

Everglades  
Law Center, Inc.  
*Defending Florida's Ecosystems  
and Communities*



March 14, 2011

Cheri Ehrhardt  
Natural Resource Planner  
Everglades Headwaters Proposal  
PO Box 2683  
Titusville, FL 32781-2683

RE: **EVERGLADES HEADWATERS NATIONAL WILDLIFE REFUGE AND  
CONSERVATION AREA**

Dear Ms. Ehrhardt,

On behalf of the Conservancy of Southwest Florida and its more than 6,000 members, we write to express our support and comments with regard to the proposed Everglades Headwaters National Wildlife Refuge and Conservation Area.

We think a National Wildlife Refuge is a very appropriate model of public lands stewardship in the Northern Everglades region. By providing for six wildlife dependent uses and allowing for other uses where they are compatible with the refuge's conservation purpose, refuges occupy a unique place in the federal public land system. In a region steeped in a tradition of hunting, fishing and other recreational uses, this model has broad public appeal.

Based on our attendance at the February 4, 2011 scoping meeting in Sebring, Florida, our review of the Project Proposal, and our experience working on refuge issues throughout the State of Florida over the past several years, we submit the following scoping comments. We hope these comments will help inform your decision-making under the National Environmental Policy Act (NEPA) and your preparation of a Land Protection Plan for the Refuge.

We appreciate your consideration of these comments and look forward to enjoying the many natural resources this Refuge will offer.

## **WHY THIS REFUGE IS NEEDED NOW MORE THAN EVER: THE CASE AGAINST A “NO ACTION” ALTERNATIVE UNDER NEPA.**

NEPA requires the preparation of an environmental impact statement (EIS) for a major Federal action significantly impacting the environment.<sup>1</sup> This includes a detailed statement of alternatives to the proposed action, as well as a “no action alternative.”<sup>2</sup>

We submit that the “no-action alternative” is not a viable option because maintaining the status quo will not produce the landscape-scale protections necessary for the preservation and restoration of the headwaters of the Everglades ecosystem.

A recent University of Florida study found that between now and 2060 the State’s population is projected to more than double from approximately 18 to 36 million people.<sup>3</sup> Assuming that development patterns do not change, there would be a need to convert an additional 7 million acres of undeveloped land into urban land uses.<sup>4</sup> Of those 7 million acres of land, 2.7 million acres of native habitat, an area the size of the state of Vermont, will be lost to development.<sup>5</sup>

In the wake of the UF study, the Florida Fish and Wildlife Conservation Commission (FWC) prepared a report that analyzed what these development patterns would mean to the state’s fish and wildlife.<sup>6</sup> The FWC report found that of these 7 million acres, more than 1.6 million acres of woodland habitat would be lost, wetland habitats would become more isolated and degraded, and “for the most part, the animals and fish that currently live in these habitats will disappear.”<sup>7</sup> More than 2 million acres of black bear and wild turkey habitat will be lost and gopher tortoises may lose a fifth of their existing range.<sup>8</sup> The federally listed Florida Scrub-jay will have lost all but 64-square miles of remaining habitat.<sup>9</sup>

From a regional perspective, population growth and development is predicted to be “explosive” in the counties making up Central Florida.<sup>10</sup> For instance, Osceola County is among the counties that will experience the greatest changes over the next fifty years as it shifts from a largely rural to largely urban area.<sup>11</sup> This is already evidenced by the number of “developments of regional impact” slated for Osceola, Highlands and Okeechobee counties.<sup>12</sup>

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<sup>1</sup> 42 U.S.C. § 4332(2)(C).

<sup>2</sup> 40 C.F.R. § 1508.25.

<sup>3</sup> Paul D. Zwick & Margaret H. Carr, GeoPlan Ctr. At the Univ. of Fla., *Florida 2060: A Population Distribution Scenario for the State of Florida* (2006).

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 17.

<sup>6</sup> Fla. Fish & Wildlife Conservation Comm’n, *Wildlife 2060: What’s At Stake for Florida?* (2008).

