



South Florida Wildlands Association
1314 E Las Olas Blvd #2297
Fort Lauderdale, FL 33301

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Stephen Fleming, Army Corps of Engineers
Fort Myers Permits Section, 1520 Royal Palm Square Blvd., Fort Myers, Florida, 33919
Stephen.J.Fleming@usace.army.mil

Robert Carey, U.S. Fish and Wildlife Service
Division Manager, Environmental Review and Consultations
777 37th Street, Suite D-101, Vero Beach, FL, 32960
robert_carey@fws.gov

Roger A. Young, Executive Director
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 32399-1600
Roger.Young@myfwc.com

Re: SAJ-2024-00967 (SP-SJF) Kingston development application for Federal 404 CWA permit

Dear Mr. Fleming, Mr. Carey, and Mr. Young:

South Florida Wildlands Association (SFWA) appreciates the opportunity to provide these comments on the Kingston development proposed for rural lands in Lee County, Florida. SFWA is a regional conservation organization founded in 2010 to protect wildlife and habitat in the Greater Everglades.

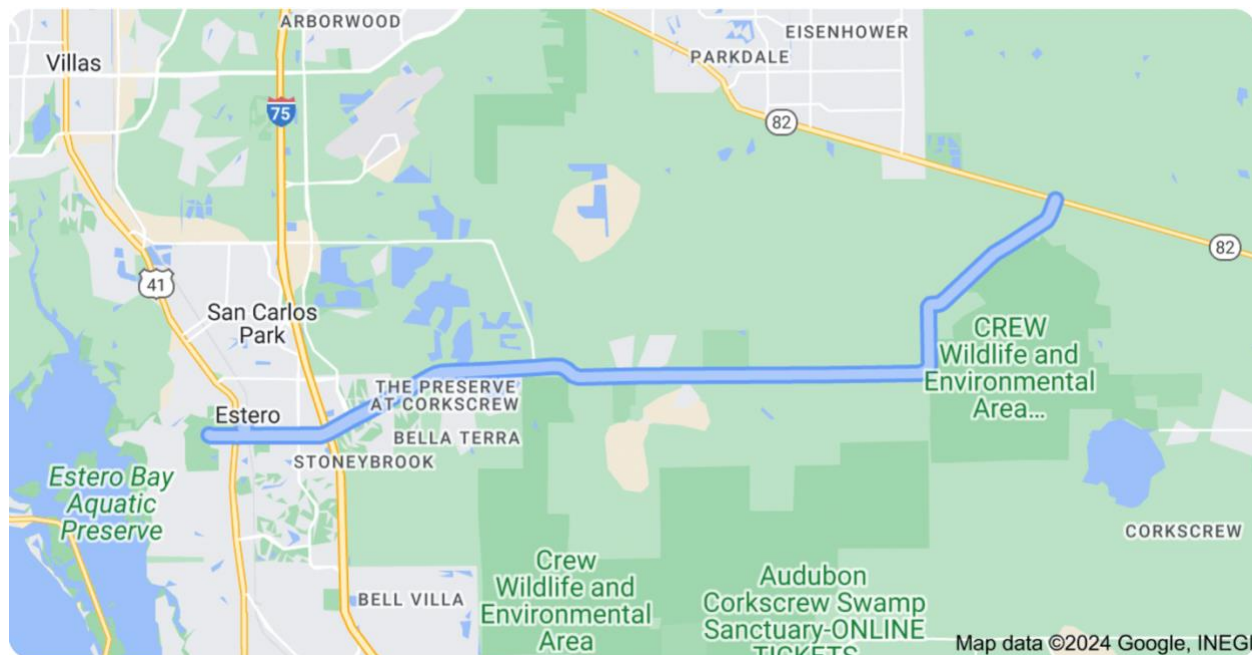
As we noted in an earlier email to our supporters, a tidal wave of new development is heading straight for the heart of Florida panther habitat in Southwest Florida. Collier and Lee County governments have already given their blessings to much of the development and the next step is approval of Clean Water Act (CWA) 404 permits by the Army Corps of Engineers (ACOE) for fill and development of wetlands. That step also requires approval (a "non-jeopardy opinion") by

the U.S. Fish and Wildlife Service (FWS or the Service) which is currently preparing Biological Opinions on impacts to federally endangered and threatened species from the projects currently under consideration.

