



**South Florida Wildlands Association • Center for Biological Diversity •
Public Employees for Environmental Responsibility**

*Comments submitted by mail and online at
<http://parkplanning.nps.gov/commentForm.cfm?documentID=41410>*

July 25, 2011

National Park Service
Denver Service Center – Planning Division
Attn: FPL Project Planning Team
P.O. Box 25287
Denver, CO 80225-0287

**Re: Public Scoping Comments for the Acquisition of Florida Power and Light
Company Lands Environmental Impact Statement**

Greetings:

The National Park Service's ("NPS") proposal to swap Florida Power and Light's ("FPL") utility corridor in the East Everglades Expansion Area for a new corridor on the east side of Everglades National Park ("Park") is contrary to the mission of the NPS, the purpose of the Park, and the public interest. If permitted to take place, one of our nation's most unique natural areas will gain a new industrial horizon consisting of three sets of power lines carrying up to 500,000 volts of electricity across towers as high as 150 feet. Valuable habitat for some of Florida's most imperiled and iconic species will be lost or irreparably altered.

Public acquisition of the parcel of land at the center of this controversy – the East Everglades and Northeast Shark River Slough – was authorized by the Everglades National Park Protection and Expansion Act of 1989. In examining the Park's conditions at that time, Congress found a number of factors detrimental to the long-term health of the Park's hydrology and ecology. Chief among these was the fact that outside development was leading to deterioration of ecological and hydrological conditions inside the Park. Second, Congress found that the critically important lands and waters of the East Everglades and Northeast Shark River Slough – the main source of water for virtually all of Everglades National Park – were excluded from the Park when its original boundaries were first established by the enabling legislation. Congress thus concluded: "Incorporation of the Northeast Shark River Slough and the East Everglades within the

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park will limit further losses suffered by the park due to habitat destruction outside the present park boundaries and will preserve valuable ecological resources for use and enjoyment by future generations.”

We appreciate that in conducting the Environmental Assessment (“EA”) for the proposed FPL land acquisition, NPS realized that the proposed project was likely to result in significant impacts to the Park, and initiated an Environmental Impact Statement (“EIS”) process to more fully examine those impacts and alternatives. The potential consequences of the proposed swap to the Park will likely result in:

- damage to sensitive wetlands due to construction of towers and maintenance roads;
- spread of exotic plant species on disturbed lands;
- impacts to federally listed endangered and threatened species including the Everglades snail kite, eastern indigo snake, wood stork, and Florida panther;
- likely increase in mortality of native and migratory birds due to collisions and electrocutions; and
- a significantly impacted viewscape and degradation of the public’s ability to enjoy a unique area already declared “wilderness eligible” by the NPS.

Because of these impacts, South Florida Wildlands Association, Center for Biological Diversity, and Public Employees for Environmental Responsibility recommend NPS fully vet and select ALTERNATIVE 3: ACQUISITION, whereby the “FPL property would be acquired by direct purchase or, as a last resort, by condemnation by the NPS. There would not be any construction of transmission lines and associated fill pads or access roads in the Expansion Area.”¹

I. Importance of Everglades National Park

Everglades National Park carries perhaps more prestigious designations than any other park in our nation. The Superintendent’s Annual Narrative Report, Fiscal Year 2005, noted the Park’s significance; Everglades National Park is the:

- Largest continuous stand of sawgrass prairie in North America.
- Predominant water recharge area for all of South Florida through the Biscayne aquifer.
- A World Heritage Site, a Biosphere Reserve, a Wetland of International Importance, and an Outstanding Florida Water.
- Home of 14 Federally listed endangered species.
- Largest mangrove ecosystem in the western hemisphere.