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* Zwick and Carr, at 11.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> A development of regional impact is defined as “any development, which because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of

In addition to a doubling of the state's population, Florida faces the ever-increasing threat of sea level rise. The Florida Keys are a sensitive area which is already experiencing the effects of sea level rise. A study by the International Panel on Climate Change estimates as much as a two-foot increase by the end of the 21<sup>st</sup> century.<sup>13</sup> As a result, development patterns could shift dramatically over the next several decades as more people move inland to build houses and raise their families. Thus, places like the Kissimmee River Valley and the Heartland are at any even greater risk of losing their ecological resources to development.

Bold steps must be taken now to conserve Florida's natural lands or else millions of acres of wildlife habitat will be lost forever. Florida is losing its most precious natural resources one piece at a time. Recent funding shortfalls for state land acquisition programs,<sup>14</sup> the inherent limitations of Federal, state and local regulatory mechanisms to conserve lands, the inability of private land trusts to acquire the state's most sensitive lands, and the continued expansion of local urban development boundaries are all factors chipping away at what remains of historic Florida.<sup>15</sup> Existing approaches will not be enough to reverse this trend.

Creation of the Everglades Headwaters NWR is vitally important to Florida and the nation. By working with local ranchers to conserve their lands, through easements or through acquisition of the most sensitive and vulnerable lands from willing sellers, the proposed NWR will help preserve lands that otherwise would be lost to development and save ranching in Florida.<sup>16</sup>

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more than one county." Fla. Stat. § 380.06 (1). *See Florida Department of Community Affairs, South Central Florida Existing and Proposed Rural Land Stewardship Areas, Large Scale Future Land Use Map Amendments, DRI's & FDOT Road Corridor Study Areas* (2007). This map, which is attached to our comments, shows 18 proposed large-scale comprehensive plan amendments, developments of regional impact and rural stewardship areas, totaling 700,000 acres that are planned for the region.

<sup>13</sup> *See* U.S. Environmental Protection Agency, *Climate Change-Health and Environmental Effects, Coastal Zones and Sea Level Rise*, at <http://www.epa.gov/climatechange/effects/coastal/index.html#ref> (citing IPCC, 2007: *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*).

<sup>14</sup> In 2009, no new funds were appropriated for Florida Forever despite a statutory authorization of \$300 million per year. *See* Florida Forever Coalition, *Florida Forever: Conservation at a Crossroads*, Florida Green Book 2010 available at <http://supportfloridaforever.org/wp-content/uploads/2009/11/gb-2010-21.pdf>. Florida Forever faces the same threat this year. *See* Treasure Coast Palm, Editorial: *Scott's Proposed Budget Puts Florida Forever in Peril*, February 25, 2011, at <http://www.tcpalm.com/news/2011/feb/25/editorial-gov-scotts-proposed-budget-puts-in/>.

<sup>15</sup> Osceola County for instance expanded its Urban Growth Boundary south of Lake Tohopekaliga in 2007 and has proposed to extend it once again within the Northern Everglades/Kissimmee River Watershed. *See* Orlando Sentinel, *State Objects to Osceola's Plan For New City*, July 15, 2010.

<sup>16</sup> Ranching is an important part of the local economy as Osceola, Polk, Highlands and Okeechobee counties are the top four cattle producers in the State. *See* U.S. Department of Agriculture, National Agricultural Statistics Service, *Livestock, County Estimates* (May 21, 2007), available at [http://www.nass.usda.gov/Statistics\\_by\\_State/Florida/Publications/County\\_Estimates/2007/lvce0507.pdf](http://www.nass.usda.gov/Statistics_by_State/Florida/Publications/County_Estimates/2007/lvce0507.pdf).

The benefits of this new refuge will extend well beyond the study area. By preserving the “headwaters” of the Everglades ecosystem, the Service will be able to protect and likely improve the quality of water flowing south into Lake Okeechobee. Further, by working with local landowners (perhaps as part of World Wildlife Fund’s Florida Ranchlands Environmental Services Project (FRESP) to provide seasonal water storage), the Refuge and Conservation Area will compliment other projects that will reduce the need to discharge polluted water from Lake Okeechobee into our state’s fragile coastal estuaries.

