



Public Employees for Environmental Responsibility

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Big Cypress Planning Team
National Park Service
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Dear Planning Team Captain:

Public Employees For Environmental Responsibility (PEER) offers the following comments on the Draft General Management Plan for the Addition to Big Cypress National Preserve, Florida.

Comment No. 1. - PEER Supports NPS Decision to Conduct Wilderness Study.

PEER commends the National Park Service (NPS) for incorporating a wilderness study and formal public hearing into the review of the Draft General Management Plan. This study is overdue by sixteen years! In 1988, Public Law (P.L.) 100-301 expanded the boundaries of Big Cypress National Preserve, Florida, originally established in 1974. The Big Cypress Addition Act required that:

Within five years...from April 29, 1988, with respect to the Addition, the Secretary shall review the area...within the Addition...and shall report to the President, in accordance with section 1132(c) and (d) of this title, his recommendations as to the suitability or unsuitability of any area...within the Addition...for preservation as wilderness, and any designation of any such areas as a wilderness shall be accomplished in accordance with section 1132(c) and (d) of this title. 16 U.S.C. 698f

PEER looks forward to a NPS final wilderness proposal that will be included in the Final GMP and EIS. We expect that the Director will transmit the wilderness proposal to the Secretary after signing a Record of Decision (ROD) on the Final EIS for the GMP.

Comment No. 2 - The Draft GMP Preferred Alternative Proposes Too Little Wilderness.

The Draft GMP Preferred Alternative suggests that only 88,000 acres of the 111,000 acres of eligible lands be proposed by the NPS to the Secretary of the Interior as wilderness. Instead, the NPS should adopt an alternative that ALL



wilderness eligible lands are proposed as wilderness. That Alternative is listed as "Alternative F" in the Draft GMP.

During congressional oversight hearings conducted by the Subcommittee on Public Lands, Senate Committee on Interior and Insular Affairs, Senator Frank Church, said this:

In the absence of good and substantial reasons to the contrary— (wilderness) areas within national parks should embrace all wild land. There is no lawful policy basis for massive exclusions of qualified lands on which no development is planned.

Senate Oversight Hearings on Wilderness, May 5, 1972, pp. 59-60.

Senator Church's view is an authoritative source on the NPS obligations for wilderness review. Senator Church was the floor manager of the Wilderness Act when Congress enacted it in 1964. The Draft GMP offers no good reason why wilderness eligible lands are not being proposed for wilderness designation in the Big Cypress Addition. The only reason the Draft GMP excludes wilderness eligible lands appears to be to permit motor vehicle use. Neither the 1974 enabling act for Big Cypress, nor the words of the 1988 Addition support this exclusion.

Section 3(a) of the Addition Act directs the NPS to administer the Addition under Section 4 of the 1974 Act establishing the original Preserve (16 U.S.C. 698m-1(c)). Section 4 of the 1974 Act (16 U.S.C. 698i) provides:

(a)....Such lands shall be administered by the Secretary as a unit of the National Park System in a manner which will assure their natural and ecological integrity in perpetuity in accordance with the provisions of this Act and with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), as amended and supplemented.

(b) In administering the preserve, the Secretary shall develop and publish in the Federal Register such rules and regulations as he deems necessary and appropriate to limit or control the use of Federal lands and waters with respect to:

- (1) motorized vehicles,
- (2) exploration for and extraction of oil, gas, and other minerals,
- (3) grazing,
- (4) draining or constructing of works or structures which alter the natural water courses,
- (5) agriculture,
- (6) hunting, fishing, and trapping,
- (7) new construction of any kind, and

(8) such other uses as the Secretary determines must be limited or controlled in order to carry out the purposes of this Act...

The designation of wilderness in the Big Cypress Addition is both consistent with and supportive of the overarching mandate of Congress that the Secretary assure the Preserve's natural and ecological integrity in perpetuity. Though wilderness designation is not essential to that goal, wilderness designation will protect the area's integrity in perpetuity.

The legislative history for the original Preserve, contained in both the House and Senate Reports, states "...the area included in the preserve is largely undeveloped at the present time and...it will be managed in a manner which will assure its return to the *true wilderness character that once prevailed*." p. 5, H. Rep. 93-502 (September 13, 1973); p. 4, S. Rep. 93-1128 (August. 22, 1974). Emphasis added.