Kingston is one of the largest projects we've seen in terms of construction projects slated for the heart of Florida panther habitat. The project would construct 10,000 new homes on 6,676.82 rural acres. The expected population of over 28,000 new residents will generate tens of thousands of new vehicle trips daily in one of the most important habitats remaining for the Florida panther as well as all wildlife species that share its range. Kingston's size puts it on par with previous massive developments in panther habitat such as the Southwest Florida International Airport, Florida Gulf Coast University (FGCU), and Ave Maria. Those were also approved by FWS in "no jeopardy" opinions.

We note that Florida Gulf Coast University (FGCU) originally received a jeopardy opinion from the Service in a draft Biological Opinion written in 1994 due to the expectation of direct loss of habitat, increased sprawl and habitat fragmentation, and increased vehicle trips and roadkill. The draft opinion also notes that the off-site mitigation offered by the ACOE for destruction of wetlands "afford no habitat value to panthers and do not constitute 'wildlife corridors.'"

FGCU is part of the same Corkscrew Corridor that will be impacted by the Kingston development. See Google Map of the Corkscrew Corridor below. FGCU was constructed on the west side of the corridor (just east of I-75) while Kingston will be built on the east side, just east of the CREW Wildlife and Environmental Area - a known hotspot for Florida panthers and other federally listed species. Many new developments such as Bella Terra, Wildcat Run, Corkscrew Shores, The Place, Grandezza, and others do not show up on this map and have already been built between the two ends of Corkscrew Road. Kingston would become the furthest east development in the corridor – and would be situated in the least developed part of it.



See article at the link below (Stewart, T., “The Dark Side of Florida Gulf Coast University,” Mother Jones, March 2013) which goes into detail on the unusual permitting process FGCU went through and which contains a link to the draft jeopardy opinion written by the U.S. Fish and Wildlife Service. According to this well-researched article, politics and not science had a great deal to do with the Service rescinding its original science-based jeopardy opinion.

<https://www.motherjones.com/politics/2013/03/florida-gulf-coast-ben-hill-griffin-panther-habitat/>

The FWS draft Biological Opinion for FGCU can be found here:

<https://www.documentcloud.org/documents/628384-19940921-fgcu-bo-draft-jeopardy#document/p21/a97518>

The FWS’s draft jeopardy finding for FGCU is found on page 16 of the document. See key excerpt below. Notice that the direct loss of panther habitat from FGCU (1,177 acres) which contributed heavily to the draft jeopardy opinion is far less than the 3,400 acres of panther habitat that the Service expects to be lost from Kingston. And none of the many residential developments now extending east from FGCU along Corkscrew Road were built at the time the draft jeopardy opinion for the university was written. Impacts from growth spurred by the creation of FGCU have grown considerably since 1994 and continue to impact the panther and other wildlife.

“Jeopardy Finding: The Service is of the opinion that the proposed project is likely to significantly affect the Florida panther in three ways. The proposed development will: 1) result in direct loss of 1,177 acres of panther habitat (642.4 for the University, 44.5 acres for Treeline Boulevard and 496.8 acres for T&T); 2) increase traffic on Corkscrew Road, Alico Road and Daniels Parkway and the risk of vehicle/panther collisions, and; 3) increase development pressure in adjacent Florida panther habitat.

“Based on the direct loss of habitat and associated increased human activity as a result of the proposed actions, combined with the effects of development in the project area as explained above, the roughly 1,600-acre area of these projects would retain no suitable habitat for panthers. This loss of habitat should be compensated for off-site. The wetland mitigation proposals offered by the University and T&T afford no habitat value to panthers and do not constitute ‘wildlife corridors.’ The area will likely undergo rapid development upon completion of Treeline Boulevard and the University. **This rapid urban growth will further fragment and reduce the habitat available for utilization by the Florida panthers located in the greater Corkscrew region. The self-sustaining capabilities of the Florida panther population will be further compromised by this direct loss of habitat, in combination with the cumulative habitat losses resulting from other projects in the area. Increased traffic (10,000 vehicle trips**

per day on Treeline Boulevard alone by the year 2010) will subject Florida panthers to significantly increased risk of vehicle/panther injury and mortality.

