

**A QUESTION OF BALANCE:  
ADMINISTRATIVE HISTORY OF  
BIG CYPRESS NATIONAL PRESERVE  
FLORIDA**



Prepared for:  
U.S. Department of the Interior  
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BIG CYPRESS NATIONAL PRESERVE  
FLORIDA  
Administrative History


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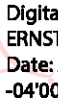
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## Introduction

Big Cypress National Preserve (Preserve) was established on October 11, 1974, the result of a short, intense preservation effort and a long-term concern for protection of the adjoining Everglades. With its legislative contemporary, Big Thicket National Preserve in Texas, Big Cypress National Preserve inaugurated a new approach to land management and resource protection within the National Park Service (NPS). As with its origins, the designation of Big Cypress as a National Preserve reflects a long tradition of conservation in America that emphasizes multiple, compatible uses for natural areas and represents an innovative and flexible approach that balances the protection of vital natural resources with traditional uses typically not acceptable within units of the National Park System. The private owners of these natural areas often relied on such traditional activities as hunting, logging, and mining and, normally, would not be willing sellers to NPS even if the political support to create a park were available. National Preserves, through this flexible approach, provide a degree of protection for significant natural resources while allowing traditional practices that are important to the local community.

In the case of Big Cypress National Preserve, the natural resources that require protection revolve largely around water. As stated succinctly in the 1973 House of Representatives Report for the Preserve's enabling legislation, "Water is the principal natural resource of this entire region."<sup>1</sup> The Big Cypress watershed is one of three interconnected drainage basins in south Florida, the other two being Lake Okeechobee and the Everglades. Although distinct from the adjoining Everglades and highly significant as its own ecosystem, Big Cypress, nonetheless, is intimately connected to the Everglades. The largest portion of the water that flows through the Everglades enters either from the Lake Okeechobee basin or as rainfall, primarily between May and October. The Big Cypress watershed, however, accounts for a significant portion of the freshwater that flows through the Everglades; by some accounts, the Big Cypress watershed provides more than half of the surface water that enters the Everglades from outside its boundaries. Much of this flow comes from just one of the Big Cypress watershed's principal sub-basins. Two of these sub-basins—one that originally flowed into the Gulf Coast estuaries and one that originally drained through the eastern Everglades—have been badly affected by earlier efforts to drain water away from the area with a resulting loss of natural ecosystems. The central sub-basin that drains to the south through the Everglades, however, remained relatively undisturbed through the 1960s and forms the basis of Big Cypress National Preserve, established in 1974.

Located adjacent to the northwest boundary of Everglades National Park, Big Cypress is set on a low limestone ridge that forms the western boundary of the Everglades basin. The Atlantic Coastal Ridge, where Miami and its adjacent cities are located, defines the eastern boundary. The area gets its name from the swamp, dominated by dwarf cypress trees which grow in two principal formations: domes and strands. Cypress domes are generally circular areas of trees surrounding a freshwater depression in which the trees in the center, where the water is deeper, are taller than the trees at the periphery. Cypress strands, meanwhile, are linear geological features with a ground elevation slightly lower and wetter than the immediate surroundings. Both domes and strands have deeper areas that stay wet throughout the year.

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<sup>1</sup> House Report 93-502, 93<sup>rd</sup> Congress, 1<sup>st</sup> Session, to accompany H.R. 10088, September 13, 1973.

Although water levels at the periphery vary with the seasons, the ground rarely, if ever, dries thoroughly, creating a soggy landscape that is treacherous for travel. In both formations, which are widespread throughout the Preserve, cypress forests are host to a wide range of other plant species, including understory plants such as swamp fern, spikewash, buttonbush, willow, and wax myrtle. Above the ground and growing on the trees themselves, epiphytes, or air plants, thrive, deriving water and nutrition from photosynthesis and the surrounding air without the need for roots in the ground. Many of the plant species found in the Preserve are state- or federally-listed threatened or endangered species, including the famous and remarkable ghost orchid, the cowhorn orchid, and a wide variety of ferns. In addition to plants, Big Cypress is home to nine federally-listed threatened or endangered animal species, notably including the elusive Florida panther, one of the most endangered species of mammals in the world. Though identified as a swamp, Big Cypress contains a range of habitats that also includes hardwood hammocks, prairies, pinelands, and estuaries. Connecting these habitats to one another and with the Everglades is water, falling as rain and collecting in the swamps and strands, seeping into the soft and cracked limestone bedrock, and flowing into estuaries of Everglades National Park and Ten Thousand Islands National Wildlife Refuge on the Gulf Coast to the southwest.

Though significant primarily for its natural resources, Big Cypress has a long and important human history as well. There is evidence for human occupation in south Florida for the past 15,000 years. By the time the Spanish explorers arrived in the early sixteenth century, the area surrounding Big Cypress and the mouth of the Caloosahatchee River was dominated by the ancestors of the modern-day Seminole and Miccosukee Indians, historically known as the Calusa, who continued to gain in strength through the century while they resisted Spanish attempts to settle. By the mid-eighteenth century, however, the Seminole ancestors had been devastated by the introduction of European diseases, with some estimates citing a reduction in their population of ninety percent from the maximum pre-Contact population. As refugees from other Muskogee-speaking tribes in what is now northern Florida and southern Alabama and Mississippi were forced out of their homelands by the pressure of European settlers from the mid-eighteenth century into the early nineteenth century, they joined with the remaining ancestors of the Seminole to form new communities in central and south Florida. Under pressure from the American military throughout the first half of the nineteenth century, many of the Seminole people moved further into Big Cypress and the Everglades, which the American soldiers found largely impenetrable and, therefore, usually left them undisturbed.

Threats to the Seminoles in south Florida came not just from war but also from the drive to make south Florida more habitable for newly-arriving Americans. Beginning in the 1880s and accelerating quickly in the 1920s and 1930s, the State of Florida worked feverishly to drain the overlay of water from the Everglades. The purpose of such a vast enterprise was to turn land in the Everglades to productive agricultural use. Diverting water from the Kissimmee River, Lake Okeechobee, and the Everglades themselves revealed the rich peat that had accumulated over many millennia from decaying aquatic vegetation. Although the full impact of these drainage activities would not be realized until the U.S. Army Corps of Engineers became involved beginning in the 1930 and 1940s, many began to notice the damaging consequences by the 1920s as wildfires increased, bird populations decreased, and surrounding water tables dropped, causing the land to subside. The Everglades had been seen by the earliest European and Euro-American visitors as forbidding and inhospitable, but, by the early twentieth century, many had



come to recognize the beauty and unique ecological character of the Everglades. Fearing its loss, advocates sought ways to protect the distinctive ecosystem of south Florida. In the 1920s, many of these conservationists rallied around the cause of a national park.

