

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

FLORIDA PANTHERS (*Puma concolor coryi*),  
an endangered species; RED-COCKADED  
WOODPECKERS (*Picoides borealis*), an endangered  
species; FLORIDA WILDLIFE FEDERATION, a  
not-for-profit Florida corporation; and COLLIER  
COUNTY AUDUBON SOCIETY, INC., a  
not-for-profit Florida corporation,

Plaintiffs,

v.

COLLIER COUNTY, FLORIDA, a political  
subdivision of the State of Florida; GEORGIA A.  
HILLER, in her official capacity as a Collier  
County Commissioner; TOM HENNING, in  
his official capacity as a Collier County  
Commissioner; FRED W. COYLE, in his  
official capacity as a Collier County  
Commissioner; and TIM NANCE, in his  
official capacity as Collier County Commissioner,

Defendants.

Case No. 2:13-cv-612-Ft.M-29DNF

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Pursuant to the June 17, 2014 Opinion and Order of the Court (Doc. 27), Plaintiffs, the Florida panthers (Florida panthers), the Red-cockaded woodpeckers (RCWs), the Florida Wildlife Federation (FWF), and the Collier County Audubon Society, Inc. (CCAS) (collectively, plaintiffs) file this Second Amended Complaint against Defendants, Collier County, Florida and Collier County Commissioners Georgia A. Hiller, Tom Henning, Fred W. Coyle and Tim Nance (collectively, defendants).

**INDEX**

Introduction.....2  
Jurisdiction.....3  
Venue.....5  
Parties.....5  
Endangered Species Act of 1973.....12  
The endangered species at issue.....15  
    A. The Florida panther.....15  
    B. The Red-cockaded woodpecker.....19  
Collier County’s land use authority.....20  
Collier County’s implementation of the ESA.....21  
Collier County’s land clearing regulations.....24  
The defendants’ agricultural land clearing actions.....25  
The defendants’ single family residential development approvals.....28  
The defendants’ actions to extend Wilson Boulevard.....29  
Declaratory and injunctive relief requested.....32

**INTRODUCTION**

1. This Second Amended Complaint is pursuant to the Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1531-1544. This Second Amended Complaint alleges the defendants are currently engaged in ongoing violations of the ESA by enacting, implementing, and authorizing land clearing, land uses, and road extensions in occupied and essential habitat for Florida panthers and RCWs by means of Collier County regulations less stringent than the prohibitions of the ESA which reasonably will likely result in the take of Florida panthers and RCWs without the U.S. Fish and Wildlife Service (FWS) having first issued an ESA Section 10 Habitat Conservation Plan (HCP) and incidental take permit (ITP).

2. This Second Amended Complaint seeks declaratory and injunctive relief prohibiting the defendants from continuing to implement, enact, or authorize land clearing, land uses, and road extensions in occupied and essential habitat of Florida panthers and RCW, without the FWS having first issued an ESA Section 10 HCP and ITP for such land clearing, land use, and road

extension. This Second Amended Complaint specifically seeks a finding and a declaration that the ESA supercedes and trumps Collier County's land use regulations at Collier Comprehensive Land Use Plan (Collier Plan) Conservation and Coastal Element Policies 6.1.5 and 7.1.2, and Collier County Land Development Code 3.05.02( c), because these regulations are less stringent than the ESA and its implementing regulations.

### **JURISDICTION**

3. The Court has jurisdiction over this ESA citizen suit and declaratory judgment action pursuant to 16 U.S.C. § 1540(g) and 28 U.S.C. §§ 1331 and 2201(a). The plaintiffs properly gave written notice of their claims under the ESA in accordance with 16 U.S.C. §1540(g)(2). The written notice of the plaintiffs ESA claims and intent to sue was given in March of 2013 to each of the defendants, and to the Secretary of United States Department of the Interior.

4. The ESA's prohibition on takings extends to "any... political subdivision of a State..." 16 U.S.C. § 1532. By including political subdivisions of states in the group of actors subject to the ESA's prohibitions, Congress implicitly intended to preempt and prohibit any action of Collier County and its officers inconsistent with, and in violation of, the ESA. See, Strahan v. Coxe, 127 F.3d 155, 167 (1<sup>st</sup> Cir. 1997). The Court has jurisdiction over the individual defendants in their official capacity as Collier County commissioners because they are state employees over whom the court has subject matter jurisdiction under the ESA and the Ex parte Young doctrine to prospectively enjoin from future violations of the ESA. See, Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't. of Health & Rehab. Servs., 225 F.3d 1208, 1219 (11<sup>th</sup> Cir. 2000); Friends of the Everglades v. SFWMD, 570 F.3d 1210, 1215 (11<sup>th</sup> Cir. 2009) (the Executive Director of SFWMD is a state official over whom the court has jurisdiction pursuant

to the Ex parte Young doctrine).

5. The Court has jurisdiction to enforce and enjoin the violation of any ESA provision or implementing regulation, including jurisdiction to enforce ESA Section 1535(f)(2) which prohibits the defendants from enacting any law or regulation less restrictive than the ESA and its implementing regulations. Specifically, Section 1535(f)(2) of the ESA declares that:

“Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.” (e.s.). 16 U.S.C. Section 1535(f)(2).

6. Additionally, Collier County and its officers have consented to being sued under the ESA by Collier County integrating the ESA species listing criteria into the Collier Plan. The Conservation and Coastal Management Element Objective 7.1 of the Collier Plan provides that Collier County “shall direct incompatible land uses away from listed species and their habitats,” based upon the listing process of state and federal agencies. This action by Collier County constitutes Collier County’s waiver and consent to Collier County and its officers being sued in the federal court under the ESA. See, Palila v. Hawaii Dept. of Land & Natural Resources, 471 F. Supp. 985, 995-99 (D. Haw. 1979) (Hawaii waived its immunity and consented to being sued in an ESA citizen suit by its participation in activities covered by the ESA).

7. Furthermore, because the Court has jurisdiction over the parties, the Court may declare whether the defendants subject land use and land clearing regulations, and Collier County’s Wilson Boulevard extension regulations, are preempted by the ESA because these Collier County regulations are less restrictive than the ESA and its implementing regulations. See, 28 U.S.C. §2201(a).

### VENUE

8. Venue in this case is proper under 28 U.S.C. §§ 1391(e). The Florida panthers and RCWs who initiated this action against the defendants reside in Collier County which is located in this judicial district and division. The FWF and CCAS each have offices in this judicial district and this division, and each have members who reside in this judicial district and this division. Additionally, the defendants and the subject land are all located in this judicial district and division.

### PARTIES

#### Plaintiff, Florida Panthers

9. Florida panthers have been listed by the FWS as endangered species since 1967. Much of the land in Collier County is occupied home range for the breeding population of the endangered Florida panther, including the land in North Belle Meade. The defendants past and foreseeable actions to implement, enact, or authorize land clearing, land uses, and road extensions in occupied and essential habitat of Florida panthers in North Belle Meade is harassing, harming, and taking Florida panthers in violation of the ESA.