PEER recognizes, and the Draft GMP provides, that Congress authorized the Secretary to regulate and, thus, allow, other uses of the Preserve and its Addition that may conflict with specific prohibitions found in the Wilderness Act. Among the uses authorized by Section 4(b) of the 1974 Preserve Act, and adopted by the Addition Act, are motorized vehicles. The authority to allow motorized vehicle use may be further reinforced by the Section 5 of the Addition Act that provides:

The Secretary and other involved Federal agencies shall cooperate with the State of Florida to establish recreational access points and roads, rest and recreation areas, wildlife protection, hunting fishing, frogging, and other traditional recreational opportunities in conjunction with the creation of the Addition and in the construction of Interstate Highway 75. Three of such access points shall be located within the preserve (*including the Addition*). (Emphasis added) 16 U.S.C. 698m-2.

Prior to the Addition Act, the major public recreational uses of the added lands, just as with the original Preserve, was hunting and fishing and operating off-road vehicles. As an interim measure, the NPS does not now permit hunting and off-road vehicles on the Federal lands in the Addition pending completion of the GMP and EIS for the Addition. The NPS closed the Federal lands in the Addition to all hunting and use of off-road vehicles (ORVs) under 36 CFR 1.5. Current notice of such closure is published in the current NPS compendium.

PEER does not deny that Congress envisioned the possible recreational use of ORVs both in the Preserve and the Addition. A system of access points and designated trails for ORVs is consistent with the Big Cypress Preserve and Addition legislation. As quoted earlier, the Addition Act explicitly requires three "recreational access points" from I-75 into the Preserve, including the Addition lands. (Note that the Addition Act is not explicit about the type of "recreational

access points.” However, such access points could [but need not] be for roads or trails that support ORV use.)

The legislative history for the 1974 Big Cypress National Preserve Act contains the following language:

While the use of all-terrain vehicles must be carefully regulated by the Secretary (of the Interior) to protect the natural, wildlife and wilderness values of the preserve, the bill does not prohibit their use along designated roads and trails. (Emphasis added). H. Rep. 93-502 (September 13, 1973) p. 6; S. Rep. 93-1128 (August. 22, 1974) p. 5

Congress clearly directed the NPS consider wilderness designation within the Addition. Congress directed the Secretary to protect the Preserve’s wilderness values while accommodating other recreational uses. Thus, the GMP alternatives may range from designating no ORV routes in the Addition to a more extensive system of designated routes. However, the NPS should select the alternative that proposes that all eligible lands in the Addition be recommended as wilderness. NPS arguments as to “balance” simply have no statutory weight.

The NPS may designate ORV routes only in the non-eligible lands (c. 57,000 acres). Even within that land category, the NPS should establish areas closed to ORVs because of other statutorily imposed obligations, such as protection of the Florida panther. Thus, the NPS would still provide for both wilderness, endangered species, ecological integrity AND an authorized recreational use of ORVs, as provided by Congress. Instead, the Draft Alternative sacrifices considerable wilderness eligible lands and areas critical to Florida panther to make them available to motor vehicle use.

At what point will the NPS recognize that it needs to get on board the future? Continuing to encourage widespread use of carbon-spewing recreation from motor vehicles is hardly the “environmental leadership” or “stewardship” the NPS babbles about so volubly!

Comment No. 3 – Preserve the Integrity of Mullet Slough.

Even if the NPS insists on sacrificing wilderness eligible lands in the Addition to ORV use in a specious service to some imaginary “balance,” none of those routes should transgress Mullet Slough.

Mullet Slough is a major physiographic feature characterized by a mixture of wetland habitats: cypress domes, vast dwarf cypress prairies and mixed swamp forest. The Slough is a wide, major flow route that receives water from Bear Island’s marshes to the northwest, and generally runs to the east/southeast into Water Conservation Area No. 3A and ultimately into the Ten Thousand Islands

area of Everglades National Park. The entire Slough encompasses 91,000 acres of which the majority is in the Addition area.

