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Reply To: West Palm Beach

September 30, 2009

VIA EXPRESS MAIL

Big Cypress National Preserve
Addition General Management Plan
National Park Service
Denver Service Center – Planning
P.O. Box 25287
Denver, CO 80225

Dear Sir/Madam:

Our firm has been asked by Mr. Jim Shore, on behalf of the Seminole Tribe of Florida, to provide our comments on the Big Cypress National Preserve Addition Draft Management Plan (“Draft Plan”). The Tribe has several comments based on its review of the Draft Plan.

GENERAL COMMENTS

1. The Tribe is concerned that the overall process of selecting proposed alternatives in the Draft Plan is flawed. Specifically, how can the federal agency that initiates the proposed action and authors the Draft Plan then be qualified to objectively evaluate it and select the preferred alternative?

2. The Draft Plan does not clearly justify why the Preferred Alternative was selected over Alternative F. Pursuant to 16 U.S.C. § 1, the purpose of the National Park Service is to promote and regulate the use of the national parks, monuments, and reservations “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” Alternative F ranked highest with regard to fulfilling “the responsibilities of each generation as trustees of the environment for succeeding generations.” Accordingly, Alternative F is arguably the alternative which most conforms to the Service’s purpose.

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3. Though the Tribe knows and understands that the Draft Management Plan's purpose is not to define the Tribe's use and occupancy rights within the Preserve, the Tribe would like to take this opportunity to express its desire to have these rights further defined. Pursuant to 16 USA § 698(j), the "Seminole Tribe of Florida shall be permitted, subject to reasonable regulations established by the Secretary, to continue their usual and customary use and occupancy of Federal or federally acquired lands and waters within the Preserve Addition, including hunting, fishing and trapping on a subsistence basis and traditional tribal ceremonials." For over twenty (20) years now the Tribe's usual and customary use and occupancy rights pursuant to the previously mentioned statute have not been defined. The Tribe is concerned that with new privileges being granted to the general public within the Preserve, it will become increasingly difficult to define the Tribe's rights. As the public begins to enjoy its' privileges within the addition and the preserve, defining the Tribe's statutory rights will become even more difficult because some of the public's new privileges will likely have to be curtailed. Therefore, the Tribe would like to take this opportunity to have its' rights further defined so as to avoid any potential conflict with the privileges that are granted to the public within the Addition and the Preserve.

**COMMON BORDER BETWEEN NORTHEAST ADDITION LANDS AND
SEMINOLE TRIBE OF FLORIDA RESERVATION**

1. The Tribe is concerned that increased Off Road Vehicle ("ORV") traffic in the Northeast Addition Lands along the Tribal Reservation's southern border will facilitate trespassing. Several areas of the fence along the Reservation's southern border are in disrepair. The increase in ORV traffic in these areas will require the Tribe to repair these areas to prevent trespassing. These repairs will be costly because some will require a Clean Water Act Section 404 permit prior to commencing work.

2. The Tribe does not have the resources to patrol the Reservation's southern border. Therefore, the Tribe is concerned whether the Draft Plan will provide for adequate staffing of Northeast Addition Lands' access sites, campsites, and the Addition's interior to implement management strategies and enforce proposed seasonal, nightly, and other closures.

3. The proposed increase in ORV traffic within the Northeast Addition Lands along the Reservation's southern border will facilitate illegal harvesting within the Reservation, specifically within the "Native Area".

4. The Tribe is concerned that the increase in recreational traffic within the Northeast Addition Lands near the Reservation's southern border will increase the incidence of poaching, illegal harvesting or otherwise adversely affect existing populations of over 100 threatened, endangered, or otherwise commercially exploited plant species, including the ghost

orchid. These species are known to occur within the Northeast Addition Lands therefore they are likely to occur within the "Native Area" of the Reservation as well.

5. There are five invasive exotic plant species common to both the Northeast Addition Lands and the Reservation's "Native Area" – melaleuca, Brazilian pepper, lygodium, hyacinth, and hydrilla. Currently, the Tribe is actively managing the three former species within the "Native Area" along the Reservation's southern border. The Tribe is concerned that NPS strategies to manage these species may duplicate or conflict with the Tribe's strategies. Therefore, the Tribe would like to coordinate its efforts with the NPS.

6. The Preferred Alternative and Alternative B direct backcountry recreation within the Northeast Addition Lands toward the Reservation's southern border which is utilized as a boundary for these recreation activities despite the presence of alternative boundaries such as the L-28 interceptor canal and Jones Grade Road. Use of the Reservation's southern border as a boundary for these activities will have adverse impacts to the Tribe's cultural resources in the area above the L-28 interceptor canal and the Jones Grade Road. Additionally, the presence of hikers and ORVs near the Reservation's southern border will increase the threats to the Reservation from fire, seed dispersal of exotic vegetation, poaching, and illegal harvesting. Accordingly, the Tribe recommends that ORV traffic be directed away from the Reservation's southern border and at least be limited to the area south of the L-28 interceptor canal or south of existing campsites.

