

**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-

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiffs, Florida Panther (*Puma concolor coryi*), an endangered species;  
Red-cockaded woodpeckers (*Picoides borealis*), an endangered species; the Florida Wildlife  
Federation, and Collier County Audubon Society, Inc. (hereafter are collectively referred to as  
“The Panthers”) bring this verified suit, pursuant to the Endangered Species Act (“ESA”), 16  
U.S.C. §§ 1531, et seq., against Defendants, Collier County, Florida and four Collier County  
Commissioners (hereafter collectively referred to as “The Defendants”) contesting The

Defendants' approvals (authorizations) of land clearing, land uses, and road extensions in occupied and essential habitat of Florida Panthers and Red-cockaded woodpeckers (RCWs) in North Belle Meade (NBM), without an ESA Section 10 Habitat Conservation Plan (HCP) and incidental take permit (ITP) from the U.S. Fish and Wildlife Service (FWS), approvals causally related to takes of Florida Panthers and RCWs in violation of the ESA. The Panthers contend Collier County is liable for knowingly and negligently violating Federal law. See, Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231, 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 without HCP and ITP).

2. The Panthers seek relief in the form of declaratory judgment and injunctive relief to prevent The Defendants from implementing, enacting, or authorizing land clearing, land uses, and road extensions into occupied and essential habitat of Florida Panthers and RCWs in NBM without first obtaining a HCP and ITP from the FWS. The Panthers respectfully request the court take the following actions to protect The Panthers and enforce the ESA.

A. Enter an order finding that The Defendants' approval of land clearing in occupied and essential habitat of Florida Panther and RCWs, without first obtaining an ESA Section 10 HCP and ITP, is causally related to the taking of Florida Panthers and RCWs in violation of Section 9 of the ESA.

B. Enter an order finding that The Defendants' 2013 Settlement Agreement action which authorized the re-designation of 578 acres of NBM land from "Sending Lands" to "Receiving Lands," without first obtaining an ESA Section 10 HCP and ITP, is causally related to the harassment and taking of Florida Panthers and RCWs in violation of Section 9 of the

ESA.

C. Enter an order finding that The Defendants' 2013 Settlement Agreement action which authorized extension of Wilson Boulevard further south into NBM occupied Florida Panther and RCW habitat, without first obtaining an ESA Section 10 HCP and ITP, is causally related to the taking of Florida Panthers and RCWs in violation of Section 9 of the ESA in the form of harassment, habitat loss, and the likely lethal take of Florida Panthers and RCW in vehicle collisions as a result of the road extension.

D. Enter an order finding that The Defendants' refusal to enact an ESA Section 10 HCP for RCWs in NBM, in conjunction with The Defendants' land clearing, land use, and roadway extension authorizations in NBM, is causally related to the harassment and taking of RCWs in violation of Section 9 of the ESA.

E. Enter an injunction prohibiting The Defendants from implementing, enacting or authorizing any approval of land and habitat conversion applications and/or exemptions to conduct land clearing for purposes of agricultural conversion (including timbering and pasture improvement) in NBM until The Defendants obtain a Section 10 HCP and ITP from the FWS for such land clearing and habitat conversions.

F. Enter an injunction prohibiting The Defendants from seeking, obtaining, implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with authorization of development for a future limerock mine, residential, and associated road access in occupied and essential habitat of Florida panther and RCW habitat in NBM without first obtaining a HCP and ITP from the FWS for such land use activities.

G. Enter an injunction prohibiting The Defendants from seeking, obtaining,

implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with authorization of the extension of Wilson Boulevard into NBM without first obtaining a HCP and ITP from the FWS for such road extension.

H. Enter an injunction prohibiting The Defendants from seeking, obtaining, implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with RCW habitat land in NBM without first obtaining a RCW NBM HCP and ITP from the FWS.

### **JURISDICTION**

3. The Court has jurisdiction over this ESA citizen suit action pursuant to 16 U.S.C. § 1540(g) and 28U.S.C. §§ 1331 and 1346. The Panthers have properly given notice to each of The Defendants of The Panthers' claims under the ESA in accordance with 16 U.S.C. § 1540(g)(2).

### **VENUE**

4. Venue in this case is proper under § 28 U.S.C. §§ 1391(e). Florida Panthers and RCWs reside in Collier County in this judicial district and in this division. The Florida Wildlife Federation and Collier County Audubon Society, Inc. each have offices in this judicial district and this division, and each have members who reside in this judicial district and this division. Collier County and the subject land are located in this judicial district. Each of the four individual defendants who are Collier County Commissioners reside in Collier County which is located within this judicial district and this division.

### **PARTIES**

#### **Plaintiff, Florida Panthers**

5. Plaintiff, Florida Panthers (*Puma concolor coryi*) ("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 NBM. The Defendants' action on February 12, 2013 knowingly and negligently approved a Settlement Agreement which contracts to amend the Collier Plan land use designations to allow land uses in NBM which are incompatible with the endangered Florida Panthers. These approved Collier Plan land uses changes harass, harm, and take Florida Panthers, and cumulatively and collectively will likely doom the recovery of the Florida Panther.