“Based on the Information presented, it is the opinion of the Department of the Interior that the proposed projects are likely to jeopardize the continued existence of the Florida panther (*Felis concolor coryi*).” (Emphasis ours)

Unfortunately, the predictions made by the Service in 1994 have all come to pass and panther habitat in this important part of the panther’s range has both shrunk and deteriorated dramatically since the construction of FGCU and the associated development the Service expected. From the standpoint of the panther, both its recovery and continued existence, it is unfortunate that the Service retracted its original jeopardy finding and ultimately allowed the FGCU project in addition to all nearby development alongside Corkscrew Road to move forward.

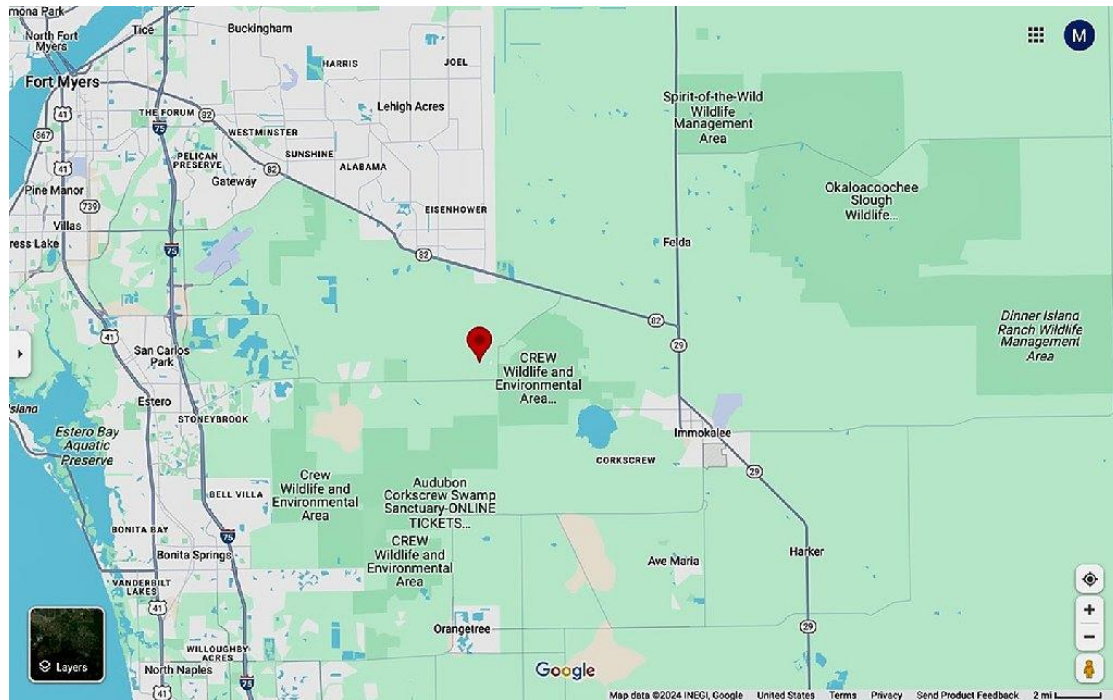
In terms of Kingston (at the opposite end of the Corkscrew Corridor from FGCU), the Service prepared a technical consultation for the Florida Department of Environmental Protection (FDEP) during the period when FDEP oversaw permitting for Clean Water Act (CWA) 404 wetlands permits in Florida. The consultation evaluated effects on federally-listed species where the agency determined detrimental impacts would occur – the endangered Florida panther plus the threatened eastern indigo snake and threatened crested caracara. The Service also examined adverse impacts to the tricolored bat, a species proposed for endangered listing under the Endangered Species Act (ESA). Other federally-listed species such as the Everglades snail kite, wood stork, Florida bonneted bat, and red-cockaded woodpecker are also present on the site and would likely be impacted – though, according to the FWS in their technical consultation, not to the extent of the four above. State-listed species identified on the site and likely facing impacts include the gopher tortoise, Florida burrowing owl, Florida sandhill crane, little blue heron, tricolored heron, snowy plover, and Big Cypress fox squirrel. Obviously, these 6,700 acres are rich in native Florida wildlife.