10. Florida panthers have legal status and standing as plaintiffs on their own right in federal courts to sue to enforce the ESA. See, Palila v. Hawaii Dep't of Land & Natural Resources, 852 F.2d 1106, 1107 (9th Cir.1988) (stating that the endangered palila “has legal status and wings its way into federal court as a plaintiff in its own right” and may be represented by legal counsel of environmental organizations); Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231, 1253 (11<sup>th</sup> Cir. 1998); Loggerhead Turtle v. County Council of Volusia County, Florida, 896 F.Supp. 1170 (M.D. Fla. 1995).

**Plaintiff, RCWs**

11. The RCWs have been listed by the FWS as an endangered species under the ESA since 1970. Both the FWS and the Florida Fish and Wildlife Conservation Commission (FWCC) have identified the RCWs colonies in west and central NBM, and the FWCC has identified the lands in North Belle Meade to be strategic habitat for RCWs. Hussey v. DCA, 25 FALR 4410, DOAH Case No. 02-3796GM, DCA Case No. DCA03-GM-137, Recommended Order, paragraph 48 (DCA 2003). North Belle Meade is an important habitat for recovery of RCWs in Collier County.

12. The defendants' past and foreseeable actions to implement, enact, or authorize land clearing, land uses, and road extensions into occupied and essential habitat of the RCWs in North Belle Meade, without the FWS having first issued an ESA Section 10 HCP and ITP for such actions, is harassing, harming, and taking the RCWs.

13. The RCWs have standing on their own right in federal courts to sue to enforce the ESA. See, Palila, 852 F.2d at 1107 (9th Cir.1988); Loggerhead Turtle, 148 F.3d at 1253 (11<sup>th</sup> Cir. 1998); Loggerhead Turtle, 896 F.Supp. 1170 (M.D. Fla. 1995).

**Plaintiff, Florida Wildlife Federation**

14. The FWF is duly incorporated under the laws of the State of Florida as a not-for-profit corporation. The FWF's place of business is in Tallahassee, Florida, with regional offices and field representatives in Naples and St. Augustine, Florida. The FWF is a conservation organization comprised of over 14,000 members and approximately 60,000 supporters. The corporate purposes of the FWF include the protection of the environment, protecting the fish and wildlife resources, protection of the air and water quality of the State of Florida, and the

protection of listed species and their habitats.

15. Since 1937, the FWF has been an advocate for threatened and endangered species in Florida, including the Florida panther. For decades the FWF has been actively advocating and litigating for the protection and recovery of the endangered Florida panthers and RCWs. This has included over 17 years of litigation to protect Florida panthers and RCWs and their habitat in southwest Florida, specifically in Collier County and North Belle Meade.

16. The FWF and its members engage in educational, recreational, and scientific activities in observing, studying, and otherwise enjoying Florida panthers, RCWs, and other listed species and their habitats. These interests have been adversely affected and harmed to date by the defendants alleged actions, and will be adversely affected by the defendants alleged foreseeable future actions.

17. The FWF owns conservation property in North Golden Gate Estates between the Florida Panther National Wildlife Refuge and North Belle Meade. This FWF property is primary Florida panther habitat essential to Florida panthers.

18. Two FWF members reside in North Belle Meade to the north of the HHH Ranch. In 2014, two panthers visited on the FWF members North Belle Meade property, one an uncollared panther and the second being female FP 224 with a scar on her right rear thigh and a green/red collar. (See paragraph 60 below for more detail concerning FP 224). These two FWF members desire for Florida panthers to be able to safely use their North Belle Meade property and other North Belle Meade property as essential habitat.

19. For decades FWF's Southwest Florida Field Representative Nancy Anne Payton has worked to protect Florida panthers and RCWs and their habitats in Southwest Florida, especially

Collier County. Collier County has recognized Ms. Payton's work by purchasing 71 acres of wildlife habitat in the northwest portion of NBM and naming the land the "Nancy Payton Preserve." The land is located in Township 49, Range 26, Section 24, and is within Collier County's North Belle Meade Rural Fringe Mixed Use District. The Nancy Payton Preserve is native pine flat woods with 5 listed animal species: the Florida panther, RCWs, black bears, Big Cypress fox squirrels, and gopher tortoises. See, <http://www.colliergov.net/Conservation/Collier>. The Nancy Payton Preserve is the only Collier County owned conservation land named after a living Collier County resident. The defendants past and foreseeable land clearing and Wilson Boulevard extension actions adversely affect use of the Nancy Payton Preserve by Florida panthers and RCWs, as well as adversely affects Nancy Payton's use and enjoy of the preserve.

20. The FWF brings this action not only on behalf of Florida panthers and RCWs, but also on behalf of FWF's corporate interests and the interests of its members.

**Plaintiff, Collier County Audubon Society, Inc.**

21. CCAS is a duly incorporated not-for-profit corporation in Florida, with over 2,000 members. CCAS operates an office in Naples, Florida.

22. CCAS has advocated on behalf of threatened and endangered species in Florida for over 53 years, and has litigated with the U.S. Army Corps of Engineers (ACOE) and the FWS over projects and impacts upon the endangered Florida Panther. CCAS has also litigated with and against Collier County and the Florida Department of Community Affairs (FDCA) over comprehensive land use plan criteria which impact the endangered Florida panthers and RCWs, and their habitats.

23. CCAS and its members engage in educational, recreational, and scientific activities

in observing, studying, and otherwise enjoying Florida panthers, RCWs, and other listed species and their habitats.

24. For over thirteen years CCAS has organized and led wildlife viewing and education trips into Florida panther habitat, including the Florida Panther National Wildlife Refuge in Collier County just to the east of North Belle Meade.

25. CCAS members and CCAS staff work, volunteer, and recreate at the Corkscrew Swamp Sanctuary (CCS), a 17 square mile wildlife sanctuary of virgin bald cypress owned by National Audubon and located partially in Collier County, where Florida panthers have frequently been observed.

26. CCAS interests will be adversely affected and harmed in the future if the defendants continue to approve land clearing in North Belle Meade, and implementation of the extension of Wilson Boulevard in North Belle Meade.

27. CCAS brings this action not only on behalf of Florida panthers and RCWs, but also on behalf of CCAS's corporate interests and the interests its members, many of whom regularly enjoy, and will continue to enjoy in the future, educational, recreational, and scientific activities regarding the Florida panther and RCWs.

**Defendant, Collier County, Florida**

28. Defendant, Collier County, Florida (Collier County) is a political subdivision of the State of Florida and has comprehensive land use planning and zoning authority for land located in unincorporated Collier County pursuant to Chapter 125, Fla. Stat. and Chapter 163, Part II, Fla. Stat.