When local proponents and the National Park Service were building support to create Everglades National Park in the late 1920s and early 1930s, the initial proposed boundary included Big Cypress Swamp. Even though Big Cypress has its own watershed separate from the flow of water that spills out of Lake Okeechobee and flows southward over the Everglades and also has different terrain and vegetation than its neighbor, the region's early conservation advocates recognized the intimate connection between the two areas. At that time, as discussed in greater detail in Chapter 1, the recently-completed Tamiami Trail sliced across both areas, and Big Cypress still retained enormous areas of old-growth cypress trees. Big Cypress Swamp, therefore, remained in a relatively pristine state. Much of the land, however, was owned by Barron Collier, the advertising millionaire who had relocated to southwestern Florida and begun buying vast swaths of land there. As described in Chapter 1, although Congress passed legislation in 1934 to establish Everglades National Park, discussions over its boundaries represented an onerous task that took nearly fifteen years to complete. Florida Governors Spessard Holland and Millard Caldwell, along with local business leaders, conservationists, and NPS officials, negotiated throughout the late 1930s and 1940s to define a boundary that would be politically acceptable. It was not until early 1947 that the boundary was settled, and the Florida legislature approved expenditure of two million dollars to acquire the land for Everglades National Park. By that time, local lumbering operations in the Big Cypress Swamp were at their height, and oil had recently been discovered there. Bowing to strenuous and successful lobbying efforts by Collier and other landowners, therefore, the final boundaries for Everglades National Park excluded Big Cypress Swamp, agricultural lands in the eastern Everglades, and portions of Key Largo that were also within the initial boundary.<sup>2</sup> President Harry S Truman dedicated Everglades National Park on December 6, 1947, while Big Cypress continued to hum with industrial activity.

The decision to exclude Big Cypress Swamp no doubt rankled many of the state's conservationists, who, by the 1950s and early 1960s, were witnessing the continued degradation of the Everglades ecosystem resulting from ever more aggressive drainage activities, including preventing nearly all water from Lake Okeechobee from flowing south to the Everglades. In addition, logging had denuded vast areas of Big Cypress, and virtually unconstrained oil exploration threatened even more areas. Advocates for the protection of Big Cypress had no focal point, however, until 1967, when the Dade County Port Authority (DCPA) announced plans for a new jetport encompassing thirty-nine square miles within Big Cypress Swamp. With the rising surge of interest in environmental protection coming to maturity at the same time, opponents of the new jetport gained widespread public support by the end of the decade. Their cause was aided by the premature construction of one runway in 1968 and the admission by

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<sup>2</sup> Robert S. Gilmour and John A. McCauley, "Environmental Preservation and Politics: The Significance of 'Everglades Jetport,'" *Political Science Quarterly*, Vol. 90 No. 4 (Winter, 1975-1976), 721. This early article assessed the role of environmentalism in the creation of Big Cypress National Preserve and noted that Big Cypress was removed from Everglades despite the necessary connection between the two. It went on to state that "the fact that the park's boundaries did not include a self-sufficient ecosystem, if it was even considered, was not regarded as a problem."

DCPA that the jetport would be accompanied by a wide-ranging series of developments, all within Big Cypress Swamp and on the edge of the Everglades. At the same time, a host of scientific studies expounded on the devastating environmental consequences of the jetport. By 1969, opponents of the jetport had gained support from several members of Florida's Congressional delegation and the national press and, by the 1970s, had the ear of the administrations of Florida Governor Reuben Askew and President Richard M. Nixon. As a result of negotiations led by the President's Special Assistant for Domestic Affairs John Ehrlichman, a former land-use attorney, the Nixon White House forced the relocation of the jetport and announced support for the federal acquisition of much of Big Cypress Swamp. Several different bills were introduced in Congress in the early 1970s leading to the passage of Public Law (P.L.) 93-440 establishing Big Cypress National Preserve which President Gerald R. Ford signed on October 11, 1974.

At the time of its creation, Big Cypress National Preserve consisted of 577,000 acres in Collier, Dade, and Monroe Counties. It has since been enlarged with Congressional authorization to include a total of approximately 729,000 acres (Figure 1). As required by the legislation, all land within this enormous boundary had to be acquired by donation or acquisition, except for improved properties and mineral rights, that could be acquired only from willing sellers in either fee ownership or as a part-interest with the possibility of life estates. In accordance with the wishes of Congress, NPS, in its management of Big Cypress National Preserve, seeks to protect the area's most significant natural resources, starting with the Big Cypress watershed. This watershed is vital to the survival of the Everglades ecosystem, together with North America's largest dwarf cypress forests, important habitats for state and federal threatened and endangered species, recreational opportunities in this increasingly urbanized area, and culturally significant archeological resources. At the same time, NPS must balance a range of human uses, including hunting, fishing, and trapping; oil and gas exploration and extraction; off-road recreational vehicles, private landownership, and traditional uses by the Miccosukee Tribe of Indians and the Seminole Tribe of Florida. This task, to protect the natural resources while allowing a number of activities with the potential to harm those same resources, has required Preserve and regional staff to coordinate among often conflicting interests in a balancing process that has continued to the present. Through studies, compromise, an ever-changing set of regulations and permit processes, and in the face of multiple lawsuits, NPS, over the past half-century, has worked to maintain that balance, serving as a vital part of the growing effort to protect and restore the broader Everglades ecosystem.

The purpose of this Administrative History of Big Cypress National Preserve is to explore how NPS has developed and managed one of the two original National Preserves in the National Park System. The early years of the Preserve's existence were taken up with acquiring land, a massive and complicated undertaking that took six years to complete. Much of the story told in this Administrative History revolves around establishing and maintaining a balance between protecting natural and cultural resources and allowing the continuing practices of recreational access and consumptive uses. This study, using a combination of archival research and oral history interviews, explores the origin, establishment, and development of this unit of the National Park System. The principal sources for this study are the administrative files for Big Cypress National Preserve, curated in the South Florida Collections Management Center, a

