

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

RESPONSIBLE GROWTH MANAGEMENT)
COALITION, INC., and ELLEN PETERSON,)

Petitioners,)

DOAH Case No. 95-569

v.)

FLORIDA BOARD OF REGENTS OF THE)
STATE UNIVERSITY SYSTEM OF FLORIDA,)
and SOUTH FLORIDA WATER)
MANAGEMENT DISTRICT,)

Respondents,)

and)

LEE COUNTY BOARD OF)
COUNTY COMMISSIONERS,)

Intervenor.)

SETTLEMENT AGREEMENT

Petitioners, Responsible Growth Management Coalition, Inc. (RGMC) and Ellen Peterson (Peterson) and the Respondents, Florida Board of Regents of the State University System of Florida (BOR) and South Florida Water Management District (District) hereby resolve and settle the above styled proceeding on the following terms.

1. **The Florida panther.**

The final order for the wetland resource permit in this proceeding sought by the BOR shall be amended to include the following language concerning the review of adverse impacts of proposed projects upon the conservation of the Florida panther and

its habitat.

"Section 403.918 (2) (a) (2), Fla. Stat. (1991) [now codified in Section 373.414 (1) (a) (2), Fla. Stat.,] and implemented in this case through the wetland resource regulatory program and Fla. Admin. Code Chapter 62-312) provides in part that:

"In determining whether an activity, which is in, on, or over surface waters or wetlands. . .and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. . ."

"In order to comply with the directive in Section 403.918 (2) (a) (2), Fla. Stat. (1991), in the implementation of the wetland resource regulatory program, the District's review of impacts of wetland alteration projects upon the conservation of the Florida panther and its habitats must include the evaluation of all habitat impacts on the proposed site. Review can not be limited to just wetland habitat impacts and denning site impacts."

"While the District and the BOR neither agree with nor stipulate to the following findings, they do acknowledge that the October 27, 1994 United States Fish and Wildlife Service (FWS) Biological Opinion for the Florida Gulf Coast University (FGCU) project, the Treeline Boulevard project, and the Timberland & Tiburon project, included such findings as:

1. The FGCU site is dominated by vegetative cover types of high suitability as potential Florida panther habitat, namely upland hardwood hammocks and pine flatwoods (pg. 14);
2. The Greater Corkscrew Region, of which the FGCU site is a part may support a separate breeding segment of the Florida panther population (pg.11);
3. The Florida panther is a potentially present species on the FGCU site according to the BOR consultants (pg. 16);
4. Florida panthers have been documented to the north of the FGCU site (pg. 17);
5. According to the FWS Biological Opinion, no evidence of Florida panther usage has been discovered on the FGCU site (pg. 17). However, the Florida Game and Fresh Water Fish Commission asserts that a radio collared male Florida panther was located via aerial telemetry on the FGCU site on May 29-30, 1989 (Florida Game and Freshwater Fish Commission (FGFWFC) memo, 11/10/94);
6. The FGCU site currently has a deer and pig prey base for Florida panthers, which is in the category of poor (pg. 11);

7. The FGCU site is not within the area delineated by the January, 1994 Interagency Florida Panther Habitat Protection Plan (HPP) as priority lands (pg. 21); and

8. Issuance of the three permits for the FGCU, Timberland & Tiburon and Treeline Boulevard projects will adversely affect the Florida panther, but will not jeopardize the continued existence of the species (pg. 22);"

"In order to mitigate for any potential adverse affects of the FGCU project on habitat, and not create any adverse cumulative and secondary affects on the conservation of the Florida panther and its habitat, Lee County has agreed to mitigate for any lost habitat functions on the FGCU site by purchasing currently impacted lands within the area identified in the January, 1994 Florida Panther Habitat Protection Plan (HPP) within Lee County, in accordance with Lee County Board of County Commission Resolution No. 95-01-13 which is incorporated herein by reference."

"The proposed mitigation plan for the FGCU project consists of \$1.7 million for the purchase, restoration and management of approximately 560+ acres of land within the HPP in Lee County. This land is to be located within the area identified in Special Condition #35 of the surface water management permit and Special Condition #32 of the wetland resource permit, and in accordance with Lee County Board of County Commission Resolution No. 95-01-13. The key elements of this mitigation plan are the acquisition of all or part of Section 12 (T 46 R 26 E) or acquisition of all or parts of Sections 23 and 24. The management of these lands will be combined with the management of the Green Meadows Mitigation Areas, which will be consistent with the CREW Project management plan. The purchase of the land will result in the creation of a larger area of ecosystem protection in Lee County, in the area of the Green Meadows and Flint-Penn Strand Corridors."

"This mitigation plan will not individually adversely affect the conservation of the Florida panther and its habitat because there will be no net loss of Florida panther habitat functions since the identified land to be purchased, restored and managed is within the HPP and the land has been disturbed by previous agricultural row cropping activities. The land acquisition, restoration and management provided for herein will address the impacts of the Treeline Avenue and FGCU projects. The purchase of this previously disturbed land replaces and restores the Florida panther habitat functions which may be adversely impacted on the FGCU site, resulting in no net loss of panther habitat functions."

2. Surface Water Treatment Criteria.

For each phase of the project, FGCU shall provide 1/2 inch of dry detention/retention pretreatment in addition to the required primary treatment volume

of the first one-inch of wet or dry detention treatment for all runoff to "waters of the state" (i.e. total treatment of the first 1.5 inches of runoff). For the one-inch of primary treatment volume, FGCU shall have the option of providing this treatment by means of a system which provides the functional equivalent or better of one-inch of wet detention, or the equivalent dry detention treatment in terms of quality. This treatment criteria will be added to the FGCU surface water management permit.