PEER would legally describe the Mullet Slough and adjacent areas as:

1. Proposed Wilderness:

All Federal lands south of I-75, west of the Levee 28 Interceptor Canal in T. 50S., R. 34E., sections 1-12, 14 and 16 and T. 50S., R. 33E., sections 1-12 and 14.

2. Proposed Potential Wilderness:

All lands, including tracts of Federal lands, in T. 50S., R. 34E., in sections 13 through 36 (except for 14 and 16 listed above and section 31 which is in the original Preserve), and T. 50S., R. 33E., in sections 13, 15-18, 20-25, and in T. 50S., R. 32E., sections 1-5, 10-14, and in T. 51S., R. 34 E. sections 1 and 2.

The northern boundary of this Wilderness Unit would be the southerly ownership of the State of Florida in connection with I-75. Alternatively, the NPS could propose to set the wilderness boundary south and parallel to the I-75 right-of-way at a distance of between 200 to 500 feet. The southerly boundary would be the Addition-Preserve boundary. (NOTE: A restudy of the original Preserve should evaluate the Slough in the original Preserve since these lands exhibit wilderness characteristics as well. While the Mullet Slough Wilderness proposed in this study stands on its own merit, the addition of lands to the south in the original Preserve must be considered so as to encompass the entire physiographic feature undivided by the artificial boundary of the 1988 Addition. Should the restudy of the original Preserve conclude that the Mullet Slough area also merits wilderness designation, the combination of the two parts could result in an impressive wilderness.)

Several sets of structures used as seasonal camps exist in the area known as the Gap in T. 50S., R. 34E., sections 13 and 24 but none are "improved properties" and will be removed over time. The two sections are proposed as part of a larger "potential wilderness" in the above description because of the seasonal camps and mixed State ownership. That status would allow more flexibility during the next decade while the NPS restores and rehabilitates the area and acquires the State and private lands.

An alternative wilderness configuration would create a road corridor beginning at I-75 in T. 50S, R. 33E., section 6, nw quarter and proceeding south through sections 7 and 18 to the original Preserve boundary. The "road" was constructed decades ago by an oil company and leads to several abandoned drilling pads. Though the road has now been reduced to grade, the roadbed forms a scar that is likely to be visible for years. The 100 foot-wide corridor could be open to public use of motor vehicles and/or bicycles. The road corridor would bisect the Mullet

Slough proposed wilderness and potential wilderness, as legally described above. PEER opposes any other designated trail, roads, routes for motor vehicles or mechanical transport other than the above-described route.

Comment No. 4: Interim Management Obligations

If the NPS adopts a proposal to the Secretary that does not include all wilderness eligible lands, the NPS will be governed by interim management prescriptions found in NPS Management Policies. It is lawful for the Secretary to propose to the President a wilderness that may differ from the NPS final alternative. It is lawful for the President to recommend to the Congress a wilderness that differs from the Secretary's proposal or the NPS Final alternative. In either case, the Secretary may decide to propose, and the President may decide to recommend an area larger than that adopted by the NPS. This has occurred before in the history of NPS wilderness review. Should the NPS adopt a deficient proposal, PEER, and, we are sure, others will work assiduously to advise the Secretary and the White House, and Congress to give greater protection to wilderness areas of the Addition.

NPS Management Policies (2006) prescribe that "the National Park Service will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed." The paragraph continues: "the only exception is for areas that have been found eligible, but for which, after completion of a wilderness study, the Service has not proposed wilderness designation. However, those lands will still be managed to preserve their eligibility for designation."

Thus, even after the completion of the GMP for the Addition, the public hearing, the transmittal of the NPS conclusion to the Secretary, and then to the President and his recommendation to Congress, the NPS must live within the status quo in the Addition. No construction on wilderness eligible lands. No designation of routes for ORVs on wilderness eligible lands that leave permanent ruts and tracks embedded in the moist substrate to endure for decades. Either action would fail to preserve eligibility for wilderness and violate the Management Policies.

Final Comment:

PEER urges that the NPS reflect upon these comments and grant greater protection to the wilderness eligible lands of the Big Cypress Addition than the preferred alternative now affords.

Cordially,


Jeff Ruch
Executive Director