7. The maps of Alternative B and the Preferred Alternative show a network of proposed hiking and ORV trails within the Northeast Addition Lands leading up to the Reservation's southern border. The majority of these trails already exist. However, the maps for Alternative F and the No Action Alternative do not show these existing trails.

FORRESTRY & WILDLIFE RESOURCES

1. The increase in ORV traffic coupled with dry weather conditions within the Northeast Addition Lands will increase the threat of wildland fires along the Reservation's southern border.

2. The preferred alternative illustrates a network of existing trails and 'islands' of primitive backcountry in between. Inevitable off-trail ORV traffic will adversely impact these islands, eventually turning them into areas comparable to so-called recreational backcountry areas, similar to those in alternative B.

3. Increases in foot and ORV traffic will disrupt the migration patterns of large mammals between the Preserve and the Reservation, including threatened or endangered species such as the Florida Panther and Florida Black Bear, and major game species such as white-tailed deer and wild turkey.

4. Increases in foot and ORV traffic will disrupt behavior of wood storks nesting in two historic rookeries near the Reservation's southern border. Although the Park Service staff periodically performs surveys in conjunction with wood stork telemetry flights, they have not documented any new nesting occurrences.

5. The Tribe is concerned that poaching may increase if public hunting is expanded from the Preserve into the Northeast Addition Lands.

6. As previously mentioned, portions of the fence along the Reservation's southern border are in disrepair. This disrepair has been advantageous to wildlife by allowing them to pass through these openings and move freely between the Reservation and Preserve. However, because the increase in foot and ORV traffic in this area will likely lead to increased trespassing on the Reservation, the Tribe will be required to repair these openings.

7. ORV traffic within the Northeast Addition Lands along the Reservation's southern border may reduce or degrade desirable herbaceous groundcover, reducing or eliminating the amount of suitable game and panther prey habitat and further drive game communities away from the area.

8. The increase in ORV traffic within the Northeast Addition Lands may degrade and devalue potential panther denning habitat.

9. Table 11 summarizes impacts identified for each alternative, but limits consideration to only four species, the Florida panther, West Indian manatee, red-cockaded woodpecker, and wood stork.

10. Potential nesting habitat for the red-cockaded woodpecker has been identified in the southern portion of the Reservation. Increases in foot traffic and ORV traffic will likely disrupt the behavior of any red-cockaded woodpeckers attempting to nest within and/or near the Northeast Addition Lands and the Reservation's southern border.

SURFACE WATER & WETLANDS

1. The Tribe and Army Corps of Engineers have spent millions of dollars on the WCP to restore the sheet flow to lands south of the Reservation. The preferred alternative and alternative B will create long term impacts on surface water flow.

2. Trail improvements and associated construction will adversely impact wetlands within the Northeast Addition Lands. The section of the Draft Plan which discusses environmental consequences of the Preferred Alternative claims that "impacts from actions contained in this alternative would not result in impairment of wetlands in the Addition", despite

acknowledging that the majority of the Northeast Addition Lands have been mapped as wetlands as part of the Fish & Wildlife Service's National Wetland Inventory. Yet the Draft Plan does not acknowledge adverse wetland impacts resulting from the proposed action, nor does it offer compensatory mitigation or specific Best Management Practices to offset or minimize such impacts.

CULTURAL RESOURCES

1. The Tribe is concerned about the focus of the methodology of the surveys being conducted. The results of these methods can be seen in the results of the field season of 2000, including the discovery of forty archaeological sites. Of these, only one was recognized as having a Seminole component present in the artifact assemblage collected from these sites. It is more likely that the researchers did not recognize the cultural remains that indicated the presence of the Seminole people that occupied nearly every rise in the Big Cypress and Everglades regions over the last three hundred years. Or it may pertain to the methods used. At the Okeechobee Battlefield a few hundred shovel tests and a long trench gave little indication of the army that had occupied the site in 1837, and showed even less evidence of the Seminole camp upon which the military camp stood. There had been thousands of people present at the site during the battle. The fact is that the methodology used by archaeologists tends to favor locating evidence of prehistoric campsites. This is compounded by the duration of the prehistoric Draft Plan occupation versus the relatively short historic occupation, leaving far less evidence of these events.

2. It is not the position of the Tribal Historic Preservation Office ("THPO") that the Seminole occupation of the Everglades has been ignored. The second and third volumes of the Schwadron report of 2005 give descriptions of the recorded sites located within the Preserve lands and here we see that a great number of sites have been recorded as having Seminole components. However, in 1993 the Tribe asked the Archaeological and Historical Conservancy (AHC) to conduct a statewide survey to record all of the known Seminole sites and bring the state records to the Tribal Museum. In addition to this data collection, research was conducted which located twenty-three Seminole towns that were known only by the historic record and had never actually been located and recorded. Examples of sites that were located during this study include Bowlegs Town, east of Tampa; Peliklakaha (Abraham's Town); Coa hadjo's Town; and Charley Emathla's Town. What the 1993 AHC study determined was that a great number of the Seminole sites located in the Everglades and Big Cypress areas were recorded in a manner that was not strictly archaeological. The SEAC surveys conducted from about 1977 to 1981 recorded many Seminole sites by the presence of orange trees (8CR483 is an example) or girdled oaks (8CR449 is an example). While it is likely that these sites were occupied by the Seminole people, there was no archaeological evidence used to make these determinations. It is this lack of developed methodology to define the Seminole occupation of these sites that is our concern. The 1993 AHC report therefore excluded any site that did not have archaeological evidence (*i.e.*, cultural material or food refused in some manner shown to be of Seminole origin) indicating

Seminole occupation. The upshot of this observation is that we believe that the research design needs to be reassessed to give more consideration to an area of archaeology which seems to need development. That is, the historic component of the Preserve's history.