29. Pursuant to the definition section of the ESA, as a political subdivision of the State of

Florida, Collier County is a “person” subject to the provisions of the ESA. See, 16 U.S.C. § 1532(13) (persons subject to the "take" prohibition of the ESA include any political subdivision of a State); Tennessee Valley Auth., 437 U.S. 153, 184 (1978) ("All persons ... are specifically instructed not to 'take' endangered species"); Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231, 1255 (11<sup>th</sup> Cir. 1998) (Volusia County is a person subject to the ESA). Collier County has also

30. Actions by the County which authorize land uses and activities which create a reasonably certain threat of future harm or harassment to endangered or threatened species are prohibited by Section 9 of the ESA unless the County has obtained an ESA Section 10 HCP and ITP from the FWS. See, Loggerhead Turtle, 148 F.3d at 1253 (11<sup>th</sup> Cir. 1998)(Volusia County’s authorization of beach driving and beach lighting was causally related to ESA Section 9 take of loggerhead turtles); Strahan v. Coxe, 127 F.3d 155, 158, 163 (1st Cir.1997) (state agency caused takings of the endangered right whale because it “licensed commercial fishing operations to use gillnets and lobster pots in specifically the manner that is likely to result in violation of [the ESA]”); Defenders of Wildlife v. Administrator, Env’tl. Protection Agency, 882 F.2d 1294, 1300-01 (8th Cir.1989) (the federal EPA agency caused takes of the endangered black-footed ferret through its “decision to register pesticides” even though other persons actually distributed or used the pesticides).

**Defendant, Georgia A. Hiller**

31. Defendant, Georgia A. Hiller (Commissioner Hiller) is a Collier County Commissioner who resides in Collier County. Commissioner Hiller is being sued in her official capacity as a Collier County Commissioner. Commissioner Hiller is a person subject to the

provisions of the ESA. See, 16 U.S.C. § 1532(13). The ESA authorizes citizen suits which seek prospective injunctive relief against any person, including individual officers of state political subdivisions. See, 16 U.S.C. § 1540(g); Strahan v. Coxe, 127 F.3d 155, 167 (1<sup>st</sup> Cir. 1997).

**Defendant, Tom Henning**

32. Defendant, Tom Henning (Commissioner Henning) is a Collier County Commissioner who resides in Collier County. Commissioner Henning is being sued in his official capacity as a Collier County Commissioner. Commissioner Henning is a person subject to the provisions of the ESA. See, 16 U.S.C. § 1532(13). The ESA authorizes citizen suits which seek prospective injunctive relief against any person, including individual officers of state political subdivisions. See, 16 U.S.C. § 1540(g); Strahan v. Coxe, 127 F.3d at 167.

**Defendant, Fred W. Coyle**

33. Defendant, Fred W. Coyle (Commissioner Coyle) is a Collier County Commissioner who resides in Collier County. Commissioner Coyle is being sued in his official capacity as a Collier County Commissioner. Commissioner Coyle is a person subject to the provisions of the ESA. See, 16 U.S.C. § 1532(13). The ESA authorizes citizen suits which seek prospective injunctive relief against any person, including individual officers of state political subdivisions. See, 16 U.S.C. § 1540(g); Strahan v. Coxe, 127 F.3d at 167.

**Defendant, Tim Nance**

34. Defendant, Tim Nance (Commissioner Nance) is a Collier County Commissioner who resides in Collier County. Commissioner Nance is being sued in his official capacity as a Collier County Commissioner. Commissioner Nance is a person subject to the provisions of the ESA. See, 16 U.S.C. § 1532(13). The ESA authorizes citizen suits which seek prospective

injunctive relief against any person, including individual officers of state political subdivisions.

See, 16 U.S.C. § 1540(g); Strahan v. Coxe, 127 F.3d at 167.

**Endangered Species Act of 1973**

35. The ESA is comprehensive legislation to protect threatened and endangered species. Tennessee Valley Auth. v. Hill, 437 U.S. 153, 180, 98 S.Ct. 2279, 2294-95, 57 L.Ed.2d 117 (1978). "The plain intent of Congress in enacting the Endangered Species Act was to halt and reverse the trend toward species extinction, whatever the cost." Tennessee Valley Auth., 437 U.S. at 184. Congress intended the ESA "to be as far-reaching as possible and to prevent any taking of an endangered species, 'whatever the cost.'" TVA v. Hill, 437 U.S. 153, 184 (1978). "[E]xamination of the language, history, and structure of the legislation ... indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities." *Id.* at 174, 98 S.Ct. at 2292.

36. Congress intended the ESA to "provide comprehensive protection for endangered and threatened species." Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687, 699 (1995). Congress recognized that certain species of plants and animals "have been so depleted in numbers that they are in danger of or threatened with extinction," and enacted the ESA to provide both "a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531.

37. The ESA provides for "the listing of species as threatened or endangered and the designation of their critical habitat." Defenders of Wildlife v. U.S. Dep't of the Navy, 733 F.3d 1106, 1111 (11<sup>th</sup> Cir. 2013) (citing 16 U.S.C. § 1533).

38. An endangered species is defined as a species that is “in danger of extinction throughout all or a significant portion of its range . . . .” 16 U.S.C. § 1532(6).

39. A threatened species is defined as a species that is “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Id.

40. Section 9 of the ESA protects listed threatened and endangered species by making it unlawful for any person to “take” such listed species without express authorization from FWS. 16 U.S.C. § 1538(a)(1)(B). The word “take” is broadly defined to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19); See, Babbitt v. Sweet Home Chapter of Cmty. for a Greater Oregon, 515 U.S. 687, 704 (1995) (“Congress intended ‘take’ to apply broadly to cover indirect as well as purposeful actions.”). The FWS regulations define “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” 50 C.F.R. § 17.3. The term “harm” is defined by FWS regulations “as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” 50 C.F.R. §17.3.

41. The Section 9 prohibition on a “take” of a threatened or endangered species includes reasonably foreseeable takes incidental to otherwise lawful activity. See, Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231, 1253 (11<sup>th</sup> Cir. 1998); Marbled Murrel v. Pacific Lumber Co., 83 F.3d 1060 (9<sup>th</sup> Cir. 1996).

42. Section 9 of the ESA prohibits not only past actions, it also applies to wholly-future

threat of ESA prohibited harm to endangered and threatened species. Marbled Murrel v. Pacific Lumber Co., 83 F.3d 1060, 1064-65 (9<sup>th</sup> Cir. 1996) (Threat of future harm related to harvesting trees is grounds for court issuance of ESA based injunction).

43. In 1982 Congress amended the ESA to add the Section 10 HCP and ITP provision that supports the FWS regulations which provide that non-federal activities “not intended to harm an endangered species, such as habitat modification, may constitute unlawful takings under the ESA unless the Secretary permits them.” Babbitt v. Sweet Home Chapter of Chapters for a Great Or., 515 U.S. 687, 70-01(1995). Specifically, ESA Section 10 provided an ITP exception for takings that are incidental to, and not the propose of, the execution of otherwise lawful activity. 16 U.S.C. §1539(a)(1)(B). The ITP must specify in detail the allowable take.