6. 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 could 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). The Florida Panthers are hereby exercising their right to walk their way into federal court as a plaintiff in their own right.

**Plaintiff, RCWs**

7. Plaintiff, Red-cockaded woodpecker (*Picoides borealis*) (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 NBM 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). The subject property in NBM is an

important habitat for recovery of RCWs in Collier County.

8. The Defendants' February 12, 2013 proposed amendment of the Collier Plan land use designations will allow land uses which are incompatible with the endangered RCWs, and will harass, harm, and take RCWs without a HCP and ITP from the FWS.

9. RCWs have standing on their own right in federal courts to sue to enforce the ESA. See, Palila, Supra 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). RCWs are hereby exercise their right to wing their way into federal court as a plaintiff in their own right.

**Plaintiff, Florida Wildlife Federation**

10. Plaintiff, Florida Wildlife Federation (FWF) is duly incorporated under the laws of the State of Florida as a not-for-profit corporation. The Federation'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, the protection of the air and water quality of the State of Florida, and the protection of listed species and their habitats.

11. 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 Panther and RCWs. This has included over 14 years of litigation to protect Florida Panthers and their habitat, and to protect RCWs and their habitat in southwest Florida, specifically in Collier County and NBM.

12. 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 February 12, 2013 Settlement Agreement and proposed Collier Plan amendments adopted by The Defendants. These FWF interests will be further adversely affected and harmed in the future if the Settlement Agreement and Collier Plan amendment are implemented by The Defendants. Additionally, the Settlement Agreement and proposed Collier Plan amendment will also create a precedent which other similar Florida local governments with land use planning authority over listed species habitat would rely upon, resulting in a foreseeable cumulative harm, harassment, and take of Florida Panthers, RCWs, and other ESA listed threatened and endangered species, without a HCP and ITP from the FWS.

13. Collier County has recognized the work of FWF's Southwest Field Representative, Nancy Anne Payton protecting listed species and their habitats, 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 the NBM Rural Fringe Mixed Use District. The land is native pine flat woods with 5 listed animal species: the Florida panther, RCWs, black bear, Big Cypress fox squirrel, and gopher tortoises. The Nancy Payton Preserve also has five state-listed plant species and 121 native plant species documented. See, <http://www.colliergov.net/Conservation.Collier>. It is the only Collier County owned conservation land named after a living Collier County resident.

14. 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 its members.

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

15. Plaintiff, Collier County Audubon Society, Inc. (CCAS) is a duly incorporated not-for-profit corporation in Florida, with over 2,000 members. CCAS operates an office in Naples, Florida.

16. CCAS has advocated on behalf of threatened and endangered species in Florida for over 49 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 (DCA) over comprehensive land use plan criteria which impact the endangered Florida Panther and RCWs, and their habitats. For over twelve years CCAS has organized and led wildlife viewing and education trips into panther habitat, including the Florida Panther National Wildlife Refuge in Collier County just to the east of NBM. CCAS runs programs, field trips, education for children, and advocates for the conservation of wildlife. CCAS members and staff work with the staff 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.

17. 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. These interests have been adversely affected and harmed to date by The Defendants' February 12, 2013 Settlement Agreement and proposed Collier Plan amendment. These CCAS interests will be further adversely affected and harmed in the future if the Settlement Agreement and Collier Plan amendment are implemented by The Defendants.

Additionally, the Settlement Agreement and proposed Collier Plan amendment will also create a precedent which other similar Florida local governments with land use planning authority over listed species habitat would rely upon, resulting in a foreseeable cumulative take, harm, and harassment of Florida Panthers, RCWs, and other ESA listed threatened and endangered species, without a permit from the FWS.

18. 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, educational, recreational, and scientific activities regarding the Florida Panther and RCWs.

**Defendant, Collier County, Florida**

19. 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.

20. 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 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).

**Defendant, Georgia A. Hiller**

21. Defendant, Georgia A. Hiller (Commissioner Hiller) is a Collier County

Commissioner who resides in Collier County. Commissioner Hiller voted on February 12, 2013 to approve the subject Settlement Agreement and proposed amendment of the Collier Plan.

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.

**Defendant, Tom Henning**

22. Defendant, Tom Henning (Commissioner Henning) is a Collier County

Commissioner who resides in Collier County. Commissioner Henning voted on February 12,

2013 to approve the subject Settlement Agreement and proposed amendment of the Collier Plan.

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.

**Defendant, Fred W. Coyle**

23. Defendant, Fred W. Coyle (Commissioner Coyle) is a Collier County Commissioner who resides in Collier County. Commissioner Coyle voted on February 12, 2013 to approve the

subject Settlement Agreement and proposed amendment of the Collier Plan. 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.

**Defendant, Tim Nance**

24. Defendant, Tim Nance (Commissioner Nance) is a Collier County Commissioner

who resides in Collier County. Commissioner Nance voted on February 12, 2013 to approve the

subject Settlement Agreement and proposed amendment of the Collier Plan. 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.

### **ENDANGERED SPECIES ACT**

25. The ESA is comprehensive legislation to protect 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.

26. 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.

