

July 17, 2018

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Re: Comments on Group 3 Policies

I submit the following comments on behalf of the League of Women Voters Collier County as a follow up to the April 26th and May 24th 2018 RLSA Restudy Workshops on Group 3 policies. We make these comments and raise these issues for consideration by the County and for discussion at the Restudy workshops. Will our comments be considered and discussed? Please place an original copy of these comments in the record for the RLSA restudy.

1. Habitat Stewardship Areas (HSAs)

Policy 3.7 provides that HSAs with an index value of 1.2 or less can be used for earth mining and processing, recreational uses and conditional uses. HSAs are environmentally sensitive areas, i.e. areas that are suitable habitat for listed species and areas contiguous to habitat suitable for listed species. Why was it determined that portions of HSAs could be subject to these uses? Why was a value of 1.2 chosen as the cut-off point?

In addition, Policy 3.7 does not specify what percentage of HSAs have an index value of 1.2 or less. This information is important in terms of understanding the impact. The Policy provisions on FSAs and WRAs both specify the percentage of those areas that have an index value of 1.2 or less.

At the April 26th Workshop, you stated that you will look into these matters. We look forward to your response.

2. Specific language modifications for HSA Policy 3.7

A. Policy 3.7 should be revised to disallow Golf Courses as an appropriate use for HSAs. Golf Courses are not passive recreation. The activities related to landscaping and playing the course are high. In addition these golf courses are treated with heavy fertilizer and moderate pesticide use. Both the Collier County Planning Commission and the Environmental Advisory

Council raised this matter at the October 2002 RLSA Adoption meeting and stated that golf courses should not be allowed.

B. Delete the proviso in Policies 3.5 (FSAs) and 3.7 (HSAs) “where practicable” in reference to directional drilling. Both policies provide that “where practicable, directional-drilling techniques and/or previously cleared or disturbed areas shall be utilized for oil and gas extraction in FSAs (and HSAs) to minimize impacts to native habitats.” FSAs and HSAs have been determined to be areas important for water resources and wildlife; why isn’t it required that Oil and Gas Extraction in such areas use directional-drilling techniques and/or previously cleared areas to protect these areas?

C. Protect our aquifers by reinstating the requirement for an Environmental Impact Statement. At the time the RLSA was adopted the Land Development Code required an environmental impact statement that would examine impacts to our aquifers in the RLSA. This requirement was deleted some years later from the LDC.

3. Protect Water Retention Areas (WRAs), Policy 3

A. Revise the GMP to include explicit elements that will preserve and protect our water resources. A goal of the Group 3 policy is “to protect water quality and quantity and maintain the natural water regime...”. WRAs function as water retention areas for agriculture, and also help protect regional water flow, water supply and water quality. These wetlands soak up and store water during the rainy season, reduce flooding of neighboring areas and replenish underground supplies of drinking water. We’ve recently learned of concerns about Corkscrew Swamp Sanctuary losing water more rapidly in the dry season and actually drying up for a few months before the rains begin as a matter of course. This can have a devastating impact on Corkscrew Swamp and serves as a bell-weather on other areas in eastern Collier County that may also be drying up much more than in the past.

Developments through their storm-water lakes and canals tend to move water southward much more rapidly than the original overland flow; WRAs tend to retard this movement. The Growth Management Plan needs to have explicit elements that will preserve and protect regional water flow and our water supply. According to SFWMD Executive Director at an Everglades Conference in January 2009 “Counties and municipalities are overly dependent on the SFWMD to preserve and protect their water supplies. You

must be more proactive in creating explicit elements within your comprehensive and growth management plans. We can only use what you give us to make decisions. You must take control of your own futures.”

In addition, proposed developments in the RLSA also appear to be altering WRAs to be lakes for their development (at the same time designating the WRA as an SSA). We’d like the County to look closely at this. Should developers be able to alter WRAs from the important water resource functions they serve?

B. Modify Policy 3.13 to specify that use of WRAs as part of a storm water management system should be avoided. WRAs are preserve areas important for regional water flow, water quality and water supply. The use for storm-water treatment should be avoided. If, however, it is necessary to use part of an WRA to provide storm-water management, water treatment and/or water retention for the SRA, the acreage of the WRA used for treatment or storm water management for the SRA should be included in the SRA.

