners came together to develop a habitat conservation plan that would preserve 106,000 acres of panther habitat. Such a plan would require FWS' review and, if approved, would be the largest such habitat conservation plan in the eastern U.S.

The group paid for an additional employee to cover regular department duties and ended once the bulk of the work "that had to be handled by the field office was substantially complete, as I understand it," said property owners group spokeswoman Tina Matte.

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Collier County Commissioner Penny Taylor likens the arrangement to "a bribe."

"The idea that a private company can pay government officials – the same government officials who are going to approve or disapprove of their (plan) is just remarkable," Taylor said. "It's just

not something that we should tolerate.”

A final decision on whether to greenlight the plan hasn't yet been made, but environmental nonprofits expect it soon.

Much of the land in the mostly undeveloped 185,000 acre-area, known as Collier's Rural Lands Stewardship Area, belongs to the 11-member Eastern Collier Property Owners. By giving up their rights to develop some of their environmentally valuable, they can earn credits that allow them to build towns and villages in areas identified as more appropriate for development. Neither the property group nor the FWS agreed to an interview with The News-Press/Naples Daily News; instead, both asked for a list of questions to answer via email, but only the property owners had answered by press time.

An exhaustively researched piece appearing last month in The Intercept, an investigative online news organization, raised questions about why the federal agency in charge of enforcing endangered species protections also handles the property owners' permitting.

“We’re very concerned about the use of these reimbursable agreements, where the (property owners) are reimbursing costs for the staff folks who are reviewing their projects,” said Amber Crooks, environmental policy manager for the Conservancy of Southwest Florida, which has long opposed the plan. Public records Crooks obtained on behalf of the Conservancy detail the arrangement from its initial memorandum of agreement through its sometimes rocky lifespan.

At times, the relationship took intense management. To get paid, Fish and Wildlife staff had to send dunning emails to the private group, reminding them payments were overdue. In August 2017, FWS field Supervisor Roxanna Hinzman emailed project manager Christian Spilker over unpaid invoices: “I need to know if there's a reason the invoice hasn't been paid, and figure out a way to get us squared up. Without payment I won't be able to justify having someone working full time on this project (not to mention I'll end up in the red at the end of the year).”

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The following October, the group was in arrears again. Janice Annis of the service's South Florida Ecological Services Office asked Hinzman to intervene. “Rox, can you please speak with Collier Enterprises and expedite our \$ long past due. It puts Vero's resource \$ at risk. They need to pay two bills: \$44,240.39 and \$72,257.23.” She emailed Spilker as well, and eventually the accounts were brought up to date.

The records Crooks got showed a similar contract exists with Florida Power and Light, but beyond that, she's never encountered one.

They do exist, said spokeswoman Matte, pointing to an Incidental Take Authorization for Alta Windpower's 51-turbine electric generating facility and the Tejon Ranch Corp Incidental Take Permit, both in California.

Such public/private pacts are by no means common, said attorney Bonnie Malloy, who works in the national non-profit law firm Earthjustice's Tallahassee office.

"This is the first instance I've heard of this," said Malloy, "And I used to work for (the Florida Department of Environmental Protection) for more than seven years. It concerns me greatly ... Once they're allowed an entry point, there's influence attached to that," she said.

As Florida precedent, the developers' group points to Coral Reef Commons in Miami, a Walmart project that environmental advocates fought for years. To get that building to the finish line, FWS also accepted payment from the developer.

For the Collier project, Matte said FWS approached them – not the other way around.

"The FWS requested ECPO's assistance with funding a new staff member for its Vero Beach Field Office in 2016," Matte wrote in an email. The agreement stipulated that the staffer in the subsidized position wouldn't work on the plan.

That buffer hardly matters, said attorney Malloy "(The service's) duty is to ensure protection of endangered species, so that should be their focus and what's driving their decision-making. When you allow developers to provide funding for agency staff, it more than just creates an appearance of conflicts of interest and bias in the decision-making, changing their focus from the protection of species to servicing these developers," Malloy said. "Knowing that funding is coming directly from the permit applicant – I don't know how you take away that bias."

The section of the U.S. Code covering these matters is titled, "Salary of Government officials and employees payable only by United States." It allows for certain exceptions, but even those are subject to ethics tests set out in the department's policy rules: "Donations, Fundraising, and Solicitation"

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That's what bothers Ryan Orgera, who heads the Sanibel-Captiva Conservation Foundation and has wide national environmental policy experience

“There are lots of reasons why not to accept a donation – it’s a pretty high hurdle,” Orgera said. “Here’s one I just pulled out here,” he said, “Section 810 A. The first line is, ‘Is the donation or does it appear to be an attempt to influence regulatory or other departmental or service authority?’ In a lot of ways, what is happening makes this questionable,” he said. “Here’s another one: ‘Does the amount of the donation influence or appear to influence any pending Department or Service decision or action involving the donor’s interests?’”

“That’s really obvious here - the donors’ interests are exactly what’s at question,” Orgera said.

“But I think the most important one is, “Will accepting the donation cause substantial public controversy? ... That’s especially where they fell short, and they should have seen that.”

Bottom line, Orgera says, “It doesn’t take an ethics lawyer to understand that this on the surface really does not pass the smell test.”

Like many interviewed for this story, Ben Wilcox of Integrity Florida, a nonprofit, nonpartisan government watchdog, was incredulous about the arrangement.

“Unless there’s some kind of other explanation for it, I just don’t understand how this is going on,” he said. ““I’ve never heard of something like this happening before, where private developers are paying the salary of a government employee that is looking into a permit application from those private developers,” Wilcox said. “It does create the appearance of a conflict of interest.”

Matte said the explanation is practical: Large, complex projects like this one “would overwhelm limited field office staff, (and) requires FWS Field Offices to devote significant resources to drafting and/or review of the (habitat conservation plan), biological opinion, and environmental impact statements,” she wrote. “The funding arrangement reflects long-standing FWS policy that governs the structure and process for development and approval of such agreements.”

Practical though it may be, “I just don’t think it looks good to the public,” Wilcox said. “It calls into question whether those permit applications are being fairly evaluated ... I don’t think the public would be comfortable with permits for development being evaluated and determined by people who are being paid by the developers. I just don’t think it’s a good look.”

He agrees with Taylor’s characterization. “When you have a situation when the private sector is paying government salaries, it has the appearance of bribery,” he said. “It’s not the way government is supposed to work.”

While the practice may be legal, that doesn’t mean it’s common or advisable, Orgera said.

“Honestly, it is irregular ... It’s an unwise practice at a bare minimum, so I think it is time to stop it,” he said.

He thinks an independent review is in order, "If for nothing else, to save face," he said.

"The integrity of FWS is being called into stark relief here, so I think it's in their best interest to have a very open and transparent review of these documents."