27. The U.S. Supreme Court has held ESA is "an explicit congressional decision to afford first priority to the declared national policy of saving endangered species." Tenn. Valley Auth., 437 U.S. at 185 (1978).

28. A species may be listed as endangered or threatened. An endangered species is one that is "in danger of extinction throughout all or a significant portion of its range . . ." 16 U.S.C. § 1532(6). A threatened species is one that is "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.*

29. Section 9 of the ESA makes it unlawful for any person to "take" an endangered species without express authorization from FWS. 16 U.S.C. § 1538(a)(1). "Take" means "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). The term "harm" is further defined by FWS regulations to encompass habitat modification or degradation that injures an endangered species

by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering, 50 C.F.R. §17.3, and “harass” is defined 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.”

30. Any intentional or negligent action or omission, including disruption or modification of habitat occupied by federally listed species which significantly alters their behavior or creates the likelihood of injury or may cause death constitutes a violation of Section 9 of the ESA.

31. Collier County may proceed with activities that may lead to a “take” of a species listed as endangered or threatened under the ESA only upon obtaining an ITP in accordance with a FWS approved HCP pursuant to Section 10(a) of the ESA. See, 16 U.S.C. Section 1539(a).

32. Collier County has neither applied for, nor received, a FWS approved HCP pursuant to Section 10 of the ESA for Collier County activities and authorizations for land clearing, land uses and roadway extensions in occupied Florida Panther and RCW habitat in NBM.

33. An approved ESA HCP must show that “(1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure adequate funding for the [HCP] will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, required [by the Secretary of the FWS as necessary or appropriate] will be met.”(e.s.). See, 16 U.S.C. § 1539(a)(2)(B); Loggerhead v. County Council of Volusia County, Florida, 148 F.3d 1231, 12 (11<sup>th</sup> Cir. 1998).

34. Collier County’s proposed Settlement Agreement and amendment of the Collier Plan

knowingly, intentionally, and negligently direct incompatible land uses into occupied and essential habitat of Florida Panthers and RCWs, a decision which individually and cumulatively will take Florida Panthers and RCWs in violation of the ESA in the form of loss of both Florida Panther and RCW habitat, reduction in the spatial extent of available habitat, harassment during foreseeable mining operations, and the likely lethal take of Florida Panthers and RCWs in causally related vehicle collisions. See, 16 U.S.C. Section 1539(a).

### **FLORIDA PANTHER DATA**

#### **A. The current panther population**

35. The FWS has listed Florida Panthers as an endangered species under the ESA. See, 50 C.F.R. §17.11.

36. The FWCC estimates the current population of Florida Panther adults is between 100-160 adults, making the Florida Panther one of the most endangered species in the United States.

37. 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.

38. 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. Adding the occupied panther habitat north of the river to that south of the river, the FWC estimates that over fifty percent (50%) of this occupied panther

habitat used by panthers is in private ownership, making the likely cumulative affect of the proposed Collier County Settlement Agreement and proposed Collier Plan amendment a severe adverse affect that is likely to substantially reduce the likelihood of the survival and recovery of Florida Panthers.

39. The biggest threat to this breeding population is the loss of habitat. “The Florida Panther faces extinction unless ‘aggressive action’ is taken for its protection.” Hussey v. DCA, 25 FALR 4410, DOAH Case No. 02-3796GM, DCA Case No. DCA03-GM-137, Recommended Order, paragraph 44 (DCA 2003).

40. Local government use of land use authority to direct incompatible land uses away from occupied panther habitat is critical and essential to protecting Florida Panthers and moving Florida Panthers towards survival and recovery, not extinction.

**B. Florida Panthers in North Belle Meade**

41. The importance of NBM and the subject 578 acres of NBM property to endangered Florida Panthers is established by NBM’s designation as primary zone panther habitat in the peer reviewed Kautz, et al. (2006) paper. Collared and uncollared Florida Panthers unquestionably use of all of NBM, the use having been well documented for decades, and the panther use of NBM having been ever increasing. The FWCC has collected GPS and VHF telemetry of collared panthers since 1981. This data establishes that NBM 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 NBM is possible. Hussey v. DCA, 25 FALR 4410, DOAH Case No. 02-3796GM, DCA Case No. DCA03-GM-137, Recommended Order, paragraph 46 (DCA 2003). Recent FWC evidence has documented the presence of uncollared Florida Panthers in NBM. See, paragraphs 44, 45 and 47

below.

42. The FWCC has collected GPS and VHF telemetry of collared panthers since 1981. This data establishes that NBM, an area consisting of 15,960-acres located north and east of I-75, south of Northern Golden Gate Estates (NGGE), and west of the Florida Panther National Wildlife Refuge, is the home range of at least a male and a female Florida Panther. Since only a third of the Florida Panthers were collared, other Florida Panther use of NBM is possible. Hussey v. DCA, 25 FALR 4410, DOAH Case No. 02-3796GM, DCA Case No. DCA03-GM-137, Recommended Order, paragraph 46 (DCA 2003).

43. There have been documented Florida Panther kills of prey in NBM, and documented Florida Panther signs in NBM. The FWCC has also documented Florida Panther movement under I-75 through the Miller Canal culvert from South Belle Meade to NBM.