C. Revise the GMP Policy 3 to require that new developments include measures to address water quality such as installing filter marshes as part of storm water management systems and waste water treatment systems that are constructed. The County can take action to help protect water quality from the impacts of new development in the RLSA. For example, Rural Lands West (RLW) will be discharging from its stormwater management system into Camp Keais Strand, a state impaired water. Discharges from RLW can further degrade the water. The County should direct Collier to install filter marshes connected to the RLW storm water management system to clean the water before discharging into Camp Keais Strand. This has successfully been done in other Florida communities. See, for example, the Wakodahatchee Wetlands in Delray Beach which is used by the Southern Region Water Reclamation Facility to clean treated wastewater and the Sweetwater Wetlands Park created by the City of Gainesville and other partners to reduce nutrients from treated wastewater. The GMP should be revised to encourage this approach.

4. Protect Primary Panther Zone; Update the RLSA Overlay and Natural Resource Index (NRI)

There are two peer-reviewed Florida panther studies that have been completed since the original RLSA was adopted and the 2007 5-year review. Based on these studies, we now know that some agricultural land designated as open land in the RLSA Overlay is very important to the long-term survival of Florida panthers. The two studies by panther experts are based on panther telemetry data and identify those areas in the RLSA that are essential to the long-term survival of the panther. (Kautz, R. et al 2006; Frakes et al. 2015). These Florida panther experts have identified the “primary panther zone” as the land essential to the long-term viability of the panther. Kautz 2006. The primary panther zone is the minimum area necessary to ensure survival of the Florida panther. *Id.* U. S. FWS relied on and cited the Kautz study in its 2008 Florida panther recovery plan, stating at page 89 “The primary Zone supports the only breeding panther population. To prevent further loss of population viability, habitat conservation efforts should focus on maintaining the total available area, quality and spatial extent of habitat within the primary zone.”

The RLSA Overlay designates some primary panther habitat as open area suitable for development—these designations are based on an outdated NRI. The RLSA Overlay and Stewardship Credit worksheet used to designate land usage in the RLSA was developed by Wilson/Miller in 2000. Wilson/Miller developed the NRI at that time to score each RLSA grid square based on its determination of natural resource value. If this methodology is continued to be used, it should be updated to include the best available science, i.e. the primary and secondary panther habitat as set out in the panther studies. The RLSA scores should be recomputed.

5. Revise Restoration Credits Provisions

A. The GMP and LDC should be revised to add and tighten up requirements concerning Restoration. Currently, neither the GMP nor the LDC require that restoration goals such as restoring a flow way or creating a functional wildlife corridor be met before credits are awarded. Development of the open lands can in many cases cut off panther movement between the Florida Panther National Wildlife Refuge and Corkscrew Swamp and the OK Slough State Forest. Development of the open lands will also disrupt regional water flow south. Therefore, it is important that the SSA restoration is actually successful in providing a functional wildlife corridor or restoring a flow way. In addition, neither the GMP nor the LDC set out requirements concerning a start date for restoration, milestones to be met,

metrics to be measured, or provisions for verification of accomplishing the restoration goals. Once land is cleared for development, wildlife will flee the area and panther/deer/bear movement will be impeded by construction activities. If an area of an SSA is to be restored, the landowner should begin restoration before or at least at the same time it begins site clearing.

Currently, as we understand, landowners can and are delaying restoration efforts until they've got sufficient commitments from builders (or maybe enough houses sold). We learned at the April 26th workshop that although 50,000 acres are under an SSA, only 600 acres have been restored.

B. The Credit System appears to award too many credits for restoration.

The credit system should be re-examined as it currently creates excess credits, in particular concerning restoration. Take SSA15 (5259 acres) for example. Collier Enterprises will get 10,095 “base use” credits for removing 5 layers of land use on 4,820 acres (keeping Ag 2 uses) and 4 layers of use on 439 acres (keeping Ag 1 and Ag 2). However, Collier Enterprises will get an additional 14,178 credits for **designating** 3545 acres of the 4820 acres as land that can be restored, and then get another 14,178 credits for doing the restoration (total 28,356 credits: designating and restoring). Why isn't this double counting? Why so many credits for just identifying land that can be restored? Collier Enterprises gets credits for taking all land uses off except Ag 2—why should it also get such a large number credits (14,178) for designating this portion of the SSA as land that can be restored? If Collier Enterprises implements the restoration, it will get an additional 14,178 credits for a total of 28,356 restoration credits. Note that this SSA15 is comprised mostly of FSA (Camp Keais Strand), HSA acres and WRA acres.