In their technical consultation, looking at the footprint of the projected development on the site, its occupancy by the four key species noted above, and the portion of lands being set aside for conservation, the FWS predicted the loss of 3,233 suitable acres for the crested caracara, 3,242 acres for the eastern indigo snake, and 3,400 acres for both the Florida panther and the tricolored bat. Endangered Florida bonneted bats and the many other animals utilizing this large site are also likely to be impacted.

For the Florida panther, whose once-vast breeding range across the Southeast U.S. has been whittled down to a small corner of still-rural Southwest Florida, this is critical. Though the FWS technical consultation shrugged off the Kingston development as only a small percentage of a panther’s average home range, that conclusion ignored a great deal – including the FWS’s own prediction that development of Kingston will lead to anywhere from 4 to 23 additional panther deaths per year. That would be due to a combination of habitat loss, an increase in “intraspecific aggression” (panther-on-panther fights to the death over ever-shrinking territories), and, most importantly, vehicle mortality from increased traffic in the core habitat.

Given the dire condition of the panther and its role as an “umbrella species” (protection of the panther protects all the species that live within its range) we are focusing on impacts to the panther in these comments.

The Google Map below locates Kingston in the middle of a rich complex of public lands and still-rural agricultural lands that constitute a major part of the Florida panther’s last holdout in Southwest Florida and in the state.



Kingston (red marker) and nearby public lands. Kingston would be built directly in the corridor that connects many of those public lands.



Busy traffic moving Northwest to Southeast on SR 82 along the northern boundary of Kingston. SFWA photo.

All of Kingston is in the primary and secondary habitat zones for the endangered Florida panther. Research studies such as those by Dr. Robert Frakes, a now-retired scientist with the U.S. Fish and Wildlife Service, and colleagues have concluded the following: **“Because there is less panther habitat remaining than previously thought, we recommend that all remaining breeding habitat in south Florida should be maintained, and the current panther range should be expanded into south-central Florida.”** In other words, if we want the panther to persist in South Florida, all its remaining core habitat should be protected from this type of development and its small current range should be expanded by recovery efforts and protective corridors. No science – not independent scientific studies nor FWS’s own “Florida Panther Recovery Plan” – supports the kind of wholesale destruction and fragmentation of remaining Florida panther habitat that will result from Kingston. The full article (Frakes et al., “Landscape Analysis of Adult Florida Panther Habitat,” PLoS One, July 29, 2015) can be found here:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4519242/>

For as far back as records exist, the U.S. Fish and Wildlife Service has been greenlighting the development and “incidental take” of panthers (e.g., via vehicle mortality or the destruction of important habitat “incidental to” an otherwise lawful project). Yet, not once has the Service determined how much roadkill and/or habitat destruction is “acceptable” and how much is “too much.” At a time of rapid habitat destruction, now is the time for the Service to make that determination, draw a line, to ensure that the many developments now on the table (and those expected soon) for the panther’s core habitat do not “jeopardize” the species. In the U.S. Code of Federal Regulations (CFR), “jeopardize” is defined

as “reducing appreciably the likelihood of both the survival and recovery of the species in the wild by reducing its reproduction, numbers, or distribution” (See 50 CFR § 402.02 – Definitions). Kingston along with other related developments now working through the approval process (see below) will surely do that. Note that in the CFR’s jeopardy definition, the panther’s ability to recover is equal in importance to its survival when the FWS makes a jeopardy determination.

Kingston is not coming in by itself. There are numerous development projects on the horizon that are barely discussed in the FWS’s previous technical analysis of Kingston. In another recent technical consultation for FDEP, the FWS greenlighted the Village of Bellmar and associated projects – about 1,700 acres of dense development a stone’s throw from the Florida Panther National Wildlife Refuge (26,400 acres of public land with the densest population of panthers in the state). For that one, the FWS predicted up to four additional panther deaths per year. If we add Bellmar to Kingston and then look to developments like the Immokalee Road Rural Village, Brightshore, Longwater Village, Rivergrass Village, and the Collier Rod and Gun Club – all projects in core panther habitat that the Collier County Commission has already approved but are awaiting final approval by the ACOE and FWS – the predicted mortality numbers for panthers go through the roof. Sixteen panthers are known to have died in 2024 – twelve by vehicle collision and the majority in this same rapidly developing corner of Southwest Florida. Allowing panther roadkill to increase dramatically at this time – eyes wide open – would be unacceptable and irresponsible behavior on the part of the federal agencies charged with the protection and recovery of endangered species.

