



June 12, 2024

Stephen Fleming, Army Corps of Engineers
Fort Myers Permits Section, 1520 Royal Palm Square Blvd., Fort Myers, Florida, 33919;
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Robert Carey, Division Manager, USFWS,
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Re: SAJ-2024-00967 (SP-SJF) Kingston development proposal application for Federal 404 CWA permit

Dear Mr. Fleming and Mr. Carey,

The Responsible Growth Management Coalition of SWFL (RGMC) a 501c3 organization based in Southwest Florida advocates for sustainable development practices that link growth to appropriate location and infrastructure, minimizing environmental impacts and permanently preserving public and natural spaces. We accomplish our mission through education, advocacy and where needed, litigation.

We at the Responsible Growth Management Coalition are writing to you today to entreat you to either deny the Federal 404 permit for the massive and destructive Kingston project in rural eastern Lee County, FL or take measures to compel the developer to substantially mitigate harm and habitat destruction through on-site reductions of development footprint and significant increases in restoration and conservation lands set aside to allow for adequate habitat land area to prevent jeopardy to the critically endangered Florida Panther and other endangered species who utilize and depend on the Kingston land tracts for their habitat and survival.

This project, Kingston, already has undergone critical review of endangered species impacts when the USFWS provided its 'technical analysis' to Florida DEP under the since vacated State 404 program administered by that agency. In the document titled: 'State 404 Permit Application Review/Response Form' dated 10/26/2023 USFWS biologist reviewers clearly established the following:

The Service expects the proposed Project to incidentally result in take of the Florida panther in the form of harm due to the destruction of habitat in the project footprint, disturbance due to land clearing and construction activities, and mortality. The loss of 3,400 acres of panther habitat is expected to result in the loss of habitat carrying capacity for 0.46 panthers, whereas traffic increases are predicted to increase vehicle collision mortality by 3 to 22 panthers per year

(assuming the proportional increase in traffic is equal to that of panther mortalities). Therefore, the Service expects...between 4 and 23 Florida panthers to be harmed by the combination of this loss in habitat carrying capacity, intraspecific aggression, and vehicle collision in year one, and 3 to 22 panthers each year following.

Undoubtedly take of 23 panthers per year, which amounts to approximately 10% of the remaining population of this critically endangered species will vector the panther to extinction in less than 10 years. As Federal agencies you are compelled to follow the mandate of Congress who enacted the Endangered Species Act to address increasing threats of extinction due to "economic growth and development untempered by adequate concern and conservation." Clearly the Kingston project design in its current state represents development 'untempered by adequate concern and conservation'.

The ACoE Public Notice for Kingston under criteria for evaluation for 404 permit approval states:

"The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including cumulative impacts thereof; among these are conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people."

The Responsible Growth Management maintains that the restoration of 3,293.89± acres of indigenous vegetation communities as currently designed and submitted to the ACoE in the Master Concept Plan for Kingston does not mitigate for 'reasonably foreseeable detriments' to Endangered Species that include not only the Critically Endangered Florida Panther but the Crested Caracara and Florida Bonneted Bat. We base this conclusion on the following verifiable facts:

- 1) The most environmentally sensitive lands that would comprise Kingston fall south of Corkscrew Road. The Kingston development proposal for the tract south of Corkscrew Road calls for several large-scale development pods including a massively intensive commercial development tract right up against the boundaries of the crucially important and highly sensitive conservation lands of CREW (Corkscrew Regional Ecosystem Watershed) and Corkscrew Swamp Sanctuary.
- 2) Indeed only 24% of the land area (804 acres out of 3,293 acres) proposed for restoration falls south of Corkscrew Rd. Furthermore, and more importantly (*emphasis added*) those 804 acres **don't even represent a useful corridor or expanse of habitat that large mammals like the Florida Panther or Florida Black Bear can effectively utilize**. Those 804 acres amount to thin ribbons of restoration intentionally woven between each residential development pod and between residential development pods and commercial development tracts and roadways to provide visual and aesthetic buffers to make such a massive development more appealing and create a 'human scale' experience for potential buyers and future residents.
When I asked the developer's representative Ray Blacksmith (at the FDEP Kingston State 404 public hearing on January 16th) how the developer's current design of Kingston for the southside of Corkscrew Rd allowed for panther and other large wildlife movement he didn't have a clear answer, he basically acknowledged that a panther corridor was not actually established and

incorporated in the site design. Audubon also uncovered this fact in their February 14th letter to Jeanette Gettle, Acting Regional Administrator USEPA:

“The applicant’s site design does not include elements such as protection and restoration of all existing large mammal wildlife corridors, and at least two underpasses and fencing on Corkscrew Road necessary to minimize these impacts”