Additionally, the refuge will provide the opportunity to link already existing conservation lands together which will reduce habitat fragmentation and create much needed wildlife corridors. This approach is supported by the FWC study which recommends acquiring and protecting large parcels of land for conservation, while promoting compatible agricultural activities, and using alternative protection techniques such as conservation easements to give Florida’s wildlife a fighting chance.<sup>17</sup>

The benefits of the proposed refuge will extend well beyond environmental protection. It will preserve the region’s way of life. The study prepared by FWC estimates that Florida might lose approximately 25% of private lands currently providing opportunities for hunting to development by the year 2060.<sup>18</sup> These lands within the Northern Everglades study area provide some of the best hunting and fishing opportunities anywhere in the state. Without the proposed NWR, where hunting is one of six-wildlife dependent uses, privately owned hunting lands will be lost when the property owner sells the land for development.

The development of these properties could fundamentally alter the rural lifestyles that many in the community want to maintain for future generations. While some members of local hunting clubs and airboat associations have expressed concerns, and even opposition in some cases, to the project as an encroachment on their way of life, the proposed NWR lands are actually essential to continuing this way of life. The refuge would provide outdoor recreation areas that are not currently available to the public and would function as a necessary buffer between development areas and preserve natural soundscapes, open spaces and local watersheds.

A new NWR could also serve as a much needed stimulus to the local economy with the creation of new jobs. The Refuge could employ a number of local residents and refuge visitors, in turn, would help further stimulate the local economy by purchasing fuel and goods from local businesses.<sup>19</sup>

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<sup>17</sup> *Wildlife 2060*, at 4.

<sup>18</sup> *See id.* at 26.

<sup>19</sup> Over 40 million people a year visit national wildlife refuges and the system contributes more than \$2 billion annually to our nation’s economy. *See* U.S. Department of Interior, *Economic Impact of the Department of Interior’s Programs and Activities (2009)*, available at [http://www.doi.gov/news/pressreleases/upload/DOI\\_Economic-Impacts-Report.pdf](http://www.doi.gov/news/pressreleases/upload/DOI_Economic-Impacts-Report.pdf). A 2006 study revealed that the Southeast Region (which includes Florida) had the greatest number of refuge visitors. *See U.S. Department of Interior, “Banking on Nature 2006: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation.* A similar study in 2005 showed that Ding Darling NWR in Southwest

As a whole, the proposed Everglades Headwaters NWR promises to be an invaluable contribution to the protection of public lands in the State of Florida. In the following section we will outline the steps we believe the Service should take to create a Refuge that accomplishes these objectives while taking into consideration the unique traditions and interests of the surrounding community.

## **HOW THIS PROPOSAL CAN BEST ACHIEVE THE CONSERVATION MISSION OF THE NATIONAL WILDLIFE REFUGE SYSTEM.**

### **Establish Ecosystem-Based Refuge Purposes.**

One of the first steps in the creation of a new refuge should be to identify its purpose or purposes. The establishment documents should provide a clear statement of the refuge's purposes<sup>20</sup> and these purposes should be consistent with the conservation mission of the System as a whole.<sup>21</sup> These purposes are instrumental in guiding the Service in its management of refuge resources and in making compatible use determinations.

In describing the Greater Everglades Partnership Initiative, Secretary Salazar explained:

This initiative is aimed at preserving a rural working ranch landscape to protect and restore one of the great grassland and savanna landscapes of eastern North America. The partnerships being formed would protect and improve water quality north of Lake Okeechobee, restore wetlands, and connect existing conservation lands and important wildlife corridors to support the Everglades restoration effort.<sup>22</sup>

The Secretary's description is noteworthy because while this proposal is aimed at preserving working ranchlands, the Service appears to express an ecosystem-based approach to the creation and management of the Everglades Headwaters National Wildlife Refuge and Conservation Area. While it is critically important that refuges that were created for the purpose of conserving endangered species continue to be managed and expanded in a manner that is consistent with that purpose,<sup>23</sup> we are excited to see that

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Florida contributed \$47 million to the local economy in a single year. *See Banking on Nature 2004: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation.*

<sup>20</sup> The lack of clearly articulated refuge purposes has in some instances lead to disputes over the appropriate management of refuge resources. *See Schwenke v. Secretary of the Interior*, 720 F.2d 571 (9<sup>th</sup> Cir. 1983) (involving a dispute between the foraging needs of livestock and wildlife). Because the proposed Everglades Headwaters NWR is a proposal that involves both working ranchlands and wildlife conservation, *Schwenke* is particularly instructive and illustrates the importance of drafting clearly defined refuge purposes in the refuge's establishment documents to avoid conflicts later on down the road.