Kingston is not an isolated piece of private property and the lands and corridors connected to it will also be impacted. It is located just east of the 60,000-acre Corkscrew Regional Ecosystem Watershed (CREW lands) and just north of the 13,000-acre Audubon Corkscrew Swamp Sanctuary. Those lands along with undeveloped agricultural lands and other conservation lands connect panther habitat in Kingston to a vast network of public lands such as the Big Cypress National Preserve, Florida Panther National Wildlife Refuge, Fakahatchee Strand Preserve State Park, and the Picayune Strand State Forest to the south. It is that remaining constellation of roadless lands – the public lands just mentioned but also the rural private lands which surround them – that are the reason the Florida panther has persisted in Southwest Florida. Outside of this small corner of Southwest Florida, there is no known breeding puma population in the Eastern United States. The panthers of Southwest Florida are special indeed.

A short distance to the northeast (panthers can travel 20 miles or more in a night of hunting), Kingston is also ecologically connected to places like the Spirit-of-the-Wild, Okaloacoochee Slough, and the Dinner Island Wildlife Management Areas. The Service has defined the “action area” for the panther for this project as the area within 25 miles of Kingston. According to FWS, 382 panther deaths have been

documented in the action area, the vast majority (280) dying due to vehicle strikes. Adding tens of thousands of daily vehicle trips to the action area will make the panther's habitat far more dangerous and less usable by the species. It will become more fragmented and difficult to move through as panthers seek prey and maturing panthers try to find a territory of their own. Many panthers will die on roads carrying out normal life activities even without Kingston. But Kingston as well as the other projects coming into the same habitat will make it far worse - and far more deadly.

The impacts of Kingston and other developments are also not the only stressors panthers are facing. At this time, Florida panthers are reeling from a combination of disease (feline leukomyelopathy or FLM, a neuro-muscular disease discovered in 2018 for which no cause or cure has been discovered), loss of prey due to the proliferation of invasive Burmese pythons in the habitat (the National Park Service has indicated a collapse of deer populations as well as other mammals in Everglades National Park and the Big Cypress National Preserve), excessive roadkill from increased traffic and road expansion, and loss of habitat and travel corridors from decades of past development. Though some Florida panthers from the core breeding habitat in Southwest Florida have made it north across the Caloosahatchee River into southern Central Florida, neither the FWS nor the Florida Fish and Wildlife Conservation Commission (FWC) have documented any recruitment of panthers born in Central Florida (north of the Caloosahatchee River) into an adult breeding population. And development in Central Florida (with far less protected public land than that found in South Florida) is booming, making the prospect of an expanded breeding habitat for the panther in Central Florida questionable at best.

Suitable roadless and rural areas that could theoretically be pieced together through protected corridors into viable panther habitat are being gobbled up far too quickly. Programs like the Florida Wildlife Corridor and the Service's "Southwest Florida Fish and Wildlife Conservation Area," voluntary programs that can take some land off the market but do not add one square inch to remaining panther habitat (the lands being purchased already serve as habitat and corridors), are not creating the vast roadless landscapes a viable panther population requires. With current rates of growth in Florida (about 1,000 new residents per day), the actual remaining and potential habitat for panthers shrinks daily. It is certainly not growing – as press reports that trumpet the state purchase of some agricultural lands (most in Central Florida and far removed from core panther habitat) imply. See "Endangered Florida panthers now have more room to roam" as an example of the erroneous message about panther habitat being sent to the public - <https://landtrustalliance.org/blog/endangered-florida-panthers-now-have-more-room-to-roam>

In 2023, SFWA petitioned FWS to write an updated Five-Year Status Review for the panther. The last one was written in 2009 and a new one was due in 2014. It is now ten years overdue. As the status review is based heavily on population estimates, we also requested a new panther population count. We were told by the Service that both of those would be forthcoming towards the beginning of 2024 to be followed by an updated Species Status Assessment (a more comprehensive assessment document than the Five-Year Review). Our 2023 petition can be found here:

<https://drive.google.com/file/d/1Emmi7UwifVH60FbfMNLi3E6rbC6DqBGM/view>

The last population estimate released by the FWC and FWS in 2017 found 120 to 230 adult panthers and that number is the one that has been used by the agencies, environmental organizations, and the press ever since. It was thus surprising that, in their technical analysis of both Kingston and Bellmar, FWS referred only to studies carried out by McClintock, et al. that found 222 to 773 panthers (an outlying and gigantic number that received little public attention and is miles from other scientific estimates) – and no mention of the Florida Fish and Wildlife Conservation Commission’s (FWC) official estimate of 120 to 230 panthers that had been widely circulated, used, and accepted by the Service. If you dig hard enough on the FWC’s website (and our search required contacting an FWC scientist to locate it), you can still find the estimate of 120-230 panthers and how that number was derived.

The 2017 FWC estimate can be found below and is miles from the McClintock estimate used in FWS’s previous technical consultation.

<https://myfwc.com/media/3107/determiningpantherpopulation2017.pdf>

It is a complete mystery to us why a much higher number was substituted in the FWS’s analysis of Kingston and not the estimate that has been officially used since 2017. We should point out that even in the 2017 estimate, the upper number of 230 was not viewed as realistic. According to the FWC, it was “calculated using annual count data from core (very good) panther habitat to derive a density of panthers for that area. The density value is then multiplied by the total number of acres of habitat in the primary zone...” But much of the current primary zone, such as Everglades National Park or much of the Big Cypress National Preserve barely supports panthers now, due largely to a near wipeout of the prey base – courtesy of the invasive Burmese python. Still, the estimate of 120-230 is labeled as “best data currently available” by the FWC and should have been referenced in the FWS’s Kingston technical consultation to present an accurate portrayal of the percentage of remaining panthers that are expected to be lost if Kingston is built (up to 10 percent of the population per year just from Kingston). The federal and state agencies should also invest necessary resources in the updated population

count and status report SFWA was promised in 2023, incorporating best available science. Given the large number of projects making their way through approvals in the tiny fraction of the panther's core habitat that remains, the updated population estimate, five-year status review, and the more comprehensive Species Status Assessment (SSA) should all be completed before any approvals are given for any further development in core panther habitat by either the FWS or the U.S. Army Corps of Engineers.

We should also add here that the last Florida Panther Recovery Plan – the main blueprint or road map for bringing the Florida panther from an endangered status to the point where it can be removed from the Endangered Species List (the actual goal of the Endangered Species Act) - is an even older document that dates from 2008. The conditions for the panther – both inside its core habitat and the locations where it could expand – have changed (from the point of view of the panther, deteriorated) so drastically in the 16 years since that document was written that a new, revised recovery plan is critically needed.

In a 2017 draft revision of the document, FWS summarizes the 2008 recovery strategy: “to maintain, restore, and expand panthers and panther habitat in south Florida, expand this population into south-central Florida, and reintroduce at least two additional viable populations within the historic range.”

See: https://www.fws.gov/sites/default/files/documents/2017-08-08_FL_Panther_RIT_Meeting_Recovery_Criteria_SubTeam_Draft_Report.pdf

None of those goals, not even the maintenance of currently occupied panther habitat in South Florida, the easiest of the three recovery criteria to achieve if FWS simply set that as a firm goal, is being achieved. In brief, if the Service finds recovery cannot take place under current conditions, then the panther is already in a state of jeopardy (“baseline jeopardy”) and the Service cannot permit any further take of the panther or its habitat. The Service – and by extension the ACOE – cannot sit on the sidelines while an endangered species enjoying full protection of the Endangered Species Act is jeopardized in terms of both its continued existence and its chances of recovery. For the ACOE and its decision on a 404 permit for Kingston, it is hardly in the “public interest” for an endangered species already on the brink of extinction to be brought further along that path due to impacts of this massive development and traffic in core panther habitat.