44. In order for a person to receive a Section 10 ITP, the applicant must submit a HCP that specifies:

“( i) the impact which will likely result from such taking;  
(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;  
(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and  
(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan. 16 U.S.C. §1539(2)(A)(i-iv).  
See, Loggerhead v. County Council of Volusia County, Florida, 148 F.3d 1231, 1238 (11<sup>th</sup> Cir. 1998).

45. The FWS’s regulations further instruct the applicant for a HCP and ITP to include a "complete description of the activity sought to be authorized" and "[t]he common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known[.]" 50 C.F.R. § 17.22(b)(1)(i)-(ii) (endangered wildlife); 50 C.F.R. § 17.32(b)(1)(iii)(A)-(B) (threatened wildlife). Id.

46. 16 U.S.C. Section 1535(f)(2) reads as follows.

“ Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.” (e.s.).

This ESA language preempts and supercedes all Florida law and Collier County regulations that are less restrictive than the prohibitions of the ESA and its implementing regulations.

47. Because endangered and threatened species reside in Collier County, the County must comply with the ESA when enacting land use and zoning laws which authorize activities that are likely to “take” endangered or threatened species, including activities which modify their habitat.

#### **The endangered species at issue in this action**

##### **A. The Florida panthers**

48. The FWS has listed Florida Panthers as an endangered species under the ESA since 1967. See, 50 C.F.R. §17.11. This FWS listing of the Florida panther as an endangered species was a FWS finding that the survival of Florida panther as a species required assistance.

49. The 2014 FWCC estimate of the current range of the number Florida panther adults is between 100-180 adults, the adult Florida panther population to lie somewhere in between, making the Florida panther one of the most endangered species in the United States.

50. The current Florida panther breeding population is located on approximately 2.27 million acres of land in Collier, Lee, Hendry, Miami-Dade, and Monroe counties, all located south of the Caloosahatchee. Of this 2.27 million acres of land, approximately 1.67 million acres (73%) are publicly owned, and approximately 620,000 acres (27%) are privately owned. (Kautz, et al. 2006). The majority of these 620,000 acres of privately owned land south of the

Caloosahatchee River is currently ranch and agricultural land.

51. There are also approximately 10 male Florida panthers confirmed to be north of the Caloosahatchee River, however, no female Florida panther has been document north of the Caloosahatchee River since 1973.

52. The FWS's Recovery Plan for the Florida panther requires the protection of all existing occupied breeding panther lands, expansion of the panther breeding population in the south-central Florida panther population to 240 adults, and the reintroduction of at least two additional breeding populations of 240 adult breeding Florida panthers within the Florida panther's historic range outside south-central Florida. (See, Florida Panther Recovery Plan, Third Revision, Nov. 1, 2008, fws.gov website). See also, the Florida Panther Protection Plan at [www.floridapantherprotection.com/pantherscience/scientificliterature](http://www.floridapantherprotection.com/pantherscience/scientificliterature)).

53. The protection of the existing breeding Florida panther occupied habitat in North Belle Meade is essential not only to the protection of the existing 100-180 adult Florida panthers, it is also essential to the recovery of the Florida panther.

54. The Kautz, et al. (2006) peer reviewed paper states that primary zone Florida panther habitat is essential to the long-term viability and persistence of the Florida panther in the wild. In order to protect the current population of Florida panthers, habitat conservation measures must be used to protect occupied primary zone Florida panther habitat, such as North Belle Meade, from being cleared, mined, or fragmented by roadways. Panther habitat selection is related to prey availability (Janis and Clark 1999) and, consequently, prey habitat use. Adequate cover, and the size, distribution, and abundance of available prey species are important factors to the persistence of panthers in south Florida and often determine the extent of panther use of an area.

55. The importance of North Belle Meade to endangered Florida Panthers is established by North Belle Meade's designation as primary zone panther habitat in the Kautz, et al. (2006) paper. Collared and uncollared Florida panthers unquestionably use all of North Belle Meade, the use having been well documented for decades, and the panther use of North Belle Meade having been ever increasing. The FWCC has collected GPS and VHF telemetry of collared panthers since 1981. This data establishes that North Belle Meade is the home range of at least a male and a female panther. Since only a third of the panthers were collared, other panther use of North Belle Meade is possible.

56. There have been documented Florida panther kills of prey in North Belle Meade, and documented Florida panther signs in North Belle Meade. The FWCC has also documented Florida panther movement under Interstate-75 through the Miller Canal bridge from the Picayune Strand State Forest to North Belle Meade. The FWCC has documented that Florida panthers use the banks of the Miller Canal to travel between North Belle Meade and the Picayune Strand State Forest.

57. The FWCC has listed nine (9) Florida panther deaths on Interstate-75 between North Belle Meade and the Picayune Strand State Forest, east of the Interstate-75 toll booth located at mile marker 101. The FWCC reported Florida panther deaths using the term "UCFP" to mean uncollared Florida panther, "K" to mean kitten, and "FP" to mean Florida panther.

- A. August 19, 2013, UCFP198 (3 year female) at Interstate-75 mile marker 93.
- B. January 22, 2011, UCFP153 at Interstate-75 mile marker 98.
- C. January 13, 2011, UCFP152 (female) at Interstate-75 mile marker 98.
- D. March 12, 2010, FP174 at Interstate-75 mile marker 95.

E. September 6, 2009, UCFP125 at Interstate-75 mile marker 96.5.

F. April 3, 2007, UCFP at Interstate-75 mile marker 98.

G. August 17, 2004, K94 at Interstate-75 mile marker 98.

H. June 27, 2004, UCFP at Interstate-75 mile marker 93.

I. February 2, 2004, UCFP63 at Interstate-75 mile marker 99.

58. On July 1, 2013, FWCC motion cameras photographed an uncollared female Florida panther on the Nancy Payton Preserve in the northwest corner of North Belle Meade.

59. Other FWCC documentation of panther use of North Belle Meade include: a female Florida panther having had a den with her litter of three kittens (panthers) in Section 33 next to the subject 578 acre property, and multiple documented Florida panther kills of goats in Section 24 in the northwest corner of North Belle Meade.

60. On May 14, 2013, just north of North Belle Meade, the FWCC recovered a nine-month old uncollared female Florida panther hiding in thick brush with a badly broken right rear leg. She was found in North Golden Gate Estates off of 12<sup>th</sup> Street SE, just south of Golden Gate Boulevard. The Florida panther appeared to have been hit by a vehicle. The FWCC arranged for veterinarians to use a steel plate to repair the compound break, and the Florida panther was taken by the FWCC to the White Oak Conservation Center for recovery. In March of 2014 the FWCC released her in southeastern Hendry County, and not long thereafter she appeared on the property of two FWF members who live in North Belle Meade. She had returned to her home in North Belle Meade.