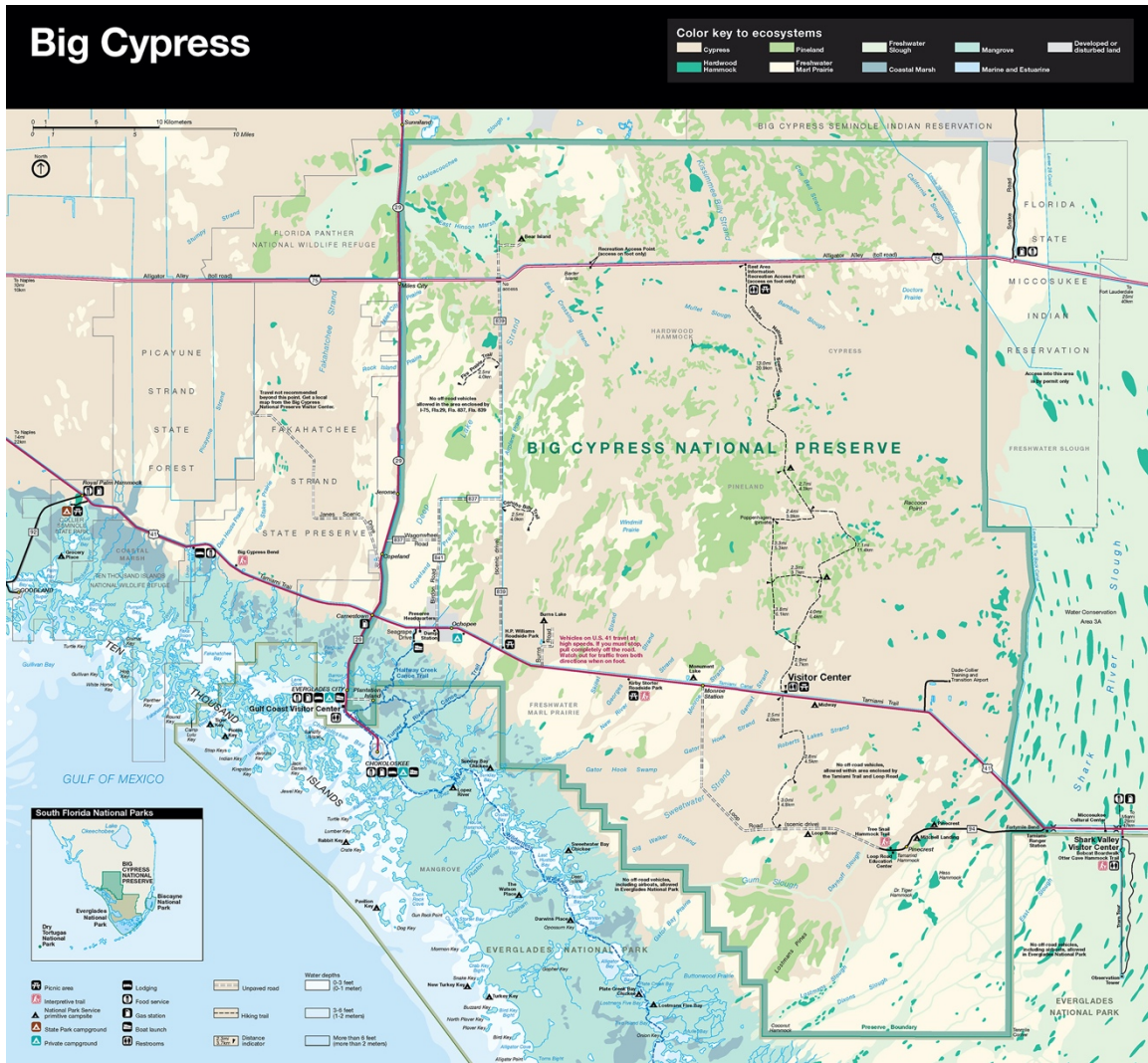


Figure 1. Big Cypress National Preserve boundary.

multi-park facility located in Everglades National Park. An important component of the present study are oral history interviews with individuals knowledgeable about the Preserve's history and operations, including previous and current park and regional office staff, volunteers, and professionals who have collaborated with the park in various ways. These oral history interviews, which were transcribed and transferred to the Preserve and are also maintained at the South Florida Collections Management Center, provide not just information that may not be recorded in the Preserve's documents but also invaluable insights into the basis for many decisions and actions. Finally, local, regional, and national newspapers proved extremely useful to help fill gaps in the documentary record.

## Chapter 1: Prehistoric and Historic Background

Big Cypress Swamp, like its neighbor to the south and east, the Everglades, remained largely free of contact by Europeans and Americans well into the nineteenth century. It was a remarkably inhospitable place for humans, with large parts of it covered with open water through much of the year, and deep forests of cypress and slash pine dense with undergrowth. Maps of the state well into the twentieth century show the area as entirely undeveloped, often without any details of topography or drainages. This very inhospitableness, however, perhaps to an even greater degree than in the Everglades, partly helped to preserve Big Cypress Swamp. It lacked the wide-open spaces that promised broad, productive, agricultural fields in a drained Everglades. Its conversion to productive land was not so straightforward as proponents of the Everglades deceptively promised. They argued that, since water flows downhill, creating a handful of drainage canals from the interior to the coast would do the trick. Big Cypress Swamp, with its dense terrestrial vegetation, did not facilitate such easy dreams. Until the 1920s, then, Big Cypress remained a pristine, remote wilderness. At that time, however, with the advances in dredging capabilities gained from experience in the Everglades and the construction of the Tamiami Trail, the swamp's old-growth cypress trees were too great an allure to ignore. From the 1920s to the early 1960s, giant saws mowed down these ancient forests until not enough cypress trees remained to be profitable, and the lumber camps and mills closed. Even this destruction, however, allowed the basic structure of Big Cypress Swamp, the pattern of water accumulation and flow into the Everglades, to continue largely as before.

This is not to say that Big Cypress Swamp did not face grave challenges even before being directly threatened by the Miami-Dade County Jetport in the late 1960s. In the early 1960s, for example, Leonard and Julius Rosen purchased several hundred thousand acres of land on the western outskirts of Big Cypress Swamp which they then sold to gullible buyers, often unseen, as prime housing estates. The two men, owners of the infamous Gulf American Land Corporation which went bankrupt after their fraud was discovered in the early 1970s, constructed more than 180 miles of canals and built roads through previously untouched pine woods and marshy grasslands, draining vast amounts of fresh water into the Gulf of Mexico.<sup>1</sup> Although Gordon Harvey declared Big Cypress Swamp in the late 1960s “The poster child for Florida’s environmental problems in the 1970s,” his discussion of these problems focused on the lumbering operations of the previous generation and on the threat from the proposed Jetport. Even at that time, Harvey acknowledged, “if the Everglades had a ‘heart,’ it was the 2,450-square-mile Big Cypress.”<sup>2</sup>

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<sup>1</sup> See Gordon E. Harvey, “‘We Must Free Ourselves....from the Tattered Fetters of the Booster Mentality’: Big Cypress Swamp and the Politics of Environmental Protection in 1970s Florida,” in Jack E. Davis and Raymond Arsenault, *Paradise Lost? The Environmental History of Florida*, University Press of Florida, Gainesville (2005), 350-51, and “Lost City of the Everglades,” *South Florida Sun-Sentinel*, February 2, 1992, <https://www.sun-sentinel.com/news/fl-xpm-1992-02-02-9201060511-story.html>. See also “Southern Golden Gates Estates,” Conservancy of Southwest Florida, which discusses ongoing restoration efforts to undo the ecological damage caused by the developers, <https://www.conservancy.org/our-work/science/everglades/southern-golden-gate-estates>.

<sup>2</sup> Harvey, “We Must Free Ourselves,” 354.