3. Estero Bay Improvement and Management Plan.

The District shall develop an Estero Bay Improvement and Management (EBIM) plan. The EBIM plan shall include and address the following tasks:

- a. collect, develop and analyze data on freshwater inflows (surface and groundwater) into Estero Bay;
- b. collect, develop and analyze data on the total pollutant loads (i.e. point source, non-point source, airborne) into Estero Bay and its tributaries;
- c. collect, develop, and analyze vegetative community trends in Estero Bay and its tributaries;
- d. develop biological goals and standards for Estero Bay and its tributaries;
- e. develop pollution load reduction goals (PLRG) for point sources and non-point sources discharging into Estero Bay and its tributaries.

The EBIM plan shall be initially funded by the District for a sum of at least \$50,000.00 to be funded in the FY 1996 Budget, subject to Governing Board adoption, for an Estero Bay freshwater inflow plan.

It is estimated that an additional sum of at least \$500,000.00 will be necessary for the District to develop and complete the plan. In the event the Florida Legislature does not make an appropriation sufficient to fund the study, the District, FGCU, and the SWFRPC shall use their best efforts to obtain the necessary funding. In the event insufficient funding is provided for plan development, the District shall undertake as many of the plan tasks (a) through (e) above as possible with available funding. This agreement, however, does not constitute a commitment by the parties hereto to fund the study beyond the sum of \$50,000.00 for the freshwater inflow study, as referred to above.

4. Representative Arnold Committee

State Representative J. Keith Arnold shall chair a cooperative planning process composed of state and federal regulatory agencies, Lee County, Responsible Growth Management Coalition, affected property owners, and environmental organizations (Arnold Committee). The Arnold Committee shall be a non-regulatory advisory body. Details of the membership, geographic scope, duration goals and scope of study are set forth in Exhibit A hereto. The Florida Department of Community Affairs agrees to provide the staff support for the Arnold Committee.

5. Estero Bay Agency on Bay Management

After the completion of the Arnold Committee, but in no case later than September, 1996, the Southwest Florida Regional Planning Council (SWFRPC) shall establish an Estero Bay Agency on Bay Management (ABM) as a subcommittee on the SWFRPC. The SWFRPC shall provide staff support to the ABM.

The ABM shall be a non-regulatory advisory body whose directive is to make comments and recommendations for the management of Estero Bay and its watershed. The ABM shall collect and maintain data concerning the Estero Bay watershed, and make such data available to the public.

The ABM shall review and comment upon the District's Estero Bay management and improvement study as it is developed. The ABM shall also review and comment to regulatory agencies on issues affecting Estero Bay and its watershed. It is recommended the ABM issue an annual "State of the Bay" report.

ABM members shall initially be appointed to one year terms by the Arnold Committee. Thereafter the ABM shall determine the method of membership appointments. ABM membership shall consist of, but not be limited to, Lee County legislative delegation members who desire to participate, and shall include, but not be limited to, members from the following: local Chambers of Commerce, Citizen and Civic Associations, Lee County, the District, the Department of Environmental Protection, the FGFWFC, the FGCU, the SWFRPC, commercial and recreational fishing interests, environmental and conservation organizations, Responsible Growth Management Coalition, the Ft. Myers Beach Civic Association, Citizens Association of Bonita Beach, scientists, affected property owners, and the land development community.

6. Mitigation Banks in Southeastern Lee County

The District shall identify and establish a mitigation bank in the HPP area of southeastern Lee County. Where appropriate, the District shall also encourage private mitigation banks in the HPP area of southeastern Lee County.

7. Implementation

a. Because the settlement agreement requires the SWFRPC, the Florida Department of Community Affairs (DCA), and State Representative J. Keith Arnold to perform tasks relating to the Estero Bay ABM and the southeastern Lee County cooperative planning process committee, the SWFRPC, DCA, and Representative Arnold have been made signatories to this settlement agreement even though they are not parties to the above-styled permit challenge proceeding.

b. The RGMC, Peterson, the District, and BOR agree to request the State Division of Administrative Hearings (DOAH) to relinquish jurisdiction to the District Governing Board for the purpose of taking final agency action to implement this settlement agreement and issue the challenged surface water management and wetland resource permits to the BOR.

c. The execution of the settlement agreement by the parties and the District Governing Board's adoption of a final order implementing the settlement agreement and issuing the requested permits shall resolve all claims of the parties relating to the subject matter of the permits at issue in this proceeding.

d. In the event the District Governing Board fails to approve this settlement agreement and take final agency action to implement the settlement agreement, the parties shall request the DOAH Hearing Officer to schedule the final hearing as soon as practicable.

e. In the event this settlement agreement is not approved by the District Governing Board, the settlement agreement shall not be admissible at the final hearing and shall in no manner limit the arguments of the parties.

f. The Petitioner RGMC and their undersigned counsel, Thomas W. Reese, hereby agree not to participate in any further judicial or administrative proceedings challenging the FGCU project or any future phases thereto or the Treeline Avenue Project. Actions to enforce the instant settlement agreement are not included within this prohibition.

g. This settlement agreement shall not be construed to bind other projects or landowners that are not a party to this agreement.

h. This settlement agreement is contingent upon the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency providing a letter of support and participation regarding the cooperative planning processes outlined herein.