¹ The federal register announcing the scoping orders the alternatives differently than the newsletter, i.e. in the federal register notice, NPS lists the first alternative as the land exchange, the second alternative as the land acquisition/condemnation, and the third alternative as the no action alternative, while the newsletter lists Alternative 1 as the no action alternative, Alternative 2 as the land exchange, and Alternative 3 as the land acquisition. Here we follow NPS’ newsletter and refer to Alternative 3 as land acquisition.

- Largest designated wilderness in the southeastern U.S.
- Site of invaluable breeding grounds for tropical wading birds in North America.
- Site of significant ethnographic resources.
- Site of a nationally significant estuarine complex in Florida Bay.
- The largest remaining subtropical reserve in the United States.
- Major “edge” area of the northern and southern limits for many species creating a unique mingling of diverse temperate and subtropical species.

Moreover, with frontage on Tamiami Trail and close proximity to developed areas, the East Everglades and Northeast Shark River Slough is by far the most accessible part of the Park for the millions of Floridians and visitors who live in and visit Miami and other nearby communities. For these reasons and many more (e.g. disruption of the eastern viewscape from the highly popular Shark River Observation Tower), the proposed project site - inside the current borders of the Park - is not the right location for a major new power line across south Florida.

The 1989 Everglades National Park Protection and Expansion Act stated that the purpose of NPS acquisition of the East Everglades Expansion Area, where the FPL land is located, is to:

- (1) increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and
- (2) assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

However, if FPL keeps its current parcel and obtains the necessary permits, it would have to fill wetlands to build bases to anchor the towers and construct access roads to maintain them. The construction and operation of the facility at this site would impede water flow from reaching the Park’s interior and it would forever alter the natural landscape of the Park. Furthermore, the 1991 NPS Land Protection Plan specifically identifies power lines as an incompatible use: “Activities that would disturb the ecology, interfere with the restored hydrologic system, or prevent public enjoyment of the Addition would be incompatible...Major additions to existing developments or agricultural activities, as well as the construction of utility lines and roads, also would not be compatible.”

In addition to the Plan restrictions, three of the most productive wading bird colonies in the central and southern Everglades are near the site FPL would receive in the land exchange. The construction and operation of power lines in that area are certain to have grave impacts to these bird populations. From the October 2010 NPS Avian Impact Report on the impacts of proposed FPL transmission lines:

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Restoration of bird-life, in particular, the abundant wading bird colonies that defined the historic Everglades, was and remains a driving force behind Everglades restoration efforts. Many planned restoration projects focus specifically on restoring water flows, depths, and hydroperiods to Northeast Shark River Slough in support of the ecological requirements of the system and with the expectation of improving wading bird habitat and species productivity. The placement of the proposed transmission line corridor within this area would likely have adverse impacts on our ability to achieve Everglades restoration goals.

Another issue of concern is the Wilderness Study of the Expansion Area released to the public in the May 2007 NPS Newsletter. This study found: "Approximately 106,000 acres of the 109,600 acres (or 97%) of the East Everglades Expansion Area were determined to contain (or potentially possess) wilderness values and characteristics. These lands are eligible to be included in a NPS recommendation for wilderness designation." Both the current FPL corridor and the one proposed for exchange are inside the 106,000 acres deemed by NPS to be "wilderness eligible."

According to the current (2006) Department of the Interior Management Policies for the NPS:

For the purposes of applying these policies, the term "wilderness" will include the categories of eligible, study, proposed, recommended, and designated wilderness.

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. Until that time, management decisions will be made in expectation of eventual wilderness designation.

No new utility lines may be installed in wilderness, and existing utility lines may not be extended or enlarged.

In conducting the EIS, NPS must produce the most rigorous, comprehensive and objective analysis possible. This includes identifying and analyzing the full range of impacts the construction and operation these power lines could have on soils, wetlands, exotic plant species, listed wildlife, bird populations, and the public's ability to enjoy these lands with the addition of three massive power lines running across them. This includes identifying and analyzing a full range of alternatives (including predicted costs of acquiring the FPL property without transfer) - and the selection of the alternative at the end of the process which best protects the public interest in these lands and the natural and cultural resources of Everglades National Park.