- 3) Also as revealed in Audubon Florida’s February 14, 2024 letter to Jeanette Gettle, Acting Regional Administrator USEPA:

“The Kingston Project footprint includes 1800 acres that have been designated for public acquisition as a Florida Forever Project by the State of Florida. Similarly, Corkscrew Swamp Sanctuary, adjacent to the project, is a Ramsar-designated Wetland of International Importance. The project lacks a sufficient conservation management buffer, which directly conflicts with Audubon’s prescribed burning and wetland restoration activities. Audubon has already invested millions of dollars in restoration work to repair decades of ecological damage done by citrus operations on the Kingston site directing polluted effluent into Corkscrew Sanctuary’s North Marsh. The project footprint should be at least one mile from preserve boundaries.”

- 4) Kingston as a whole not only robs the Florida Panther and other endangered species of critical habitat for their survival but fragments and isolates vital corridors needed for their movement to find prey and breed:

In the peer reviewed findings of USFWS biologist Dr. Robert Frakes as provided to the Conservancy of Southwest Florida it has been determined that: Kingston and 2 other parcels currently under ACoE review “are located in areas where panther movement currently occurs and are essential for connecting panther habitat within eastern Lee and into both Hendry and Collier Counties. These projects, if developed, will sever connectivity and render remaining habitat areas less viable for the panther. The Kingston land alone contains a large amount of “Adult Breeding Habitat” and development would fragment connectivity to Corkscrew Regional Ecosystem Watershed (CREW) and other sensitive lands to the south and east. The project would destroy more than 3,330 acres of Primary and Secondary Zone Florida panther habitat while fragmenting additional habitat essential to its survival and recovery.”

- 5) Kingston falls on the farthest east, most rural, most environmentally sensitive sector of the Lee County DR/GR. The value of Lee County DR/GR lands to the Florida Panther is indisputable: “DR/GR lands constitute a last frontier of natural wetlands and uplands with a remnant system of interconnected flowways that historically have supported abundant wildlife and the critical estuarine system of Estero Bay...DR/GR lands provide a contiguous habitat, at times more than ten miles across, which is of special importance to wide-ranging species such as the eastern indigo snake, Florida black bear, and Florida panther.”¹
Yet since 2015 DRGR lands have been severely altered through radical land use policy changes by Lee County Gov’t allowing 10s of 1000s of acres to be permitted for residential and commercial development at densities of up to 1.5 units per acre. Much of the land consumed

¹ van de Kerk, M., Onorato, D.P., Hostetler, J.A., Bolker, B.M. and Oli, M.K. (2019), Dynamics, Persistence, and Genetic Management of the Endangered Florida Panther Population. Wild. Mon., 203: 3-35. <https://doi.org/10.1002/wmon.1041>

for this level of intensive development falls directly up against fragile and valuable conservation tracts like the CREW Regional Ecosystem Watershed preserves, the Corkscrew Swamp Sanctuary and Lee County's own Conservation 20/20 tracts. Furthermore Corkscrew Rd., the rural east-west road that bisects the DRGR is slated to go from two lanes to up to 6 lanes for much of its 17.4 mile length.

- 6) The impacts to Florida Panthers and Panther habitat in this region of Southwest Florida will be devastating and irreversible unless immediate measures are taken by the US Fish and Wildlife Service to declare a jeopardy opinion on many of the larger developments in the DRGR (Lee) under Consultation review by the agency.

For all the reasons stated above and many more that time will not allow us to uncover in this letter, that have nevertheless been thoroughly analyzed and provided to ACoE, EPA and USFWS by other conservation and scientific organizations focused on water resource quality and quantity, storm water impacts and proposed general changes to vital regional conservation and rural lands through vast landscape scale land conversion to urbanized uses, we ask you to either deny the 404 permit for this project and determine Jeopardy to the Florida Panther or seek far greater on site mitigation than presently proposed by the developer.

These are factors directly relevant to the proposal as they all substantially present cumulative impacts to: conservation, economic, esthetic, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, food, etc. All factors that weigh into ACoE, EPA and USFWS's responsibility to protect the Public Trust resources under the Clean Water Act and Federal Endangered Species Act for present and future generations.

Finally, all the reasons stated in the foregoing paragraphs warrant the need for the ACoE and USFWS to conduct a public hearing for the Kingston project. We anticipate that you will act with the best interest of the public in mind to safeguard the vital natural resources Floridians so highly cherish and wish to protect into posterity.

Sincerely,

Patty Whitehead

Patty Whitehead

Secretary
Responsible Growth Management Coalition of SWFL