<sup>21</sup> Consistency in the Refuge's purpose and the System's mission is important because where they conflict the Refuge Improvement Act requires the conflict to be resolved in a manner that first protects the purposes of the refuge. 16 U.S.C. § 668dd(a)(4)(D).

<sup>22</sup> *See* <http://www.fws.gov/southeast/gretereverglades>.

<sup>23</sup> For example, the Florida Panther National Wildlife Refuge was established in 1989 under the Endangered Species Act to provide optimum habitat conditions for the Florida Panther. Accordingly, the

the Service is taking an ecosystem-based approach to establishing a refuge north of Lake Okeechobee.

With the exception of some endangered species scenarios, the current literature on land protection and ecosystem management strongly promotes a conservation focus favoring biodiversity, conservation of representative ecosystems, resilience, and preservation of undeveloped linkages to facilitate evolutionary adaptation and range transitions.<sup>24</sup> The latter is particularly important at a time when climate change and sea level rise will pose new challenges to a number of different species who may need to transition and adapt towards the inland part of the state and away from areas closer to the coast.<sup>25</sup> We would submit that the Northern Everglades Region, with its vast array of representative ecosystems, rich biodiversity and unique location, provides a tremendous opportunity to advance ecosystem-based approaches to wildlife management. Accordingly, the Service should maintain the approach outlined in the GEPI Project Proposal and pursue a management strategy that conserves “biodiversity” and “protect(s) the headwaters of the iconic Everglades ecosystem.”<sup>26</sup>

### **Focus on Large Contiguous Tracts of Properties, Which Can Be Acquired From Willing Participants.**

The preferred alternative should reflect a land acquisition strategy that targets large, contiguous tracts of lands from willing sellers. Particular focus needs to be paid to establishing linkages between existing conservation lands, creating wildlife corridors and preserving a number of different types of representative habitats. We would also suggest coordinating with the South Florida Water Management to advance future “dispersed water management programs” such as FRESP.

While we continue to emphasize an ecosystem-based approach, the Service should also consider identifying areas that advance the recovery of endangered species. Two species that should receive particular attention are Audubon’s Crested Caracara, which are found throughout many of the region’s working ranchlands,<sup>27</sup> and the Everglade Snail Kite which due to drought conditions in recent years has increasingly relied on waters within

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Service’s future expansion plans under the Greater Everglades Partnership Initiative should be pursued in a manner that prioritizes the acquisition of prime panther habitat.

<sup>24</sup> Robert L. Fischman & Bob Adamcik, *Beyond Trust Species: The Conservation Potential of the National Wildlife Refuge System in the Wake of Climate Change*, Research Paper Number 159, at 32 (Nov. 2010) available at <http://ssrn.com/abstract=1561948>.

<sup>25</sup> *See id.* at 32-34.

<sup>26</sup> USFWS, Everglades Headwaters National Wildlife Refuge Preliminary Project Proposal, Phase 1 of 4 Phases of Greater Everglades Strategic Habitat Conservation Initiative, at 4 (August, 2010).

<sup>27</sup> The Recovery Plan for the caracara explains that pasture constitutes the highest percentage of habitat cover type found within the home ranges of breeding caracaras and that the conversion of pasture to other uses is a reason for concern. *See* USFWS, Multi-Species Recovery Plan for South Florida, Audubon’s Crested Caracara, at 4-226. The Recovery Plan further states that territories on private lands are “critical to the survival and recovery of the caracara” and calls for the protection of these lands (particularly prairie lands) through purchase, conservation easements and other options. *Id.* at 4-233.

the Upper Kissimmee River Basin for foraging and nesting.<sup>28</sup> This proposal provides a great opportunity for the Service to make significant strides in implementing the recovery plans for these and other listed species.