The environment, the history of the region's Indigenous residents as known through archeology and written records, the role of early European settlers, and the modern American history of Big Cypress is intimately connected to the adjoining Everglades. In 1934, the United States Congress passed, and President Franklin D. Roosevelt signed, the legislation authorizing Everglades National Park, subject to the State of Florida providing the funds which would be donated to the federal government for the purchase of land. Negotiations regarding the boundaries and the purchase of land continued after World War II. These negotiations led to the exclusion of Big Cypress Swamp from Everglades National Park. In 1947, the Florida legislature appropriated \$2 million for land acquisition, which the federal government used to purchase the land. Once he received notice that the State of Florida's funds had been transferred to the federal government, Secretary of the Interior Julius Krug signed Secretarial Order No. 2338 on June 20, 1947, which officially established Everglades National Park. In 2015, Robert Blythe completed the Administrative History of Everglades National Park, a richly detailed and exhaustive study that includes an extraordinarily valuable environmental, prehistoric, and historic overview of not just Everglades National Park but of the entire south Florida region.<sup>3</sup> Blythe's recent work provides the most useful overview for understanding the cultural and natural setting of Big Cypress Swamp, with a level of detail that need not be repeated here. The following brief summary, therefore, relies extensively on Blythe's work for the general natural and cultural setting that includes Big Cypress while drawing upon additional sources as noted to identify the key natural and historical themes of Big Cypress Swamp.

### ***South Florida Environmental and Cultural Overview***

Big Cypress Swamp, together with the other major drainage systems in south Florida that included the Everglades and Kissimmee River, were of relatively recent origin in geological time. As the oceans rose and fell with the waning and waxing of glacial eras throughout Earth's history, eons of deposits formed the limestone bedrock in Florida's mostly low, level peninsula. At the end of the last glacial era, approximately 15,000 years ago, oceans gradually rose to their present level, and south Florida took on its present form. In his administrative history of Everglades National Park, Blythe describes the process:

Slightly higher limestone formations to the east (the Atlantic Coastal Ridge) and to the west in the Big Cypress Swamp created the Everglades Basin, an extremely shallow trough running through the last 100 miles of South Florida. As the sea level rose, the water table also rose, and portions of this basin became inundated during part of the year.<sup>4</sup>

At the same time, rainfall increased throughout the area, while cracks in the soft limestone bedrock allowed surface water and ground water to intermix. This constantly watery environment in the Everglades established a new ecosystem in which a specific, wide-ranging plant community thrived. Decaying vegetation built up a dense layer of peat and muck on the

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<sup>3</sup> Robert W. Blythe, *Wilderness on the Edge: A History of Everglades National Park* (Cultural Resources, Partnerships and Science Division, Southeast Region, National Park Service, prepared under the National Park Service/Organization of American Historians cooperative agreement, 2015). While more journalistic in approach and tone, Michael Grunewald, *The Swamp: The Everglades Florida, and the Politics of Paradise* (NY: Simon & Schuster, 2006), also proved an invaluable overview.

<sup>4</sup> Blythe (2015), 5.



limestone bedrock which later encouraged the dreams of those who wished to turn the Everglades into productive farmland.

People had occupied what is now south Florida for millennia by the time the present Everglades and Big Cypress ecosystems developed between 5,000 and 6,000 years ago. The earliest archeological evidence for human occupation in south Florida is from approximately 10,000 years before present, but both archeological evidence and traditional Seminole knowledge point to the presence of the Seminole's ancestors in northern Florida and the panhandle approximately 14,000 years ago.<sup>5</sup> As the climate changed and the current subtropical environment became settled, food sources in south Florida were increasing dramatically and the population increased with it. In particular, stable, year-round populations were emerging along the Gulf Coast during the late Archaic period from approximately 6,000 to 3,000 years before present. The coastal rivers and estuaries had abundant resources for fishing, hunting, and gathering, which allowed the development of more complex, sedentary societies. By this time, these native peoples had begun creating permanent structures at the locations of their communities, including earthwork mounds that allowed the construction of buildings for living and craft working above the watery ground. These mounds were typically built above a foundation layer of oyster shells surmounted by layers of sand and earth and facilitated the establishment of substantial coastal towns in inland trade hubs.<sup>6</sup>

By approximately 2,000 to 1,500 years ago, these stable communities had access to ready food supplies and sources of wood, bone, and shells for tools. Dugout canoes provided transportation along the coast and into the inland rivers. Communities were becoming increasingly complex and socially stratified in the early centuries of the Common Era, as evidenced by many archeological sites on slightly higher lands throughout the coastal marshes and estuaries. The muck that underlies Big Cypress Swamp and Everglades provides an anerobic environment which allowed wooden objects to survive into the modern era, including in an important site first discovered in 1896 along the Gulf Coast north of Everglades City, which contained wooden bowls, pounding tools, throwing stick handles, and decorative objects.

The area surrounding the Caloosahatchee River, which is partially a tidal river immediately north of Big Cypress Swamp that drains to the southwest into the Gulf of Mexico, was home to a socially stratified chiefdom society by late in the Archaic period. This society, the descendants of the original indigenous people who are ancestors to the current Seminole Tribe, was called Calusa by the Spanish explorers and settlers in the sixteenth century. This was a large group by the time the first Spanish settlers arrived. For decades, they successfully repelled Spanish attempts to establish a colony along the south Florida coast. Together with the Tequesta, based near what is now Miami, and the Ais, living further north on the Atlantic Coast near the St. Lucie River, they constituted a population of approximately 20,000 by the time of European contact. Although their principal settlements remained along the coasts, where food and supplies were most abundant, individuals and groups frequently traveled across the interior of Big Cypress Swamp and Everglades for hunting and fishing, where they set up camps and small settlements on the tree islands and hammocks.

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<sup>5</sup> The Seminole Tribe of Florida presents a summary history of their culture in Florida on their website: <https://www.semtribe.com/history/introduction> (viewed February 26, 2024).

<sup>6</sup> Ibid.

Those whom the Spanish called Calusa had become the more dominant of several indigenous groups by the time the Spanish arrived in greater numbers later in the sixteenth century. Although the Spanish established a garrison at the principal village of the Calusa, Mound Key, in the 1560s, they abandoned it by the early 1570s to focus their defensive energies on St. Augustine, leaving the Calusa in control of southwest Florida into the eighteenth century. As the Spanish attempted to foster their system of missions in Florida, many of the Calusa refused to take part in the new mission culture and continue to live independently as they had for untold generations. As a result, the Spanish began to refer to them as *cimmarones*, runaways or wild ones, which by the nineteenth century had been reinterpreted as Seminole. The Calusa and other groups proved themselves stout defenders against the Spanish. More deadly than war, however, contact with Europeans facilitated frequent outbreaks of diseases from which indigenous peoples had no natural immunity. These diseases nearly destroyed the native population, killing an estimated ninety percent of the population between 1500 and 1700. In the decades following that period, other indigenous groups from what are now Georgia and South Carolina, under pressure from English settlers in those areas, began moving south into Florida. This new influx of peoples, who shared the Muscogee linguistic tradition and culture with the Seminole ancestors living in the Everglades and Big Cypress, created immense change in south Florida. While many of the new Muscogee groups fought with those whom they found already living in the area, others joined with the survivors to reestablish a strong network of communities from whom the current Seminole Tribe is descended.