Kingston and the huge amount of additional habitat destruction, habitat fragmentation, and roadkill that is expected to flow directly or indirectly from this project would be an excellent place to draw the line on further encroachment in the panther's habitat. Given all the threats noted above, the Florida panther is almost certainly in jeopardy already regarding its ability to recover. And given ongoing habitat destruction, loss of prey, disease, and roadkill, its continued existence in South Florida is also on shaky ground. On that basis, the U.S. Army

Corps of Engineers should deny the permit for the Kingston development. Meanwhile, the U.S. Fish and Wildlife Service should carry out its duties to protect the Florida panther and its habitat (especially its current breeding habitat in Southwest Florida). FWS should describe accurately the current condition of the panther population with revisions and updates to all required documents, create viable habitat and corridors for an expanded panther population in Central Florida, and at long last, start the panther on the road to actual recovery by protecting its small amount of remaining habitat. It's unfortunate that the Service has decided not to grant the panther "critical habitat" designation (the panther was listed before that requirement of the Endangered Species Act was instituted – though the Service still has that option) as it would go a long way to clarifying the habitat that should not be developed if the panther is to persist in Southwest Florida.

We conclude these comments with a paragraph from the Florida Fish and Wildlife Conservation Commission's evaluation of Kingston in response to a request for comments on a proposed South Florida Water Management District Environmental Resource Permit. It's a thorough summary of the major impacts to this key part of the panther's habitat. Though both FWC and FWS focus on mitigating harmful projects instead of stopping them (as both agencies have so far done even after laying out the harm that will occur), the inescapable conclusion is that the impacts from the massive Kingston project in this key location will only add to the panther's precarious situation and its dim prospects for survival and recovery. "Business as usual," including some of the steps outlined by the Service in their technical consultation such as donations to Lee County that can be used for additional widening of Corkscrew Road (how that would help the panther is beyond us), donations for panther research (though what exactly still needs to be researched with regards to the plight of the panther at this point is also beyond us), or the printing of brochures to future residents on "Living with Panthers" – are simply not going to cut it. The Kingston project should instead be halted. FWC's excellent summary of wildlife impacts is below:

"Ecological Corridors

"Data from the Florida Natural Areas Inventory's (FNAI) Conservation Needs Assessment indicates that the Kingston site falls within a critical linkage - priority 2 ranked area of the Florida Ecological Greenways Network database. This database identifies the most important ecological corridors and intact landscapes across Florida for the protection of the state's native wildlife, ecosystem services, and ecological resiliency. **The site is bordered by conservation lands to the east, south, and west. These lands provide important habitat for a diversity of wildlife which are connected by existing wildlife corridors within the Kingston property. Severance or reduction of these connections could constitute a significant adverse impact to these conservation lands and important state**

wildlife resources through habitat fragmentation, isolation of existing wildlife populations, and hinderance of genetic exchange.”

All the above evidence should lead to a denial of the Federal 404 permit (SAJ-2024-00967 (SP-SJF)) for Kingston by the U.S. Army Corps of Engineers and a jeopardy opinion by the U.S. Fish and Wildlife Service in their Biological Opinion. That is SFWA’s recommendation on Kingston. As already noted, it is hardly in the public interest for Florida’s beleaguered State Animal to move such a big step in the direction of extinction and to see its chances of recovery decrease dramatically.

Many members of the public as well as a wide assortment of scientists and environmental and civic organizations are deeply opposed to the construction of Kingston. It would be in the interest of the two federal agencies, the ACOE and FWS, to provide a public forum where diverse members of the public can not only state their case but provide detailed empirical evidence to the agencies as to why the Kingston project should not move forward. We therefore request a public hearing be held jointly by the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service before any decision on the Kingston project is made.



Four wildlife species that the FWS expects to be "adversely affected" by the massive Kingston development. Clockwise from upper left: crested caracara (Isabel Gottlieb); tricolored bat (Scott Altenbach); Florida panther (fotoguy22); eastern indigo snake (Dirk Stevenson).



Looking southeast across a section of the proposed Kingston development south of Corkscrew Road. SFWA photo. During a recent SFWA field visit to this site at sunset, a large deer herd was seen in the distance. The loss of this habitat and panther prey will have serious repercussions for the future of the panther.



Landscape from the Kingston property north of Corkscrew Road in its current undeveloped condition. SFWA photo.



The legendary Corkscrew Country Store just west of the proposed Kingston development on Corkscrew Road showing the still-rural quality of this part of Corkscrew Road. SFWA photo.

Best regards,

Matthew Schwartz
Executive Director
South Florida Wildlands Association
1314 E Las Olas Blvd #2297
Fort Lauderdale, FL 33301
(954) 993-5351

<https://www.facebook.com/southfloridawild>