61. The FWS has also arrested and convicted Todd Alan Benfield, a bow and arrow hunter, who shot and killed a Florida panther in northeastern North Belle Meade in 2009.

**B. The Red-cockaded woodpecker**

62. The FWS has listed RCWs as an endangered species under the ESA since 1970. See, 50 C.F.R. § 17.11 (listed under Woodpecker, red-cockaded).

63. The FWS and the FWCC have each identified RCW colonies in west and central North Belle Meade. The FWCC has identified these lands to be strategic habitat for RCWs. Hussey v. DCA, DOAH Case No. 02-3796GM, Recommended Order, paragraph 48 (FDCA 2003). The only documented occurrence of RCW on private land in Collier County is in North Belle Meade.

64. The primary threats for the RCWs are habitat loss, fragmentation by land clearing and roadways, habitat degradation, and isolation. Highways fragment RCW populations and habitats in three ways: loss of large carnivores, habitat dissection, and the isolation of RCWs. When highways fragment large carnivore populations, RCWs can suffer increased depredation from smaller carnivores such as bobcats, skunks and weasels. Habitat dissection and isolation often result in patches of habitat too small to function as RCW territory.

65. The FWS has developed an RCW recovery plan which requires: (1) the location and preservation of viable pine forested habitats; (2) restoration of degraded pine forests; and (3) maintaining or creating pine forested wildlife corridors which link or have the opportunity to link potential breeding RCW groups.

66. Between 2007-2009, Collier County's "Habitat Conservation Plan Committee" prepared a draft ESA Section 10 HCP for the protection and conservation of RCWs in North Belle Meade. The draft RCW HCP for North Belle Meade identified the RCW cavity trees and foraging trees in North Belle Meade, and contained maps of the FWCC Florida panther telemetry

in North Belle Meade up to the year 2009.

67. However, in 2009 the Collier County Board of County Commissioners voted not to approve the RCW HCP for North Belle Meade, and no action has been taken since by Collier County on the RCW HCP for North Belle Meade.

**Collier County's land use authority**

68. Collier County has broad and all encompassing statutory land use authority. Section 125.01(g), Fla. Stat. and Section 163.3167, Fla. Stat. direct Collier County to prepare and enforce comprehensive land use plans for development in Collier County. Section 125.01(h), Fla. Stat. authorizes Collier County to establish and enforce land zoning regulations, while Section 125.01(w), Fla. Stat. authorizes Collier County to perform any acts in the common interests of the people of Collier County, and not specifically prohibited by law.

69. Collier County's comprehensive land use plan authority

“is a statutorily mandated legislative plan to control and direct land use and development of property in Collier County, it is similar to a constitution for all future development in Collier County. Zoning, or in this case, the County's [Land Development Code] is the means by which the Plan is implemented. Zoning involves the exercise of discretionary powers within limits imposed by the comprehensive plan.” Citrus County v. Halls River Dev. Inc., 8 So.3d 413, 420-21 (Fla. 5<sup>th</sup> DCA 1009)(internal citations omitted); Hussey v. Collier County, \_\_\_\_\_ FLW \_\_\_\_\_ (fn 2) (Fla. 20<sup>th</sup> Cir. 2013).

70. The ESA imposes responsibilities and limitations on Collier County land use authority. The ESA expressly provides that the ESA and its implementing regulations preempt and supercede all Florida laws, including Collier County comprehensive land ordinances and zoning regulations, which are less restrictive than the prohibitions of the ESA and its implementing regulations. See, 16 U.S.C. Section 1535(f)(2). Thus, no Collier County ordinance,

regulation or authorization to clear occupied ESA listed species habitat may be less restrictive than the ESA and its implementing regulations. Id., See, Hussey v. Collier County, \_\_\_\_ FLW \_\_\_\_ (Fla. 20<sup>th</sup> Cir. 2013). Likewise, no Collier County ordinance, regulation or authorization for the extension of roads into occupied ESA listed species habitat may be less restrictive than the ESA and its implementing regulations. Id.

71. The ESA prohibits “persons” such as Collier County, a political subdivision of the State of Florida, and its officers, from actions that are causally related to the “take” of endangered and threatened species. See, 16 U.S.C. §§ 1532 & 1538(a)(1)(B); Strahan v. Coxe, 127 F.3d 155, 167 (1<sup>st</sup> Cir. 1997).

**Collier County’s implementation of the ESA**

72. For the purpose of implementing Collier County’s land use authority and the implementation of the ESA, Collier County first enacted the Collier Plan in 1989. During the process of the Collier Plan, an advisory group of wildlife experts designated areas in Collier County that needed additional protections in the Collier Plan as Natural Resource Protection Areas (NRPAs). The 1989 Collier Plan policies provided that by August 1994, NRPAs would be designated on the Future Land Use Map (FLUM) of the Collier Plan in order to protect listed species and their habitats within the County.

73. On November 14, 1997, Collier County amended the Collier Plan pursuant to the County’s 1996 Evaluation and Appraisal Report (EAR). Among the amendments was the deletion of the August 1994 deadline for designating NRPAs on the Collier Plan FLUM.

74. On December 24, 1997, the FDCA issued its Notice of Intent to find Collier County’s EAR-based amendments not in compliance as defined by Section 163.3184(1)(b), Fla. Stat.

FDCA's petition was forwarded to the Florida Division of Administrative Hearings (DOAH) and FWF and CCAS intervened in the action petitioners.

75. After a five (5) day final evidentiary hearing, Administrative Law Judge (ALJ) Robert E. Meale issued a Recommended Order which found that Collier County's EAR-based amendments were not-in-compliance with Chapter 163, Part II, Fla. Stat.

76. On June 22, 1999, the Administration Commission (then Governor Jeb Bush and the Florida Cabinet) voted 7-0 to approve a Final Order that adopted the Recommended Order in its entirety, and directed Collier County to take the following steps to bring the Collier Plan into compliance with Chapter 163, Part II, Fla. Stat.: (1) rescind those 1997 EAR-based amendments found not in compliance; (2) adopt certain specific "remedial" amendments; (3) initiate an three year assessment of the area of Collier County designated on the FLUM as Agricultural/Rural; (4) adopt interim amendments conduct to remain in force during the course of the three year assessment; and (5) no later than June 22, 2002, adopt plan amendments needed to implement the findings and results of the three (3) year assessment. Collier County was also required to direct incompatible land uses away from wetlands and upland habitats of listed species by means of creative planning techniques.

77. Collier County conducted the mandated three year assessment and elected to divided its Agricultural/Rural designated areas into two subdistricts – the Rural Fringe and the Eastern Lands. The Eastern Lands, consisting of 196,000 acres surrounding Immokalee, was designated the Rural Lands Stewardship Area. The Rural Fringe Lands consisting of 93,000 acres, including the 15,552 acre North Belle Meade area, was designated the Rural Fringe Mixed Use District.