44. The FWCC has listed nine (9) Florida Panther deaths on I-75 between NBM and South Belle Meade, east of the I-75 toll booth located at mile marker 101. The subject 578 acres of HHH Ranch property in NBM is to where the following reported deaths of panthers occurred as the panthers were crossing I-75. 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 I-75 mile marker 93 (Miller canal bridge).

B. January 22, 2011, UCFP153 at I-75 mile marker 98

C. January 13, 2011, UCFP152 (female) at I-75 mile marker 98

D. March 12, 2010, FP174 at I-75 mile marker 95.

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

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

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

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

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

45. On July 1, 2013, a FWC motion cameras photographed an uncollared female Florida Panther on the Nancy Payton Preserve in northwest corner of NBM.

46. Other FWCC documentation of panther use of NBM 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 several documented Florida Panther kills of goats in Section 24 in the northwest corner of NBM.

47. Additionally, on May 14, 2013, just north of NBM, 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 Northern Golden Gate Estates (NGGE) 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, where she will remain until she is ready for release in south-central Florida south of the Claosahatchee River.

48. The FWS has also arrested and convicted Todd Alan Benfield, a bow and arrow hunter, who shot and killed a Florida Panther in eastern NBM in 2009.

**C. The Florida Panther recovery plan**

49. The FWS's Recovery Plan (Third Revision 2008) 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 250 adults, and the reintroduction of at least two additional breeding populations of 250 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)).

50. The protection of the existing breeding Florida Panther occupied habitat in NBM is essential not only to the protection of the existing 100-160 adult Florida Panthers, it is also essential to the recovery of the Florida Panther.

51. The Kautz, et al. (2006) peer reviewed paper states that primary zone Florida Panther habitat so as that of NBM is essential to the long-term viability and persistence of the Florida Panther in the wild. Habitat conservation measures must protect such occupied primary zone Florida Panther habitat from being cleared, mined, or fragmented by roadways.

52. "Receiving Lands" residential development and mining of occupied Florida Panther primary zone habitat without an ESA Section 10 HCP is a take of the Florida Panther in violation of Section 9 of the ESA, and will cumulatively result in irreparable harm and harassment to Florida Panthers in violation of the ESA Section 9 prohibition.

53. Extension of Wilson Boulevard into southern NBM will sever approximately 4,000 acres of occupied Florida Panther habitat in western NBM. The Defendants' authorization of such roadway extension without an ESA Section 10 HCP is a take of the Florida Panther in violation of Section 9 of the ESA. The precedent of this road extension will cumulatively result in irreparable harm, harassment, and likely lethal takes of Florida Panthers in violation of the

ESA Section 9 prohibition.

### RCW DATA

#### **A. RCW status**

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

55. Historically RCWs ranged from Florida to New Jersey and Maryland, as far west as Texas and Oklahoma, and inland to Missouri, Kentucky, and Tennessee. Today, approximately ninety-nine percent (99%) of this RCW range has been lost, and RCWs have been extirpated in New Jersey, Maryland, Tennessee and Missouri. In Collier County the only remaining documented occurrence of RCWs on private lands is in NBM.

56. The primary threats for the RCWs is 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 results in patches of habitat too small to function as RCW territory.

57. RCWs make their home in mature pine forests. In South Florida RCWs make their home in South Florida slash pine (*Pinus elliotii*, var. *densa*).

58. RCWs are one of the two woodpecker species protected by the ESA, the other protected woodpecker species being the ivory-billed, a species which was assumed to be extinct for decades until recent sightings on a national wildlife refuge in the Southeast.

59. Male RCWs have a small red streak on each side of its black cap, the streak called a

cockade, hence the name for RCWs. In the early 1800's 'cockade' was regularly used to refer to a ribbon or other ornament worn on a hat, thus the small red streak on each side of a male's cap was referred to a red "cockade."

60. Female RCWs lack the red cockade. Juvenile males have a red "patch" in the center of their black crown. This patch disappears during the fall of their first year at which time their 'red-cockades' appear.

61. RCWs are about the size of cardinals, approximately 7 inches long (18 to 20 centimeters), with a wingspan of about 15 inches (35 to 38 centimeters). RCWs excavate cavity nests only in living pine trees. RCWs need up to three years to excavate the cavities they use for nesting and roosting. RCWs feed primarily on beetles, ants, roaches, caterpillars, wood-boring insects, and spiders, and occasionally fruits and berries.

62. RCWs live in groups consisting of a breeding pair and as many as four helpers. RCWs are a territorial, non-migratory species which remain faithful to their cavity trees, and each member of the group has its own roost cavity. Cavity trees occupied by a group are called a cluster, with the size of the cluster area ranging from 3 to 60 acres.

63. RCWs peck holes around actively used cavities. These small holes in live pine trees exude resin that coats much of the tree, providing RCWs a defense shield against rat snakes and other predators.

64. RCWs play a vital role in southern pine forests. A number of birds and mammals use the nest cavities that the RCWs excavate. Larger woodpeckers may take over an RCW cavity, at times enlarging the hole enough to allow screech owls, wood ducks, and even raccoons to move in. Flying squirrels, several species of reptiles and amphibians, and insects (primarily bees and

wasps) also use RCW cavities.