Three successive military campaigns by the United States sought to remove the Seminole people from Florida during the early nineteenth century. As a result of the American Revolution, Spain regained control of Florida from Great Britain in the 1783 Treaty of Paris. Britain retained its trading rights at Pensacola in north Florida, however, and, during the War of 1812, British agents in Florida began arming the Seminoles in northern Florida and the Creeks in southern Alabama and Georgia to conduct raids on the Americans across the border. In retaliation, Andrew Jackson, then a Major-General in the United States Army, led troops in a series of attacks across southern Mississippi and Alabama in 1814 and invaded Florida, seeking to pacify the area. Realizing that many Creek and Seminole had fled further into Florida, Jackson again led American forces into Florida, still in Spanish hands, in 1818 to attack their villages in the First Seminole War. A year later, Spain sold Florida to the United States for five million dollars. Florida became an American territory in 1821, and newly-arrived settlers began clashing with the Seminole who were already there. The United States Army returned to Florida in 1832, in the Second Seminole War, which lasted until 1845. During this protracted campaign, which ended in a stalemate, Army troops pursued Seminole warriors into the Everglades. For the first time, Americans learned about the scale and nature of this vast, watery area (Figure 2).

Although most accounts of the Second Seminole War focus on the American campaign in the Everglades, Big Cypress Swamp was also an important component of the war. An influential medicine man of the Miccosukee Seminole Tribe, Abiaka, also known by the pseudonym Sam Jones, led a group of warriors to defeat American forces led by American Lieutenant Zachary Taylor at the Battle of Lake Okeechobee in 1837. Jones either directed or led other attacks on American outposts and settlements during the Second Seminole War and took part in negotiations with the U.S. Army, where he refused to allow resettlement of the Seminole people

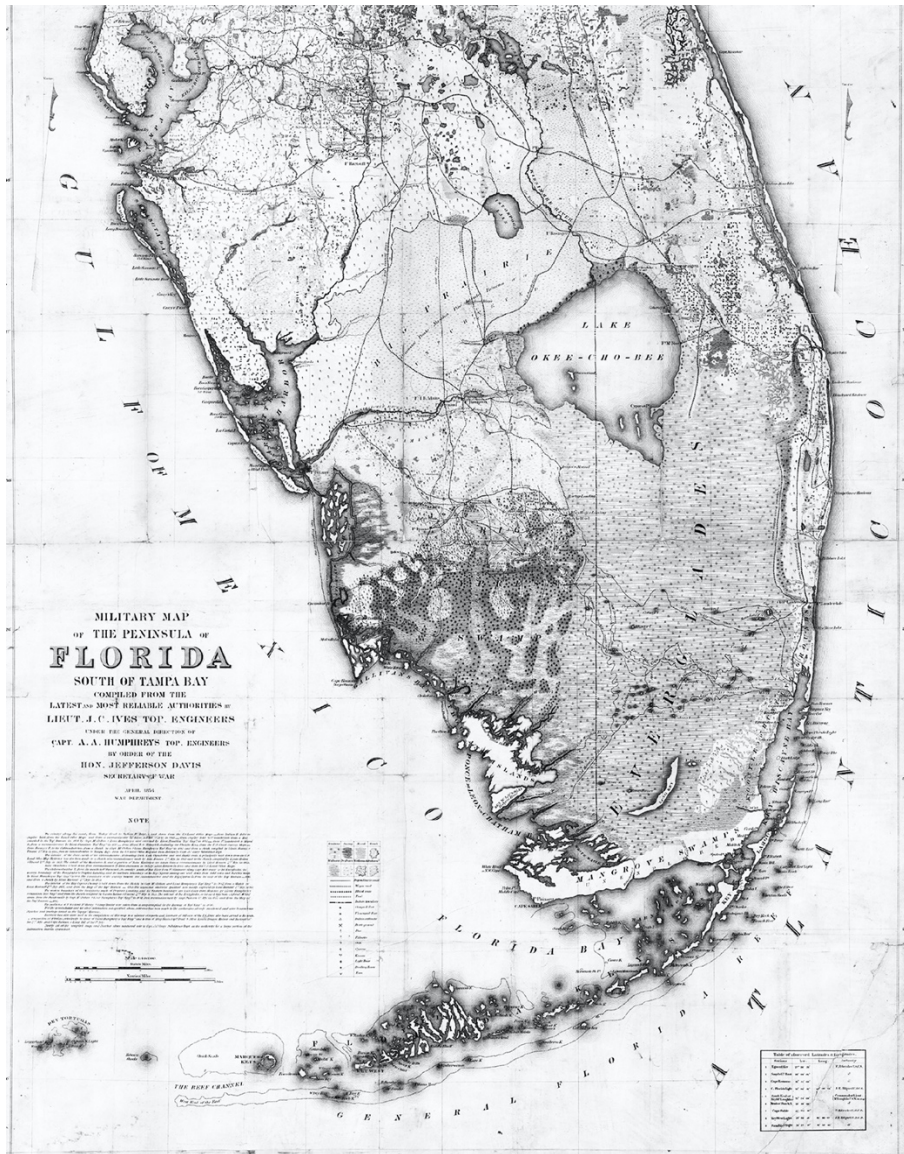


Figure 2. Military Map of the Peninsula of Florida, 1856. Courtesy of the Special Century Department, University of South Florida.

to the Indian Territory in what is now Oklahoma even when other Seminole leaders agreed. Following the end of the Second Seminole War in 1842, Jones maintained his vigilance within the different branches of the Seminole Tribe to resist immigration to the Indian Territory. His defiance of the United States Army and his refusal to relocate to the Indian Territory further established him as an important leader among the Seminole and protected the Seminole villages in Big Cypress. As an older man, he continued to provide leadership to many of the Seminole during the Third Seminole War that began in 1855. The United States had begun building forts along the south coast of Florida and in the Florida Keys. In anticipation of increased settlement, the United States sought to remove the remaining Seminole from Big Cypress Swamp and the Everglades, and the Seminole, in turn, sought to remove the growing American military presence in the area. Hostilities began in Big Cypress when an American surveying party passing through Seminole villages came under attack by forty Seminole warriors led by another Seminole chief,