78. In 2002, Collier County enacted Collier County Ordinance No. 02-32 to amend the

Collier Plan. The amendments included the new Coastal and Conservation Management Element (CCME) Objective 7.1 which mandated that the County “shall direct incompatible land uses away from listed species and their habitats,” based upon the listing process of state and federal agencies. The new CCME Policy 7.1.1 provided that incompatible land uses are directed away from listed species and their habitats by the designation on the Collier Plan FLUM of one of the five following Collier Plan land use designation categories, each of which is set forth in the Future Land Use Element (FLUE) of the Collier Plan. These five Collier Plan land use categories which direct incompatible land uses away from listed species and their habitats are: (1) the “Conservation” land use category, (2) the “Big Cypress Area of Critical State Concern Overlay” land use category, (3) the “NRPA” land use category, (4) the “Sending Lands” land use category with transfer of development rights to the Receiving Lands, and (5) the “Habitat Stewardship Areas” (HSAs) within the Rural Lands Stewardship Area Overlay of the Collier Plan.

79. The Rural Fringe amendments defined “Sending Lands” as those lands “[T]hat have the highest degree of environmental value” and “are the principal target for preservation and conservation.” See, Collier Plan, FLUE. Residential use of “Sending Lands” is restricted by the Collier Plan to one dwelling unit per parcel which existed as of June 22, 1999, or one dwelling unit per 40 acres. Non-residential uses other than agriculture are limited for the purpose of protecting native habitat, wildlife, wildlife habitat, and wetlands. Mining is prohibited on lands designated as “Sending Lands.” The Rural Fringe amendments limited residential density on lands designated as “Sending Lands,” and provided for the transfer of development rights to lands designated as “Receiving Lands.”

80. The owners of the HHH Ranch, Dr. Francis D. Hussey and his wife Mary Pat Hussey

(Husseys), challenged the designation of their land as “Sending Lands” in a DOAH administrative hearing. See, DOAH Case No. 02-3795GM.

81. At this administrative hearing the Hussey’s argued and presented evidence that all of the land in North Belle Meade was important Florida panther habitat, and that protection of the entire North Belle Meade was an appropriate reaction to the best available data.

82. After eight days of evidentiary hearing, ALJ J. Lawrence Johnston entered a Recommended Order finding the Rural Fringe Amendments to be in compliance under Chapter 163, Part II, Fla. Stat. ALJ Johnston specifically held the land use amendments were based upon the best available evidence, and that the amendments reacted appropriately to the best available data and analysis..

83. The Hussey’s filed exceptions to the ALJ’s Recommended Order with the FDCA. The FDCA reviewed the Hussey’s exceptions and entered a Final Order which found the “Sending Lands” designation of the Hussey’s property was in compliance with Chapter 163, Part II, Fla. Stat. The Hussey’s appealed FDCA’s Final Order, and the First District Court of Appeal affirmed the FDCA’s Final Order.

**Collier County’s land clearing regulations**

84. The Collier Plan designates approximately a total of 10,653 acres of North Belle Meade as “Sending Lands,” that being 4,598 acres as “Sending Lands” in general, and 6,075 acres as “NRPA Sending Lands.”

85. All of these 10,653 acres in North Belle Meade have been identified by the FWS and the FWCC as occupied Florida panther habitat. Additionally, approximately 3,547 acres of these Sending Lands in North Belle Meade have been identified as by Collier County as RCW foraging

habitat and RCW cavity tree habitat.

86. The Conservation and Coastal Management Element Policy 6.1.2 ( c) of the Collier Plan, and Collier County’s Land Development Code Section 3.05.07(c)(3)(a), each require the owners of North Belle Meade lands designated as “Sending Lands” preserve and manage eighty percent (80%) of the native vegetation of the site.

87. The Conservation and Coastal Management Element Policy 6.1.2(d) of the Collier Plan, and Collier County’s Land Development Code Section 3.05.07(c)(3)(b), each require the owners of North Belle Meade lands designated by Collier County as “NRPA Sending Lands” preserve and manage ninety percent (90%) of the native vegetation of the site.

88. Collier Plan Conservation and Coastal Management Element Policy 7.1.2 states that “non-agricultural development, excluding individual single family residences, shall directed away from listed species and their habitats” by complying with the list of guidelines and standards in Policy 7.1.2 which include landowners conducting a wildlife survey of listed species, landowners developing a wildlife management plan for listed species which describes how the project directs incompatible land uses away from the listed species and their habitats, and Collier County utilizing the recommendations of the FWS and FWCC .

89. The native vegetation preservation of Collier County’s Conservation and Coastal Management Element Policies 6.1.1 and 6.1.2 of the Collier Plan, and Collier County’s Land Development Code Section 3.05.07(c)(3)(a) &(b) are Collier County’s attempt to implement the ESA.

**The defendants’ agricultural land clearing actions**

90. However, in reliance on Florida’s Right to Farm Act, Collier County enacted

Conservation and Coastal Management Element Policy 6.1.5 of the Collier Plan which provides that “Agriculture shall be exempt from the... [native vegetation] preservation requirements contained in [Conservation and Coastal Management Element] Policies 6.1.1 and 6.1.2...”

91. Likewise, Collier County Land Development Code 3.05.02( c) authorizes agricultural land clearing on privately owned land in North Belle Meade, regardless whether the land is occupied Florida panther habitat or RCWs cavity tree habitat is present on the property.

92. Collier County’s process for land owners to apply to Collier County for authorization for agricultural land clearing in North Belle Meade property designated as “Sending Lands” and “NRPA Sending Lands” is for the land owner to fill out a Collier County form and provide proof of ownership by means of a warranty deed or tax statement, pay a \$250.00 application fee, provide an aerial photograph or site plan that includes a general vegetation inventory of the property identifying acreages of existing native vegetation and the proposed clearing plan, proof the property is classified as agriculture by the County Property Appraiser, and providing a description and evidence of a bona fide agricultural operation on the property. Collier County deems agricultural land conversion, including timbering and pasture improvement, to be a bona fide agricultural operation.

93. Collier County approval of agricultural land clearing of North Belle Meade property designated as “Sending Lands” and “NRPA Sending Lands” is a simple bookkeeping task because the Collier Plan and Collier County’s land development code allow agricultural uses in the North Belle Meade lands designated as “Sending Lands” and “NRPA Sending Lands.”

94. As of April 29, 2014, Collier County had received and approved twenty-four (24) Agricultural Clearing Notification documents concerning 975.39 acres of land in North Belle

Meade. Based upon information and believe, Collier County has never denied an Agricultural Clearing Notification for clearing vegetation from property in North Belle Meade. Currently Collier County's regulations require Collier County to receive Agricultural Clearing Notifications for occupied Florida panther and RCW habitat, and approve the notifications which meet Collier County's data collection requirements set forth in paragraph 92 above. Collier County has no discretion to deny an agricultural land clearing request which meet Collier County's data requirements set for in paragraph 92 above.