**B. RCWs in NBM**

65. The FWS and the FWCC have identified RCW colonies in west and central NBM. The FWCC has identified these lands 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).

66. Collier County's 2003 consultant Southern Biomnes, Inc. and the 2006-09 Collier County Habitat Conservation Plan Advisory Committee (HCPAC) have identified a total of 6,757 acres of RCW habitat in the western portion of NBM, consisting of 3,547 acres of RCW Foraging Habitat and 3,210 acres of RCW Cavity Habitat in the NBM.

67. There are two RCW management units of significant foraging and nesting areas in NBM. The West Management Unit is located in the western portion of NBM, and includes: Sections 24, 25 and 36 of Township 49 South, Range 26 East; the western portions of Section 30 and 31 of Township 49 South, Range 27 East; and Sections 20, 28, 29, 32 and 33 of Township 49 South, Range 27 East. The East Management Unit includes Sections 14, 15, 22, 23, 26, 27, 34 and 35 of Township 49 South, Range 27 East. Within each Management Unit are large areas designated by Collier County's 2003 consultant Southern Biomnes, Inc. and the 2006-09 Collier County HCPAC as potential or active RCW nesting or cavity tree habitat areas, which are connected by areas suitable for foraging.

68. The subject 578 acre property in NBM is an important habitat link for recovery of RCWs in NBM and South Belle Meade (Picayune Strand State Forest) and the recovery of RCWs in Collier County.

**C. RCW Recovery Plan**

69. The FWS has developed an RCW recovery plan which require: 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.

70. To help implement the FWS RCW Recovery Plan, in 2002 Collier County committed in the Collier Plan to the assessment of RCW habitat in NBM. Specifically, the Collier Plan Future Land Use Element provides as follows.

“RCW nesting and foraging habitat shall be mapped and protected from land use activities within Sending Lands, and Section 24 designated Neutral Lands. Although RCW nesting and foraging habitat shall be mapped within Sending areas within the NBM Overlay, this shall be accomplished by a study specific to Section 24 conducted by Collier County within one year of the effective date of the NBM Overlay. Within Section 24, the Neutral designation may be adjusted based upon the findings of the updated RCW nesting and foraging habitat study.”

**D. County Commission rejection of draft 2009 RCW HCP for NBM**

71. In late 2006 the Board of County Commissioners raised legal questions regarding the “Habitat Conservation Plan Advisory Committee’s” (HCPAC) which the County Commission had appointed preparing an ESA HCP for RCWs in NBM. In response to the Board of County Commissioner’s legal questions, on December 7, 2006 the Collier County Attorney’s Office provided the Board of County Commissioners with a memorandum of law that advised the commissioners there is:

“serious concern that failure to make changes in light of County knowledge of RCW’s and their habitat could be construed as “knowingly” allowing the “take” of endangered RCW’s and could result in County liability under the ESA. Many of these concerns would be alleviated if the County were to have measures in place to ensure against development on areas known to contain endangered

species or their habitats. Although there are many ways to do this, the proposed RCW Plan is an effort to put such measures in place.”

72. Between 2007-2009, the County’s HCPAC proceeded to prepare a draft ESA Section 10 HCP for the protection and conservation of RCWs in NBM, including the HHH Ranch property (aka: Hussey Properties). The draft County Draft RCW HCP for NBM is located on the County’s website at “[www.colliergov.net/Modules/ShowDocument.aspx?documentid=26274](http://www.colliergov.net/Modules/ShowDocument.aspx?documentid=26274).” The County’s 2009 draft RCW HCP for NBM clearly identified the RCW cavity trees and foraging areas in NBM, and contained maps of FWCC telemetry locations of collared Florida Panthers in NBM up to 2009, including locations on the HHH Ranch site.

73. However, in 2009 Collier County Board of County Commissioners voted not to approve the RCW HCP for NBM, and not action has been taken since by Collier County on the RCW HCP for NBM. The County’s actions to knowingly and negligently refuse to adopt an RCW HCP for NBM , and to allow land clearing and land uses in occupied RCW habitat in NBM, constitutes a take of RCWs in violation of the ESA. See, *Loggerhead Turtle v. County Council of Volusia County, Florida*, 148 F.3d 1231, 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).

## **THE COLLIER COUNTY COMPREHENSIVE LAND USE PLAN**

### **A. ESA and the Collier Plan**

74. In 1989, the County enacted its first comprehensive land use plan under Florida’s Growth Management Act, the Collier County Comprehensive Land Use Plan (Collier Plan). During this Collier Plan adoption process, for the purpose of implementing the ESA, Collier

County appointed a five member advisory group of wildlife experts identified areas in Collier County which needed to be given 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, including lands that was occupied habitat of the endangered Florida Panther.

75. Such designations in the Collier Plan to protect occupied Florida Panther habitat were required by the ESA which prohibited local governments from authorizing land use activities which harm or harass listed endangered species such as the endangered Florida panther and RCWs.