Restoration credits should be awarded for completion of the restoration; credits for just designating an area for restoration should be re-evaluated. SSAs are supposed to be areas important for protecting water resources and for protecting habitat for listed species. Landowners cannot develop the SSAs. The goal of the RLSA Overlay is to direct development away from environmentally sensitive areas and important wildlife habitat.

6. The 5 year Review Recommendations Will Create Even More Excess Credits.

The 5- year review recommendations on Group 3 policies were to add credits for preservation of agriculture and wildlife corridors. In a 2009 report Wilson Miller estimated that if the 5-year recommendations were

adopted, this would increase the number of credits available to 421,000 (or enough for 57,888 acres of development). Even these numbers are an underestimate. First, the 2009 report didn't include credits for SSA 16 and 17, did not include the restoration credits now being sought for SSAs 14-17, and also underestimated the number of credits that would arise from wildlife corridors because the corridors Wilson/Miller considered are much too narrow for the panther. According to the Panther Studies, a panther corridor along Camp Keais Strand needs to be a mile wide, if the panther corridors are to be viable. See 2006 Kautz and 2015 Frakes peer-reviewed panther Studies, the 2009 Florida Panther Technical Review Team Report and the 2008 US FWS Florida Panther Recovery Plan. If viable corridors are established, the corridors will generate far more credits than were envisioned by Wilson/Miller in 2009.

Providing excess credits will have a snowballing effect of more development. Even if credits and acres to be developed are capped, the landowners holding excess credits consider the credits an entitlement. At some time in the future these landowners will likely push to get some value for their excess credits. Most likely, they will push for additional development rights.

We agree that the County should consider incentives to set aside land for panther corridors and preserving agriculture, including the possibility of additional credits, but if credits are to be considered the system should be revised so that total number of credits does not add up to more than 315,000. In addition, credits should not be authorized for a panther corridor until the design for the corridor has been determined adequate by the US FWS.

7. Policies 3.9 and 3.10 should be revised to clearly specify at what point in time no further expansion of Agriculture 1 will be allowed.

According to 3.9, "Once the Stewardship Credit System is utilized and an owner receives compensation as previously described, no further expansion of Ag 1 will be allowed in FSAs and HSAs." It is not at all clear at what point the "stewardship credit system" is considered "utilized" and what compensation will trigger the prohibition on expansion of Ag 1. Policy 3.8 says compensation may occur through "creation and transfer of Stewardship Credits." This language adds to the lack of clarity. When are Stewardship Credits considered created and transferred, and must a transfer occur before "compensation" is received?

According to the 2018 County white paper, it appears that SSAs 1-15 have been approved and the owners have received credits for SSAs through SSA15, and are currently seeking approval for additional restoration credits for SSAs 14-16. However, we learned at the April 26th workshop that all SSAs after SSA9 are in escrow. So when exactly is the credit system considered “utilized” so as to stop expansion of Ag 1?

Policy 3.10 has similar language for Ag 2 concerning conversion of land from Ag 2 to the more intensive use of Ag 1.

The point at which Ag 1 cannot be expanded in HSAs and FSAs is important. HSAs and FSAs are environmentally sensitive lands for protection of our water resources, regional water flow and wildlife. It is a goal of the RLSA to direct development away from these areas; however, the RLSA Overlay and GMP as it currently exists can result in the landowners expanding Ag 1 in HSAs and FSAs and moving Ag 1 operations from open areas to HSAs and FSAs.

8. Modify Policy 3.11 to include language directing development away from primary panther habitat.

The RLSA program was developed to establish a voluntary system to direct development to appropriate locations with protection of panthers being one of the main goals. Since adoption of the RLSA in 2002, there have been two studies and a report by panther biologists that have identified areas of the RLSA important to the long-term survival of the panther. Panther movement telemetry data, mortality data and analysis of the two studies and the Florida Panther Technical Review Team 2009 Report should be used to make adjustments to the RLSA program and to direct development away from primary panther habitat. Currently the RLSA crediting system undervalues the importance of certain agriculture lands for panther use.

At the April 26th workshop, a representative of Stantec (formerly Wilson/Miller) stated that landowners include updated data when they submit their application for development. However, it’s clear from the Rural Lands West development proposals, that they did not take into account the 2006 peer-reviewed Kautz panther study and the 2015 peer-reviewed Frakes Study.