95. Additionally, Collier Plan Conservation and Coastal Management Element Policy 7.1.2 exempts agricultural activities from the listed species survey and wildlife management plan requirements of Conservation and Coastal Element Policy 7.1.2, as well as exempts Collier County from having to utilize the recommendations of the FWS and FWCC concerning agricultural activities impacts on listed species and their habitats.

96. Collier County does not have any law, regulation, or requirement which prohibits agricultural land clearing of vegetation in Florida panther habitat without the land owner first obtaining a FWS ESA Section 10 HCP and ITP.

97. Collier County does not have any requirement which prohibits agricultural land clearing of Red-cockaded woodpecker cavity tree habitat and foraging tree habitat without the land owner first obtaining a FWS ESA Section 10 HCP and ITP.

98. Collier County has not taken the reasonable alternative steps available to Collier County to minimize and mitigate the adverse impacts of agricultural land clearing on ESA listed species.

**The defendants' single family residential approvals**

99. Collier County's individual single family residential land use actions in North Belle Meade and Northern Golden Gate Estates directly or indirectly affect the Florida panther, and are within the FWS's Florida panther ESA action area.

100. Collier Plan Conservation and Coastal Management Element Policy 7.1.2 exempts individual single family residences not only from the listed species survey and wildlife management plan requirements of Conservation and Coastal Management Element Policy 7.1.2, it also exempts Collier County from having to utilize the recommendations of the FWS and FWCC concerning individual single family residence impacts on listed species and their habitats.

101. Collier County has approved the platting of residential lots of 5 acres or less in North Belle Meade and Northern Golden Gate Estates, and Collier County authorizes individual single family residential development of these platted lots without any ESA review and ESA mitigation.

102. Annually Collier County approves development permits for approximately 1,740 acres of vacant single family lots in Northern Golden Gate Estates being developed without FWS ESA review and without any ESA mitigation. Currently, approximately 20,000 acres of land in North Golden Gate Estates is undeveloped and uncleared.

103. Collier County's approval of single family residential development in North Belle Meade and Northern Golden Gate Estates without ESA review and ESA mitigation is causally related to the cumulative take of Florida panthers.

104. Collier County has not taken the reasonable alternative steps available to Collier County to minimize and mitigate the adverse impacts of individual single family residential

development in North Golden Gate Estates and North Belle Meade on ESA listed species.

105. The defendants can solve their knowing and willful take of Florida panthers by requiring applicants for Collier County individual single family residential development permits in North Belle Meade and North Golden Gate Estates to acquire a FWS HCP and ITP permit before being able to implement Collier County development permits, or by Collier County applying for and obtaining a FWS HCP and ITP permit for such development impacts which the County is authorizing, or by requiring applicants provide a yet to be established level of ESA Florida panther habitat mitigation determined by the FWS.

**The defendants' actions to extend Wilson Boulevard**

106. The Collier Plan and Collier County's Long Range Transportation Plan include a future Wilson Boulevard Extension in North Belle Meade in occupied Florida panther breeding habitat, and RCW habitat.

107. The Collier Plan contains a North Belle Meade Overlay map which depicts the potential north-south Wilson Boulevard Extension location through central North Belle Meade. See, Doc.17.4. This Collier Plan map is Collier County authorization of the extension of Wilson Boulevard through occupied Florida panther and RCW habitat.

108. The current Collier Plan text on pages 90-91 of the Future Land Use Element (FLUE) authorizes an extension of Wilson Boulevard by stating that "an extension of Wilson Boulevard should be provided through Section 33, Range 27 East," or in the alternative a haul road to service earth mining activities. This Collier Plan text is County authorization of the extension of Wilson Boulevard through occupied Florida panther and RCW habitat.

109. The current Collier Plan text on page 91 of the FLUE provides that "Lands required

for the extension of Wilson Boulevard will be dedicated to Collier County at the time of rezoning. The right-of-way shall be of sufficient size to accommodate collector road requirements should there be a demonstrated need.” Collier County is currently implementing this language and extracting such road right-of-way land dedications at the time the County acts upon applications to the County for development approval. See, Doc.17.6, 2013 County public notice of the Wilson Boulevard Extension.

110. The current Collier Plan text on page 93 of the FLUE provides that “The extension of Wilson Boulevard to the south with ultimate connection to the vicinity of Interstate 75, will serve to alleviate traffic congestion on Golden Gate Boulevard and serve as an alternative evacuation route for Golden Gate Estates.” This Collier Plan text is Collier County’s land use authorization of the extension of Wilson Boulevard through occupied Florida panther and RCW habitat.

111. Collier County has acted to identify the Wilson Boulevard Extension as an urban design, 180 foot wide, four lane roadway from the current southern termination of Wilson Blvd southward to Interstate -75, then westward to Blackburn Road and State Road 951. Collier County’s alignment of the 180 foot wide westward portion of the Wilson Boulevard Extension parallel with the 500 foot wide existing Interstate 75 without any wildlife crossing. This portion of Interstate 75 is a location where Florida panthers cross Interstate 75, and where Florida panthers have been killed by collisions with vehicles.

112. Collier County is currently using advanced right-of-way dedications, Developer Contribution Agreements, zoning approvals, and reservation agreements to obtain and maintain the right-of-way for Collier County’s Wilson Boulevard Extension due south to Interstate-75 and

then westward to CR 951. See, Collier County website, Wilson Boulevard Extension/Benfield Road Corridor Study; Doc. 17.5 and 17.6.

113. On August 31, 2007, Collier County entered into a Developer Agreement with Florida Rock Industries, Inc., Rockland, LLC, and FRK Putman, LLC (Florida Rock), an agreement which obligates Florida Rock to dedicate a 180 foot wide, urban type four lane right-of-way for the portion of the Wilson Boulevard Extension depicted in the Collier Plan. See, Doc. 17.5. This Developer Agreement further requires Florida Rock to design and construct Phase I of the Wilson Boulevard Extension (also known as the mining haul road). See, Doc. 17.6, the February 13, 2013 County public notice.

114. Florida Rock is currently performing the design duties for Phase I of the Wilson Boulevard extension assigned and delegated to them by Collier County. See, Doc.23.1; <http://barraco.net/floridarock>.

115. On May 8, 2009, the FWS submitted written objections to the Collier County Transportation Department regarding Collier County's proposal to extend Wilson Boulevard. The FWS recommended the no build alternative for Collier County's proposed Wilson Boulevard Extension. On page four of the letter the FWS recommended Collier County consider a landscape level approach to conservation and development, especially with regard to areas needed by the Florida panther and other federally listed species. The FWS specifically recommended Collier County work with the FWS "to develop a county-wide Habitat Conservation Plan" for County projects. See, Doc. 17.7.

116. Collier County's authorized Wilson Boulevard Extension will sever approximately 4,000 acres of occupied Florida panther breeding habitat in western North Belle Meade.