Billy Bowlegs (Holata Micco). Attacks and counterattacks between Seminole and state and federal troops took place throughout south Florida from Tampa to the Atlantic coast and resulted in another stalemate by 1858. Many Seminole then agreed to relocate to the Indian Territory in Oklahoma, including Billy Bowlegs, but approximately 150 members of the tribe, including Sam Jones, remained in the traditional villages in Big Cypress Swamp. Although Jones traveled throughout Florida during his life, he remained based in the Big Cypress Swamp until his death in 1866.<sup>7</sup>

The number of Seminole living in Big Cypress Swamp increased during the late nineteenth century in villages scattered throughout the area. Many of the principal settlements by the Miccosukee and Seminole Indians were located from the northern edge of Big Cypress Swamp northward into what is now Hendry County. Old Tiger Tail, a Miccosukee Indian who succeeded his clansman, Sam Jones, as leader, encouraged the Miccosukee to establish more formal settlements throughout the area and include associated grounds for the traditional Corn Dance ceremony in them. His goal of creating more settlements faded after his death in 1881, and, by the 1890s, Christian missionaries began establishing missions, and the United States Indian Commission began purchasing land nearby. Many of these early establishments were created immediately north of Big Cypress Swamp in what is now Hendry County, where the land was more conducive to settlements and agriculture. The Big Cypress Reservation, for example, the largest of the five Seminole reservations in Florida established by the U.S. Indian Commission and governed by the Seminole Tribe of Florida, abuts the northern boundary of Big Cypress National Preserve. In the late nineteenth and early twentieth century, though, the majority of the Seminole and Miccosukee Tribes lived in communities spread throughout Big Cypress and extending south into Collier County.<sup>8</sup>

### ***Emerging Environmental Awareness: Draining the Everglades***

The vast expanse and inaccessibility of the Everglades and Big Cypress Swamp and their potential for development made any concerns for the preservation of this watery ecosystem incomprehensible through the early twentieth century. When Euro-Americans first encountered the Everglades, they immediately found it a forbidding, inhospitable, and utterly inaccessible place. With the constant slow and steady sheet flow of water spread over this vast grassy plain interspersed with treed hammocks and filled with razor-edged sawgrass, home to alligators, snakes, and stinging insects of unimaginable quantities, few made any attempts to explore it. American soldiers in the Second and Third Seminole Wars sent back dreadful reports of the Everglades. Some, however, saw the possibility of “improving” the Everglades, making it available for agriculture by draining the water from the area to expose the rich, peaty soil below. Such actions, the proponents of drainage argued in their pride and enthusiasm, would allow them to “reclaim” the land for agriculture, although the Everglades had never been suitable for agriculture. The first assessment of the potential to create an agricultural paradise from the Everglades came in 1847, when the United States Treasury commissioned T. Buckingham

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<sup>7</sup> Patsy West, “Abiaka, or Sam Jones, in Context: The Mikasuki Ethnogenesis through the Third Seminole War,” *The Florida Historical Quarterly*, Vol. 94, No. 3 (Winter 2016), 366-410.

<sup>8</sup> Patsy West, “History of Post-war Seminole Settlement in the Big Cypress,” *The Florida Anthropologist* vol. 43, no. 4 (December 1990), 241-244.

Smith, a lawyer, politician, and historian in St. Augustine, to report on the possibilities. After a five-week investigation, Smith prepared a report in 1848 that enthusiastically supported the feasibility and desirability of draining water from the Everglades to create agricultural land. By widening and deepening the existing natural outlets that drain to the Atlantic and the Gulf of Mexico and digging a limited number of new canals to draw water to the east and west from Lake Okeechobee, Smith argued, the work could be completed for only a modest financial outlay. Subsequent efforts in the late nineteenth and early twentieth centuries were undertaken by such enthusiastic proponents as William Disston, the thirty-six-year-old heir to a saw and file factory in Philadelphia, who funded construction of canals leading southeast from Lake Okeechobee and “improved” the Caloosahatchee River by straightening its upper reaches and excavating a canal from Lake Okeechobee to Lake Hicopee, where the river began, to allow faster water flow out of Lake Okeechobee. A generation later, Governor Nelson Broward campaigned for office in 1904 on a platform of draining the Everglades. Governor Broward and the Board of Drainage Commissioners, with funding from Colorado land developer Richard Bolles, continued to dredge and widen the Caloosahatchee Canal leading southwest from Lake Okeechobee and completed William Disston’s earlier canal from Lake Okeechobee southeast to the Miami River. Although Broward and his successors completed years of dredging work, little land was actually made available for agriculture through the early 1910s.

A series of studies in the 1910s prompted a wave of new drainage efforts, but little was accomplished until the arrival of the United States Army Corps of Engineers (USACE), which first became involved with efforts to create dry land in the Everglades in the late 1920s. At the request of Florida State Representative Herbert Draine, the USACE completed its own study and presented a report to Congress in late December 1929. Congress approved the suggested work in the early 1930s; when it was completed in 1938, the overflow of water from Lake Okeechobee into the Everglades was finally controlled. Impacts of the USACE’s work were soon apparent: increased soil subsidence, more frequent fires, and a steady intrusion of salt water into the freshwater aquifers that supplied the burgeoning cities of south Florida with drinking water. World War II put a halt to most work in the Everglades. After the war, however, and following a disastrous hurricane in 1947, the USACE released yet another plan in which it admitted that much of the Everglades was not suitable for agriculture and thereby abandoned the earlier strategy of promoting widespread drainage. Instead, the USACE’s plan, which Congress approved in 1949, called for restricting and managing drainage by the division of the Everglades into distinct zones, each separated and controlled by dikes with pumps and gates to transfer water from one to the other. At the same time, the dike that retained Lake Okeechobee was enlarged, creating what is now known as the Herbert Hoover Dike. The natural sheet flow of water over the Everglades was thereby effectively curtailed.

### ***Environmentalism and its Threats in South Florida***

Interest in the conservation of natural resources emerged in America in the late nineteenth century, typically in the context of the vast wilderness areas of the American West. America’s landscape painters had popularized the grandeur and majesty of the nation’s wilderness areas throughout the nineteenth century, and many began to fear that, in the rush to fill open land in the Plains and West, and with ever-accelerating industrial progress bringing

factories and railroad lines to all points, the nation's natural wonders, forming a part of the soul of America, would be irretrievably lost. Proponents of conservation in America in the late nineteenth and early twentieth centuries, however, often moved in divergent directions. Some were the intellectual heirs of the Transcendentalist movement of the mid-nineteenth century, who emphasized a sense of the divine in nature in its undefiled state. Others saw benefits in mixed-use conservation projects that included dams and logging in lands that were otherwise set aside from development. Both occasionally took issue with the early National Park Service, created by Congress in 1916. Under the early leadership of Directors Stephen Mather and his successor, Horace Albright, NPS emphasized public use and enjoyment of wilderness areas, initially in the western states, that included building roads, campsites and visitor facilities in areas otherwise reserved from commercial use and development.