With both the no action alternative and the land swap alternative, there will likely be significant impacts to eastern indigo snake, gopher tortoise, Everglade snail kite, Florida

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panther, and wood stork, as well as hundreds of species of migratory birds. Land acquisition appears the only viable alternative as FPL is unlikely to acquire the necessary federal permits to carryout its plans. Leaving the corridor in FPL ownership is considered to be the “no action” alternative. Given the intended use of this corridor (i.e. construction of power lines), this alternative has already been examined and dismissed by the 1991 East Everglades Land Protection Plan:

This alternative would be acceptable in the short run when it is unlikely that the tract would undergo land use change and public access is not immediately needed. No action would not be acceptable when changes to the existing use would adversely affect the addition’s resources and the purposes of the addition. It is not a long-term solution, as all land s within the addition are proposed for acquisition in order to achieve hydroperiod and ecological restoration goals.

In conducting the EIS, we encourage NPS to:

- Take a hard look at alternative transmission line corridors;
- Take a hard look at the consequences the proposed land exchange will have on the completion of CERP projects;
- Include a robust analysis of the impact each alternative has on historic properties;
- Review a true appraisal of the FPL land (do not assume permits will be granted); and
- Engage in formal consultation with the U.S. Fish and Wildlife Service on the likely impacts of the proposed alternatives.

II. Historical Context of the Proposed Land Swap/Acquisition

The language of Section 7107 of the 2009 Omnibus Public Land Management Act, which authorized the “land swap”, contains no findings and no mention as to what purpose this transfer, if it took place, would serve for the Park or the American people. However, both Senators Mel Martinez and Bill Nelson of Florida attempted to provide justification for the proposed transfer in their statements before the Senate when the Bill was introduced. Both Senators emphasized the urgent need to rehydrate the Park and remove the FPL utility corridor from its current location in order to allow for the bridging of Tamiami Trail and the return of a semblance of the sheet flow that used to characterize this region. This same point was made by Superintendent Dan Kimball’s in both his opening and closing remarks at the recent public meeting of June 22, 2011 held at Florida International University.

While rehydration is a worthy goal, there are other aspects to the issue that need to be examined as well. First, the 1991 Land Protection Plan emphasized that the purpose of the acquisition was to achieve not only the hydrological restoration of Northeast Shark River Slough, but also the ecological restoration of the East Everglades. The acquired land was intended to be far more than a “water flow way” - “Further, Congress intended that the focus of management of the area be conducted, to the broadest extent possible, to

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maintain natural abundance, diversity, and ecological integrity of an entire ecosystem, not just a water flow way through a section of the Shark River Slough.”

Second, in their characterization of the current FPL corridor, both the Senators and Superintendent Kimball fail to acknowledge that the FPL corridor is not the only impediment standing in the way of the hydrological restoration of the Northeast Shark River Slough. In their statements before the Senate supporting Alternative 2 (“the land swap”), both Senators referred to the existing FPL corridor, in identical language, as “the last significant private inholding” standing in the way of the “Modified Waters Delivery Project” to be implemented by the Department of the Interior in conjunction with the Army Corps of Engineers. Superintendent Kimball made several references to the swap addressing the “urgent need to get water into the parched East Everglades” at the June public meeting.

Yet the NPS Scoping newsletter for this project and the Final Environmental Impact Statement (“FEIS”) for the Tamiami Trail Modifications: Next Steps Project made reference to numerous properties still in need of acquisition. These include Coopertown, Gator Park and Everglades Safari airboat tour companies and the Lincoln Financial and Salem Communications radio towers. All of these properties are located south of Tamiami Trail, inside the borders of the Expansion Area, and are slated for NPS acquisition in accordance with the 1989 Act.