3. During the last thirty years of archaeological research conducted in South Florida, there is a growing consensus of the significance of the archaeological record of three hundred years of Creek culture presence in the region. At one time Charles Fairbanks, the father of historic archaeology in Florida, concluded that the Creek peoples did not bring their town pattern with them into the territory. It seems that he believed that there was a breakdown of the Creek culture (including the Seminoles and Miccosukees) when they came here. This would explain the failure of the methodology being used by archaeologists to find evidence of the Creek peoples in the area. It also would justify dedicating little time to the study of a culture that had disappeared. However, recent work in South Florida has shown that the traditional Creek Town pattern, particularly as recorded in the eighteenth century in Georgia and Alabama, was in fact transplanted to the southern extremity of the territory. This is particularly important to the Seminole people as it shows that they had in fact managed to protect and maintain their cultural identity in the face of all efforts to exterminate them.

4. A report produced by the THPO of the Tribe entitled "The Snake Creek Community and Big City Island, THPO, 2009", illustrated the presence of a settlement at the headwaters of Snake Creek. Map number 13, shows the archaeological sites that have been recorded that made up this community. While this town is located on the east coast, another similar community existed in the Big Cypress Region. It was connected by a canoe route that shows up on many maps of the period and is the accepted pathway across the peninsula. It connected the Snake Creek Community with the Big Cypress Community. The map designated #11, Tribal Historic Preservation Office – Historical Map of Florida 1839, clearly shows this route. Map #2, which is L89, Record Group 77, Civil Works File, from the National Archives, has been altered to show the present day Big Cypress Reservation. It is depicted in a black outline on the map. From this and other maps we have been able to locate three towns of the Big Cypress Community which are located on Tribal lands. It also allows us to see the early historic town as it lies in relation to the proposed project.

5. What is missing in the interpretation of the historic maps of South Florida is an understanding that the structure of a Creek town is based on clan kinship. For that reason, a "town" is actually made up of numerous camps, or villages, that are centrally organized by the practice of common government through the Green Corn Dance and other ceremonies. When Denise Breit was looking for the town of Miccosukee many years ago she commented on the difficulty of determining which of the concentrations of Creek archaeological remains represented the town which was referred to in history as the mother town of the Miccosukee. In fact, the town was represented by several sites.

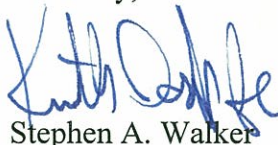
6. The Tribe is also very concerned with the potential impact the Draft Plan's ORV policies will have on the Green Corn Dance site. Currently, the Green Corn Dance site is located on state lands within the Addition north of Interstate 75. It appears from the Draft Management Plan that one of the proposed ORV trails runs adjacent to the Green Corn Dance site. The Tribe is concerned that the noise from these ORVs will interfere with the Tribe's traditional activities associated with this site. The Draft Plan admits that noise from ORVs has adverse impacts on cultural resources and visitors' enjoyment. However, the plan is silent as to noise impact on the Tribe's traditional ceremonies. Furthermore, the Green Corn Dance site is a sacred site whose location is known only to the Tribe. The Tribe is concerned that visitors using the nearby ORV trails will enter the site and damage or destroy the traditional structures therein or reveal its location to others. Additionally, most of the structures at the site are susceptible to fire which could easily be started from a visitor's cigarette or a spark from an ORV. Accordingly, the Tribe would like to work with the National Park Service to restrict access to ORV trails within the vicinity of the Green Corn Dance site.

7. The Tribe is also concerned with access to cultural sites around the Jones Grade Campsite and Jones Grade Road. Despite the fact that these areas are difficult to access, the Tribe continues to encounter people here. Therefore, it is likely that once the Addition is opened to the public, the Jones Grade Campsite and Road will become a popular destination for visitors. The increased visitor traffic in these areas will have an adverse affect on more than a dozen archaeological sites in the area. Among these sites are four (4) burial mounds and the 18th century Seminole town of Assunawah.

8. The Tribe is further concerned about proposed ORV access at Mile Marker 51. It appears that many of the ORV trails accessible from Mile Marker 51 will be adjacent to, or in close proximity to cultural, ethnographic, and archeological resources. Despite education of and restrictions on ORV drivers, users may still decide to wonder from the trails, thus, endangering cultural resources which are not directly next to or on one of the trails. Therefore, the Tribe would like to be consulted with and be kept abreast of all the plans with regard to ORV trails in the Northeast Addition Lands.

Thank you for taking the time to review these comments.

Sincerely,



Stephen A. Walker

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Enclosures