The uneasy nature of the alliance between NPS, which emphasized the recreational use of wild and natural areas, and conservationists who feared the destructive power of increased visitation, began in the early twentieth century, almost as soon as the National Park Service was established. The strains between the two approaches to conservation were particularly visible in the early 1930s as support for Everglades National Park gained momentum. Initially concerned for protection of the Everglades as a unique and beautiful place and also for boosting tourism in south Florida, the local sponsors of the park quickly gained the enthusiastic support of NPS Director Horace Albright. Albright and his predecessor, the inaugural NPS Director Stephen Mather, had, through the late 1910s and early 1920s, begun working to expand the Service's vision of wilderness conservation to the eastern United States, most notably with the creation of Acadia National Park in Maine in 1919 and Great Smoky Mountain National Park, in Tennessee and North Carolina, in 1926. The proponents of a national park in the Everglades in the late 1920s invited NPS officials to visit the area. After touring the Everglades by blimp, boat, and on foot in the early 1930s, NPS officials were strongly in favor of establishing a national park there. A number of biologists and other scientists, however, having seen the environmental destruction caused by initial efforts to drain portions of the Everglades in the early twentieth century, feared the outcome of any new development. According to Robert W. Blythe in his *Administrative History of Everglades National Park*, "The scientists' greatest fear was that the area could not be developed for visitor access without great damage to the natural environment."<sup>9</sup> These fears were only exacerbated by proposals during the early discussions of the park for roads, campsites, boat stations, and a resort hotel. The dire need to protect the Everglades from increasing destruction, however, gradually brought consensus among the differing parties through the process of Congressional deliberations and studies in which the NPS reaffirmed its commitment to preserving the wilderness character of the Everglades. Finally, in the spring of 1934, Congress passed legislation to authorize Everglades National Park, which included language designed to conserve the area's natural qualities, and President Franklin D. Roosevelt signed it into law as P.L. 73-267 on May 30, 1934.

In the course of securing passage of the Everglades National Park bill in the late 1920s and early 1930s, conservationists demonstrated the possibilities of political action oriented toward protecting the environment. Although the conservation of natural resources and their use by NPS was a key element of the emergency work programs of the New Deal in the 1930s, a full-fledged environmental movement did not emerge in the United States until after World War

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<sup>9</sup> Blythe, *Wilderness on the Edge: A History of Everglades National Park*, 84.

II. In the boom years after the war, Americans increasingly had the time and resources for outdoor recreation, and public parks and wilderness areas were made more available by means of better roads and establishment of the interstate highway system. With recreation as the initial salvo in the environmental movement, Congress created the Outdoor Recreation Preservation Review Commission in 1958, which became the Bureau of Outdoor Recreation (BOR) in 1962, a bureau of the Department of the Interior (DOI). In 1977, BOR was absorbed into the Heritage Conservation and Recreation Service (HCRS), and then, in 1981, HCRS itself was abolished and its programs merged into the National Park Service.

By the early 1960s, the environmental movement had moved beyond recreation and the interest in wilderness areas to an overriding concern with pollution. A key event in the emergence of environmentalism into the nation's political life was the publication in 1962 of Rachel Carson's book, *Silent Spring*. Though focused on the destruction wrought by the use of pesticides, particularly DDT, on bird reproduction, Carson's wildly popular book additionally documented the destructive power of a variety of human actions on many different species and ecosystems. In the remaining years of the 1960s, several other books were published that described for their readers existing environmental hazards and the potential catastrophes that could result from them. These included several books by the cellular biologist and anti-nuclear activist Barry Commoner; Secretary of the Interior Stewart Udall, who shepherded through Congress most of the major environmental legislations of the 1960s including the Wilderness Act of 1964, the Endangered Species Preservation Act of 1966, and the Wild and Scenic Rivers Act of 1968; and the biologist Paul Ehrlich, whose 1968 book *The Population Bomb* raised concerns about sustainability and limits to human growth. The eagerness with which these books were received signaled that the American public was coming to recognize the importance of environmental conservation. This recognition brought environmental concerns to a broad segment of the public who might never go to a unit of the National Park System but who could see the evidence of environmental degradation in their own neighborhoods. As Cary Coglianese observed, "These popular books of the time not only warned of dangers from industrial activities, but also provided the public with a new conceptual apparatus for understanding ecological relationships and for constructing a broad-scale political movement."<sup>10</sup>

Concern for the environment gained a great deal of political traction in the 1960s from politicians and their advisors, who began to emphasize qualitative issues of development as much as quantitative, and from mass involvement and concern of citizens. After the first wave of environmental legislation in the 1960s focused on the protection of pristine open spaces, attention by 1970 had turned to a focus on pollution in all its forms, driven by a new understanding of ecology, the study of the relationships of different organisms to each other and to their surroundings. This concern led to a second wave of environmental activism. Much of what now forms the environmental protection structure in American was put in place during the administration of President Richard M. Nixon. Nixon, according to his principal environmental adviser, Russell E. Train, was not an enthusiastic environmentalist, but "he and his immediate advisers recognized the political significance of the environmental issue." One of Nixon's first actions after winning the presidential election in 1968 was to create a Task Force on Environmental Policy, chaired by Train, that led to the Environmental Quality Council, the first

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<sup>10</sup> Cary Coglianese, "Social Movements, Law, and Society: The Institutionalization of the Environmental Movement," *University of Pennsylvania Law Review*, Vol. 150, No. 1 (November 2001), 91.

Cabinet-level interagency office focused strictly on environmental issues. Nixon quickly supported Senator Henry M. “Scoop” Jackson’s (D-WA) National Environmental Policy Act (NEPA), which had passed the Senate in late 1968 but initially stalled in the House of Representatives. After the bill finally passed in late 1969, President Nixon chose to sign it into law on January 1, 1970, as the first piece of legislation for the new decade. The law created the Council on Environmental Quality, located in the executive office of the President, and mandated the Environmental Impact Study (EIS) process to evaluate the impact of federal actions on a range of environmental factors. Russell Train, in his summary of President Nixon’s environmental record, argues that “Implementation of NEPA and the EIS process probably constituted one of the administration’s most influential and long-lasting environmental accomplishments.” Through the NEPA process, he continued, “the consideration of environmental values became institutionalized throughout the federal system.”<sup>11</sup> Through the first three years of the 1970s, the Nixon White House supported the creation of the Environmental Protection Agency and wide-ranging legislative initiatives that either established or enhanced federal regulatory controls and tax incentives for air, water, and noise pollution, solid waste disposal, and an ocean dumping ban, among many others.<sup>12</sup> As Coglianese concluded in 2001, “the 1970s saw the enactment of what became, and still remains, virtually the entire regulatory system in the United States.”<sup>13</sup>

By the 1960s, residents of central and south Florida had become acutely aware of the environmental destruction created in the name of progress. The environmental consequences of the decades-long Everglades drainage program, which was completed by the early 1970s, were devastating. As early as the 1930s, the populations of birds in the Everglades were rapidly declining, and the once-fertile muck lands along several canals had subsided by as much as three feet. Most of these impacts, however, accrued to the Everglades themselves and the cities along Florida’s southeast coast. Although the Big Cypress and Everglades ecosystems are connected, drainage efforts were focused on the Everglades proper; the vast and desolate Big Cypress Swamp offered fewer opportunities related to drainage work because the presence of dense forests did not suggest fertile and easily developed agricultural land. Therefore, the Everglades and the impacts of drainage work on it were foremost in the minds of those concerned with environmental protection in south Florida. The significant environmental threats to Big Cypress arose from other issues.