In addition to the above, two other steps are also in need of completion before “rehydration” can take place. Although the Airboat Association of Florida site is not intended for acquisition and will remain outside Park boundaries, the FEIS made clear that a flowage easement will still need to be obtained from the Association in order to complete “Mod Waters.” In addition, the newsletter points out the necessity of the Army Corps completing an Operation Plan for managing the new and increased water flows throughout the entire project area.

As the public may have been led to believe that completing the land swap with FPL would quickly remove “the last obstacle” to restored water flow, the EIS should clearly lay out all steps and acquisitions which still need to take place to allow Mod Waters to move ahead. All steps should be fully described along with projected costs and “best guess” completion dates.

III. NPS’ Management of Everglades National Park

There is no question of how Congress intended these lands to be managed by the National Park Service. Although Florida Power and Light may have a responsibility to its shareholders to maximize the profits of its investors, the NPS’s mandate is an altogether different one: “to promote and regulate the use of the...national parks...which purpose is 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.”²

The Park’s enabling legislation of 1934 proclaims: “The said area or areas shall be permanently reserved as a wilderness, and no development of the project or plan for the entertainment of visitors shall be undertaken which will interfere with the preservation intact of the unique flora and fauna and the essential primitive natural conditions now prevailing in the area.” President George H. Bush while signing the 1989 Protection and Expansion Act into law remarked: “Today I am pleased to be signing into law...the Everglades National Park Protection and Expansion Act of 1989. This important legislation will allow the Federal Government...to acquire over 100,000 acres of valuable resource lands and restore those lands to their once-natural wetlands state.”

The 1991 Land Protection Plan acknowledges: “The legislation for the park expansion clearly states the intent of congress to add these lands to Everglades National Park to be managed as park. The issues of compatible and incompatible uses...were discussed, considered, and eliminated in the passage of Public Law (PL) 101-229.”

In a 1996 letter from the NPS Southeast Region Land Acquisition Field Office to FPL, Ted Haberlein, Realty Specialist stated:

The ‘Everglades National Park Protection and Expansion Act of 1989’, was enacted on December 13, 1989, as Public Law 101-229 by the United States Congress. The purpose of this Act is to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as part of their ecosystem and to enhance and restore the ecological values and natural hydrologic conditions. Your property has been identified as being within the authorized park boundary. The purpose of this letter is to advise you that we are fully funded to continue the acquisition process and ask for your cooperation and assistance in completing this project.

It was my desire to acquire the property from you via direct acquisition, failing that, I would be required to refer this file to our condemnation department so that the government could initiate eminent domain proceeding to fulfill the above congressional mandate.

Meanwhile, Section 7107 of the 2009 Omnibus Public Land Management Act states:

IN GENERAL - Subject to the provisions of this paragraph, if the Company offers to convey to the Secretary all right, title, and interest of the Company in and to the non-Federal land generally depicted on the map as ‘Tract D’, and the offer is acceptable to the Secretary, the Secretary *may*, subject to valid existing rights, accept the offer and convey to the

² Organic Act of 1916.

Company all right, title, and interest of the United States in and to the Federal land generally depicted on the map as 'Tract B', along with a perpetual easement on a corridor of land contiguous to Tract B for the purpose of vegetation management.

Notably, Section 7107 gives the Secretary complete discretion as to whether or not to carry out the proposed land transfer with FPL. Given the weight of all previous legislation and NPS policies, the critical importance of all of these lands to hydrological and ecological restoration of the Park, and the severe ecological impacts the construction and operation of the proposed power lines at either location would produce, it is clearly in the best interest of the American public and the natural resources of the Park for the Secretary to choose not to exercise this option. The Secretary and NPS should instead move as expeditiously as possible to Alternative 3 - full acquisition of the FPL corridor with no land transfer and no construction of transmission lines, fill pads, or access roads.

Thank you for the opportunity to submit scoping comments for the acquisition of FPL lands EIS. Please do not hesitate to contact us with any questions.

Sincerely,

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