76. On November 14, 1997, the County adopted numerous amendments to the Collier Plan. These amendments were pursuant to the County's 1996 Evaluation and Appraisal Report (EAR), a report required which Section 163.3191, Fla. Stat. Local governments must conduct an EAR every seven (7) years to evaluate and appraise the implementation of comprehensive land use plans. Among Collier County's November, 1997 EAR-based amendments was the deletion of the August 1994 deadline for designating NRPAs on the Collier Plan FLUM.

77. On December 24, 1997, the DCA issued its Notice of Intent to find Collier County's EAR-based amendments not in compliance. See, Section 163.3184(1)(b), Fla. Stat. DCA's petition was forwarded to the Florida Division of Administrative Hearings (DOAH) on January 14, 1998 and was assigned to be heard by Administrative Law Judge (ALJ) Robert E. Meale. See, DOAH Case No. 98-0324GM.

78. The FWF and CCAS were granted the right to intervene as petitioners-in-intervention,

and FWF and CCAS adopted and incorporated the DCA's Statement of Intent as their own. See, DOAH Case No. 98-0324GM, Recommended Order, paragraph 3. Among the sixteen (16) issues raised by the DCA, FWF and CCAS was a challenge to Collier County's failure to adopt NRPAs and the failure to protect panther habitat.

79. A five (5) day final evidentiary hearing was held in Naples on May 4-8, 1998. On March 19, 1999, ALJ Meale issued a 72 page Recommended Order finding in favor of the DCA, FWF and CCAS on all 16 issues, including Issue 6 concerning the land use designations of listed species. ALJ Meale recommended the Florida Administration Commission, the state land use planning agency, enter a final order determining Collier County's EAR-based amendment to be not in compliance with Chapter 163, Part II, Fla. Stat.

**B. June 21, 1999 Administration Commission Final Order**

80. 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 RO in its entirety. The Administration Commission's June 22, 1999 Final Order 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.

81. The Administration Commission final order specifically required Collier County's

three (3) years assessment of rural lands to direct incompatible land uses away from wetlands and upland habitat of listed species by means of creative planning techniques.

**C. June 21, 2002 Collier Plan Rural Fringe District amendments**

82. Collier County responded to the Administration Commission's Final Order by enacting a building moratorium in the rural land area of Collier County, including the NBM area where the subject 578-acre property is located.

83. Between June 22, 1999 and June 22, 2002, Collier County conducted the mandated three year assessment and held multiple public hearings concerning the rural lands of the County located east of the urban boundary of the Collier Plan. Collier County's three year assessment elected to divided its Agricultural/Rural designated areas into two subdistricts – the Rural Fringe and the Eastern Lands – for the purpose of the assessment and implementing plan amendments. 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 NBM area, was designated the Rural Fringe Mixed Use District.

84. In 2002, Collier County enacted Collier County Ordinance No. 02-32 which consisted of amendments to the Collier Plan, including the Rural Fringe Mixed Use District Amendments and the NBM Overlay. The Rural Fringe amendments were based upon the three year assessment of the available natural resource and land use planning data available. The purpose of the Rural Fringe amendments was to direct incompatible land uses away from upland habitat of listed species, including the endangered Florida panther.

85. The 2002 Rural Fringe Mixed Use District amendments included the following Collier Plan text changes.

A. The new 2002 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.

B. The new 2002 CCME Policy 71.1 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” land use category applicable to Rural Lands Stewardship Area of the Collier Plan in eastern Collier County-the Immokalee area located east of Northern Golden Gate Estates and north of the Florida Panther National Wildlife Refuge.

C. The new 2002 FLUE IX Policy 1.2(B) Rural Fringe Mixed Use District with TDRs and Sending, Neutral, and Receiving land use designations.

D. Future Land Use Designation Description Section, Sub-Section IX. Overlays and Special Features, B. North Belle Meade Overlay, Planning Considerations, part 4, Red Cockaded Woodpeckers, which reads as follows:

“RCW nesting and foraging habitat shall be mapped and protected from land use activities within Sending Lands, and Section 24 designated Neutral Lands. Although RCW nesting and foraging habitat shall be mapped within Sending areas within the NBM Overlay, this shall be accomplished by a study specific to Section 24 conducted by Collier County within one year of the effective date of

the NBM Overlay. Within Section 24, the Neutral designation may be adjusted based upon the findings of the updated RCW nesting and foraging habitat study.”

86. The 2002 Rural Fringe amendments identified “Sending Lands” as those lands “That have the highest degree of environmental value” and “are the principal target for preservation and conservation.” See, Collier Plan, FLUE.

87. 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, whichever yields the greatest. Nonresidential 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.”

88. The 2002 Rural Fringe Amendments designated the subject HHH Ranch property as “Sending Lands,” limiting residential density onsite, providing for the transfer of development rights to designated “Receiving Lands,” and prohibited mining on the “Sending Lands” property.

**D. Landowners challenge of the 2002 Rural Fringe District amendments**

89. The owners of the HHH Ranch, Dr. Francis D. Hussey and his wife Mary Pat Hussey (Husseys), challenged Collier County Ordinance No. 02-32 in a DOAH administrative hearing, specifically challenging the land use plan “Sending Lands” designation of their NBM property (DOAH Case No. 02-3795GM). The FWF and CCAS were granted intervention in that proceeding to defend the Rural Fringe Amendments and the “Sending Lands” designation of the HHH Ranch (Hussey property).