117. The approximately 4,000 acres of occupied Florida panther in North Belle Meade west of the Wilson Boulevard Extension Phase I is Primary Zone Florida panther habitat essential to the Florida panther.

118. Collier County has not taken the reasonable alternative steps available to Collier County to avoid, or minimize and mitigate, the adverse impacts of the Wilson Boulevard Extension on ESA listed species.

**Declaratory and Injunctive Relief Requested**

**Find and declare Collier County's agricultural land clearing regulations are less restrictive than the ESA and its implementing regulations**

119. The plaintiffs request the court find and declare Collier County's agricultural land clearing regulations, namely Collier Plan Coastal and Conservation Element Policies 6.1.5 and 7.1.2 and Collier County's Land Development Code 3.05.02( c), to be less stringent than the ESA and its implementing regulations because these Collier County regulations allow and authorize agricultural land clearing of occupied Florida panther and RCW habitat without a FWS issued ESA HCP with mitigation and a FWS ITP which specifies the allowable incidental take.

**Find and declare Collier County's agricultural land clearing regulations and agricultural land clearing approvals are an ESA take of Florida panthers and RCWs**

120. The plaintiffs request the Court find and declare the cumulative adverse impact of Collier County's past and foreseeable future approvals of agricultural land clearing regulations and land clearing approvals of occupied and essential habitat of Florida panther and RCWs, without Collier County first obtaining a FWS issued ESA Section 10 HCP and ITP, is a take of Florida panthers and RCWs in violation of Section 9 of the ESA. That Collier County's

agricultural land clearing regulations and land clearing approvals are an intentional or negligent act or omission which creates the likelihood of injury to wildlife by harassing it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

**Find and declare Collier County's residential development authorizations and approvals in Northern Golden Gate Estates to be an ESA take**

121. Find and declare that the cumulative adverse impacts of Collier County's single family residential development authorizations and approvals in North Belle Meade and Northern Golden Gate Estates, without first obtaining a FWS issued ESA Section 10 HCP and ITP, is a take of Florida panthers in violation of Section 9 of the ESA. That Collier County's residential development authorizations and approvals in North Belle Meade and Northern Golden Gate Estates are an intentional or negligent act, or omission, which create the reasonable likelihood of injury to wildlife by harassing it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

**Find and declare Collier County's actions of enacting and implementing regulations which extend Wilson Boulevard in North Belle Meade to be an ESA take**

122. Find and declare that Collier County's actions of enacting and implementing regulations which extend Wilson Boulevard in North Belle Meade without first obtaining a FWS issued ESA Section 10 HCP and ITP is causally related to the take of Florida panthers in violation of Section 9 of the ESA. Collier County's actions of enacting and implementing regulations which extend Wilson Boulevard in North Belle Meade are intentional or negligent acts, or omissions, which create the reasonable likelihood of injury to wildlife by harassing it to

such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

**Enjoin the defendants from implementing, enacting or authorizing any agricultural land clearing of RCW habitat and Florida panther primary habitat in North Belle Meade without FWS issued ESA HCP and ITP**

123. Enter an injunction prohibiting the defendants from implementing, enacting or authorizing any agricultural land clearing of RCW habitat and Florida panther primary habitat in North Belle Meade until either the defendants or the land owners obtain a Section 10 HCP and ITP from the FWS for such land clearing and habitat conversions.

**Enjoin the defendants to promptly develop and implement a FWS approved HCP Florida panther mitigation plan and ITP for residential development in the currently platted North Belle Meade and North Golden Gate Estates**

124. Enter an prospective mandatory injunction directing the defendants to promptly develop and implement a FWS approved HCP Florida panther mitigation plan and ITP for residential development of the currently vacant, platted land in North Belle Meade and North Golden Gate Estates.

**Enjoin the defendants from implementing, enacting or authorizing any extension of Wilson Boulevard into North Belle Meade without a FWS issued ESA HCP and ITP**

125. Enter an injunction prohibiting the defendants from implementing, enacting or authorizing any extension of Wilson Boulevard into North Belle Meade without the FWS first issued an ESA HCP and ITP for the proposed Wilson Boulevard Extension, or its reasonable alternatives.

WHEREFORE, the plaintiffs respectfully request the court take the following actions to

protect the Florida panthers and RCWs, and to enforce the ESA.

A. Enter an order finding and declaring that Collier County's agricultural land clearing regulations, namely Collier Plan Coastal and Conservation Element Policies 6.1.5 and 7.1.2, and Collier County's Land Development Code 3.05.02( c), are less stringent than the ESA and its implementing regulations.

B. Enter an order finding and declaring that Collier County's past and foreseeable future approvals of agricultural land clearing regulations and land clearing approvals of occupied and essential habitat of Florida Panther and RCWs, without Collier County first obtaining a FWS issued ESA Section 10 HCP and ITP, is causally related to the take of Florida panthers and RCWs in violation of Section 9 of the ESA.

C. Enter an order finding and declaring that Collier County's residential development authorizations and approvals in North Belle Meade and North Golden Gate Estates, without first obtaining a FWS issued ESA Section 10 HCP and ITP, is causally related to the take of Florida panthers in violation of Section 9 of the ESA.

D. Enter an order finding and declaring that Collier County's past and foreseeable future actions of enacting and implementing regulations which extend Wilson Boulevard in North Belle Meade without first obtaining a FWS issued ESA Section 10 HCP and ITP are causally related to the take of Florida panthers in violation of Section 9 of the ESA.

E. Enter an injunction prohibiting the defendants from implementing, enacting or authorizing any agricultural land clearing of RCW habitat and Florida panther primary habitat in North Belle Meade until either the defendants or the land owners obtain a Section 10 HCP and ITP from the FWS for such land clearing and habitat conversions.

F. Enter an prospective mandatory injunction directing the defendants to promptly develop and implement a FWS approved HCP Florida panther mitigation plan and ITP for residential development of the currently vacant, platted land in North Belle Meade and North Golden Gate Estates.

G. Enter an injunction prohibiting the defendants from implementing, enacting or authorizing any extension of Wilson Boulevard into North Belle Meade without the FWS first issuing an ESA HCP and ITP for the proposed Wilson Boulevard Extension, or its reasonable alternatives.

H. Award the plaintiffs their attorney's fees and court costs.

I. Grant such other relief as the Court may deem appropriate.

Respectfully Submitted,

/S/ Thomas W. Reese  
Trial Counsel for all of the Plaintiffs  
Thomas W. Reese, Esq.  
Attorney at Law  
2951 61st Avenue South  
St. Petersburg, FL 33712  
(727) 867-8228  
Fla. Bar Number #310077  
TWReeseEsq@aol.com

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Counsel of record currently identified on the Mailing Information list to receive e-mail notices for this case are served via Notices of Electronic Filing generated by CM/ECF.

/S/ Thomas W. Reese