Accordingly, the land acquisition boundary should be revised in the draft EA or EIS to exclude small, less ecologically sensitive lands such as the River Ranch area and Suburban Estates, where it appears the land uses are a mixture of residential and recreational lands and there would be few, if any, willing sellers and participants in the program.

### **Maintain the Current Approach to Land Protection Options.**

We support the Service's approach of utilizing a combination of fee simple and less than fee simple options in this instance. The Service should continue to pursue its proposed ratio of 50,000 acres of land acquired in fee simple to 100,000 acres of land obtained through easements. Unless it is demonstrated that 50,000 acres of fee simple ownership from willing sellers is unattainable, it would not be prudent at this time to change the existing ratio as fee simple acquisition provides greater benefit in the form of permanent water resource and wildlife habitat protections.

The acquisition of at least 50,000 acres of lands in fee simple also enables the Service greater autonomy from a management perspective. A report from the General Accounting Office has shown that a major cause of incompatible uses is limited FWS jurisdiction over refuge lands.<sup>29</sup> While we recognize that this proposal is somewhat different in that it contemplates a working ranchland landscape, the Service must be able to control secondary uses in those areas of the refuge containing the most sensitive resources. We believe this can best be accomplished through fee simple acquisition.

### **Encourage and Manage Wildlife Dependent Uses In A Manner Consistent With the Conservation Mission of the Refuge System.**

The Everglades Headwaters Refuge should provide a variety of wildlife dependent recreational opportunities. These uses include hunting, fishing, wildlife observation, photography, environmental education and interpretation.

In Florida, the Florida Fish and Wildlife Conservation Commission (FWC) is typically responsible for regulating hunting and fishing activities occurring within the State. The Refuge Improvement Act recognizes the critical role states play in wildlife management and directs the Service to cooperate and collaborate with the State throughout the course

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<sup>28</sup> See USFWS, Quick Facts, Everglade Snail Kite, at <http://www.fws.gov/verobeach/images/pdflibrary/Everglade%20snail%20kite%20Fact%20Sheet.pdf>. The Recovery Plan for the snail kite also notes the growing importance of nesting habitat in and around Lake Kissimmee, Lake Tohopekaliga, and East Lake Tohopekaliga and how these areas should be considered in a future update of the Species' critical habitat designation. See USFWS, Multi-Species Recovery Plan for South Florida, Everglades Snail Kite, at 4-318-319.

<sup>29</sup> U.S. General Accounting Office, *National Wildlife Refuges: Continuing Problems With Incompatible Uses Call for Bold Action* (1989).


of acquiring and managing the refuge. For instance, regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.<sup>30</sup> But on occasion the application of state regulations may conflict with the Service's management objectives for the refuge.<sup>31</sup> Accordingly, the Service should work closely with the FWC in managing wildlife-dependent recreational uses in a manner that is consistent with the Refuge's purpose and the conservation mission of the Refuge system.<sup>32</sup>

In closing, the Conservancy is supportive of this exciting proposal and we hope the Service will carefully consider our recommendations as it moves forward in the establishment process.

Sincerely,



Jason Totoiu  
General Counsel  
Everglades Law Center



Jennifer Hecker  
Director of Natural Resource Policy  
Conservancy of Southwest Florida

Cc: Ken Salazar  
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Charlie Pelizza  
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<sup>30</sup> 16 U.S.C. §§ 668dd(a)(4)(C), (E), (M).

<sup>31</sup> See *Wyoming v. United States*, 279 F.3d 1214, 1234 (10<sup>th</sup> Cir. 2002); *National Audubon v. Davis*, 307 F.3d 835 (9<sup>th</sup> Cir. 2002).

<sup>32</sup> It should be noted that the Service has the authority to preempt the application of state rules in those instances where their application would frustrate the Service's ability to manage federally owned refuge property effectively. *See id.*