90. The issues litigated by the Husseys primarily included: (1) whether the Collier County’s designation of “Sending Lands” and “Receiving Lands” within NBM was based upon

and reacted appropriately to the best available data, and (2) whether the Collier County's TDR Program was based upon and reacted appropriately to the best available data, including whether the TDR program was feasible. See, Recommended Order paragraph 26, DOAH Case No. 02-3795GM.

91. At this administrative hearing the Hussey's argued and presented evidence that all of the land in NBM was important Florida Panther habitat, and that protection of the entire 15,960-acre NBM was an appropriate reaction to the best available data.

92. The FWF and CCAS presented the testimony of Darrel Land and Randy Kautz of the the FWCC concerning the listed species and their habitat in NBM, especially including testimony that a female panther had denned next to the Hussey property and successful raised three panther kittens. The FWF and CCAS also introduced the FWCC "Closing the Gaps" report co-authored by Randy Kautz, which identified NBM as primary panther habitat.

93. The DCA, FWF and CCAS also jointly presented the expert testimony of land use planners that the County's designation of "Sending Lands" and "Receiving Lands" was an appropriate reaction to the best available data. "Receiving Lands" were necessary to implement Collier County's new TDR Program, and that the location of "Receiving Lands" abutting the vested and growing Northern Golden Gate Estates was proper because it controlled urban sprawl, and provided for the cost-effective delivery of public facilities and services. The expert land use planners further testified that the NBM FLUM designations of "Sending Lands" and "Receiving Lands" enhanced the protection of environmentally sensitive lands and wildlife habitat. The challengers expert witness Dr. Hank Fishkind admitted that there was a functioning market for the TDRs generated by the "Sending Lands," that the County's TDR program was economically

feasible, and that Collier County had the capacity to administer the TDR Program. See, RO paragraph 89, DOAH Case No. 02-3795.

**E. The DOAH Recommended Order**

94. After eight days of evidentiary hearing, DOAH 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. Designating land closer to NGGE as “Receiving Lands,” rather than designating the Hussey’s property as “Receiving Lands,” was proper based upon listed species habitat issues, urban sprawl issues, and infrastructure issues. See, Recommended Order, paragraph 71, DOAH Case No. 02-3795GM.

**F. The DCA Final Order**

95. The Hussey’s filed exceptions to the ALJ’s Recommended Order with the DCA. The DCA 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. See, DCA Final Order, DCA Case No, 03-GM-137, 25 FALR 4410, DCA 2004.

**G. The appeal of DCA’s Final Order PCA’d**

96. The Hussey’s appealed DCA’s Final Order to the First District Court of Appeal, Hussey v. DCA, Case No. 1D03-3543. The First District Court of Appeal entered an order that Per Curiam Affirmed the DCA’s Final Order.

**FWC LETTER TO THE DEFENDANTS**

97. On August 15, 2013, the FWS sent The Defendants a letter advising Collier County

that the:

“Loss of habitat associated with the Hussey agricultural clearing and proposed mining project has likely and may result in “take” of panthers, red-cockaded woodpeckers, and possibly other State and federally listed species in the form of harm through temporary and permanent loss of both panther and red-cockaded woodpecker habitat and reduction in the spatial extent of available habitat. Florida panthers, red-cockaded woodpeckers and other State and federally listed species may also be taken in the form of harassment during mine operations, as panthers and red cockaded woodpeckers may be disturbed by these activities and leave or avoid the area. Additionally, the project may result in the lethal take of panthers and red-cockaded woodpeckers in the form of vehicle collisions as a result of project-generated traffic.”

98. This FWS letter further stated that

“We are communicating these concerns in an effort to assist Collier County from incurring further potential legal liability under the Act for agricultural clearing and timbering activities that they approved to occur on the referenced site, and any potential new liability for proposed mining actions for which the county maintains jurisdiction. As a party to these actions, Collier County could be subject to legal penalty and prosecution by the Service, or subject to third party lawsuits. We request the County refrain from permitting, approving, or otherwise conducting any activities that could result in the take of federally listed species on the subject property until the applicants have demonstrated they have received incidental take authorization under the Act.”

### **DEFENDANTS ILLEGAL ACTIONS**

99. Since at least 2006, The Defendants have knowingly and negligently authorized agricultural land clearing, land use actions, and road extensions in occupied and essential Florida Panther and RCW habitat in NBM that are causally related to the “take” of Florida panthers, RCWs, and possibly other State and federally listed species in NBM. The likely takes authorized by the County are in the form of harm through temporary and permanent loss of both Florida panther and RCW habitat, reduction in the spatial extent of available habitat, harassment, and the likely lethal take of panthers and RCWs by vehicle collisions. See, Loggerhead Turtle v. County

Council of Volusia County, Florida, 148 F.3d 1231, 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).

100. Since at least 2006, the Defendants have known that the 1,100 acre HHH Ranch in south central NBM is located within the FWS's Florida Panther Focus Area (PFA) and the panther Primary Zone (Kautz et al. 2006), and that it supports and is used by the breeding population of the endangered Florida Panther, as evidenced by recent and ongoing onsite FWS panther telemetry locations, as well as other information.

101. Since at least 2006, the Defendants have known that the 1,100 acre HHH Ranch in south central NBM contains nesting, roosting, and foraging habitat for the RCW.

102. Since at least 2006, the Defendants have known that the 1,100 acre HHH Ranch in south central NBM is within the FWS's consultation area for the endangered Wood stork (*Mycteria americana*), and threatened eastern indigo snake (*Drymarchon corais couperi*), and that it is likely Wood storks and eastern indigo snake species utilize habitats on and near the HHH Ranch for feeding, breeding, and sheltering.

103. Since 2006 the Defendants have authorized and allowed the HHH Ranch to perform agricultural land clearing of 604 acres of occupied Florida Panther and RCW habitat.

104. On February 12, 2013, the Defendants authorized a Settlement Agreement: (A) to amend the Collier Plan designation of 578 acres of occupied Florida panther habitat and occupied RCW habitat on HHH Ranch from "Sending Lands" to "Receiving Lands," (B) to extend Wilson Boulevard into occupied Florida panther and RCW habitat, and ( C) to reduce land clearing restrictions on 578 acres of the HHH Ranch.

105. The Defendants' agricultural land clearing authorization of the HHH Ranch, and The Defendants' 2013 Settlement Agreement authorization of substantial increased residential and limerock mining land uses activities on 578 acres of the HHH Ranch, individually and cumulatively, violate the ESA Section 9 prohibitions. These actions by The Defendants are causally related takes of Florida panthers and RCWs, for which The Defendants did not obtain an ESA Section 10 HCP and an ITP from the FWS.

106. The Panthers have suffered an actual and a reasonably foreseeable future threatened injury by The Defendants' violations of the ESA.

107. The Defendants' unlawful actions have caused, and continue to cause, The Panthers procedural injuries and take injuries.

108. The Defendants' actions cumulatively will likely prevent the implementation of the FWS Recovery Plans for the endangered Florida Panther.

109. The injuries to The Panthers are likely to be redressed by a favorable decision in this action.

110. The Panthers have no adequate remedy at law, and issuance of the requested prospective remedial injunction order is in the public interest because it cures violations of the ESA. Monetary compensation would circumvent the ESA, and would be contrary to the environmental protection interests of The Panthers and the public.

WHEREFORE, The Panthers respectfully request the court take the following actions to protect The Panthers and enforce the ESA.

A. Enter an order finding that The Defendants' approval of land clearing in occupied and essential habitat of Florida Panther and RCWs, without first obtaining an ESA Section 10 HCP

and ITP, is causally related to the taking of Florida Panthers and RCWs in violation of Section 9 of the ESA.

B. Enter an order finding that The Defendants' 2013 Settlement Agreement action which authorized the re-designation of 578 acres of NBM land from "Sending Lands" to "Receiving Lands," without first obtaining an ESA Section 10 HCP and ITP, is causally related to the harassment and taking of Florida Panthers and RCWs in violation of Section 9 of the ESA.

C. Enter an order finding that The Defendants' 2013 Settlement Agreement action which authorized extension of Wilson Boulevard further south into NBM occupied Florida Panther and RCW habitat, without first obtaining an ESA Section 10 HCP and ITP, is causally related to the taking of Florida Panthers and RCWs in violation of Section 9 of the ESA in the form of harassment, habitat loss, and the likely lethal take of Florida Panthers and RCW in vehicle collisions as a result of the road extension.

D. Enter an order finding that The Defendants' refusal to enact an ESA Section 10 HCP for RCWs in NBM, in conjunction with The Defendants' land clearing, land use, and roadway extension authorizations in NBM, is causally related to the harassment and taking of RCWs in violation of Section 9 of the ESA.

E. Enter an injunction prohibiting The Defendants from implementing, enacting or authorizing any approval of land and habitat conversion applications and/or exemptions to conduct land clearing for purposes of agricultural conversion (including timbering and pasture improvement) in NBM until The Defendants obtain a Section 10 HCP and ITP from the FWS for such land clearing and habitat conversions.

F. Enter an injunction prohibiting The Defendants from seeking, obtaining, implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with authorization of development for a future limerock mine, residential, and associated road access in occupied and essential habitat of Florida panther and RCW habitat in NBM without first obtaining a HCP and ITP from the FWS for such land use activities.

G. Enter an injunction prohibiting The Defendants from seeking, obtaining, implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with authorization of the extension of Wilson Boulevard into NBM without first obtaining a HCP and ITP from the FWS for such road extension.

H. Enter an injunction prohibiting The Defendants from seeking, obtaining, implementing, enacting or authorizing any approval of land use, zoning, planning and site clearing associated with RCW habitat land in NBM without first obtaining a RCW NBM HCP and ITP from the FWS.

I. Award The Panthers their attorney's fees and court costs; and

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

Respectfully Submitted,

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For The Panthers  
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