### ***Environmental Threats to Big Cypress Swamp***

Three issues in particular, emerging in the early- and mid-twentieth century, threatened to turn Big Cypress Swamp into Gordon Harvey’s poster child for environmental problems: highways, lumber, and oil.<sup>14</sup> As the railroads began drawing an increasing number of tourists south to Florida in the early twentieth century, civic boosters on the Atlantic and the Gulf coasts

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<sup>11</sup> Train, 186.

<sup>12</sup> Ibid., 188-189.

<sup>13</sup> Coglianese, 98. See also Adam Rome, “‘Give Earth a Chance’: The Environmental Movement and the Sixties,” *Journal of American History* 90 (September 2003), 525-554; Samuel P Hays, “The Environmental Movement,” *Journal of Forest History* 25 (October 1981), 219-221.

<sup>14</sup> Harvey, “‘We Must Free Ourselves,” 354.

decried the lack of a convenient east-west transportation corridor. Business and community leaders in Miami and Fort Myers met in 1915 to propose a highway that would extend west from Miami, cross the Everglades and Big Cypress Swamp to Fort Myers, and then continue north to Tampa. Quickly dubbed the Tamiami Trail, a combination of the words Tampa and Miami, it became the principal focus of the newly-created Central Florida Highway Association, the goal of which was to promote the development of central and south Florida. The proposed Tamiami Trail drew immediate attention from civic leaders, particularly in Fort Myers, which was tied to Tampa by only a single road and railroad and had no railroads extending to the south or west. Lee County, along the southwest coast of Florida south of Tampa, and then far larger before Collier County was organized from part of it in 1923, quickly sold bonds to begin work. The immense challenges that faced the early efforts to drain the Everglades, however, also plagued the early hopes for a cross-Florida highway, and progress into the early 1920s was negligible.<sup>15</sup>

In 1923, however, Barron Collier, a millionaire advertising executive and land developer from Memphis, Tennessee, who had recently settled in southwest Florida, entered the fray. Beginning in 1921, Collier purchased more than one million acres in what was then the southern portion of Lee County, focusing on the community of Everglade on the Gulf Coast as the center of his activities. In 1923, Collier proposed a deal to the State of Florida: if the State would create Collier County out of the southern portion of Lee County, of which Collier owned more than two-thirds, he would finance the construction of the remaining length of the Tamiami Trail. The State of Florida agreed, despite complaints by Lee County's leaders over the loss of land, and, in 1923, created both Collier County to the south and Hendry County to the east. Collier immediately turned his fortune to constructing the new road, employing an army of engineers and laborers. Collier's crews used more than 2.5 million sticks of dynamite to blast through the limestone bedrock, creating an east-west drainage canal in Big Cypress Swamp and in the Everglades, and using the resulting rock to form the parallel roadbed. Seeing the progress that Collier's crews were making and recognizing the value of the new road to the state, the new Florida State Road Department soon took over financial responsibility for the road and continued construction work west from Miami. Finally, in April 1928, the Tamiami Trail, now also known as U.S. Route 41, was completed from Tampa south to Fort Myers and then east to Miami.

The completion of the highway had profound impacts on south Florida and its environment. Work on the Tamiami Trail was taking place at the same time as the early efforts to drain the Everglades and create agricultural lands, a point emphasized by historian Gary Garrett: "The intentional consequences of the Tamiami Trail include the nearly successful drainage of the Everglades." The road effectively serves as a low dam that extends nearly the entire width of the state through the center of Big Cypress Swamp and the Everglades, cutting them both in half and impeding the flow of water moving to the south and southeast through both areas. Although the precise nature of the highway's impact on the sheet flow of water from Lake Okeechobee is unknown due to the lack of pre-1928 hydrologic data, Garrett concluded that "when seen as an integral part of the long, concerted effort to reclaim the Everglades, the highway was an ecological disaster."<sup>16</sup>

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<sup>15</sup> Gary Garrett, "Blasting Through Paradise: The Construction and Consequences of the Tamiami Trail," in Davis and Arsenault, *Paradise Lost?*, 260-279.

<sup>16</sup> *Ibid.*, 272.

The second major threat to the ecology of Big Cypress Swamp in the early twentieth century was lumbering. The apparently limitless expanse of valuable cypress trees was an irresistible lure at a time when Florida was just embarking on a building boom. Particularly after the completion of the Tamiami Trail in 1928, which gave unprecedented access to portions of Big Cypress Swamp from the north, and with the expansion of Everglade, soon renamed Everglades City on Big Cypress' south side, railroads were built into the swamp, and loggers rushed in to build mills to process an almost unimaginable amount of timber. The lure of the area was cypress, with old-growth trees as large as twenty-five feet in circumference and 150 feet all. Cypress was then, and remains, a highly prized lumber because of its resistance to water and rot. Much of the work of harvesting the trees and cutting them into lumber was conducted by companies affiliated with Barron Collier, who named the principal company towns of Copeland, Jerome, and Mileston after his sons or business associates. Logging operations in Big Cypress expanded dramatically through the 1920s and 1930s. As late as the 1940s, loggers cut 100,000 board feet per day from Big Cypress.<sup>17</sup> The conditions for all phases of the work, from building railroad tracks to felling and hauling massive trees and milling the wood, were especially difficult due to the heat, humidity, insects, wildlife, and standing water. As steam powered saws and mills replaced hand work in the 1940s and as demand for cypress lumber grew exponentially in the post-WWII years, the supply of old-growth cypress in Big Cypress Swamp and the adjacent Fakahatchee Strand dwindled quickly. By the late 1950s and early 1960s, the supply of timber was exhausted, leaving behind a vast and desolated area of massive cypress trunks and small, slow-growing, young, dwarf cypress trees.

The third major threat to the Big Cypress ecosystem and its survival was oil. The petroleum industry in America began when Edwin Drake, an inventor and former railroad conductor, successfully developed and implemented technology for drilling for oil using a steam engine and a cabled tool drilling rig. At that time, oil was primarily harvested from surface seepage and was being used principally for lighting due to its relative scarcity, though some were touting its medicinal benefits as well. Drake's system included the protection of the well bore by encasing it in sections of pipe, and he located oil approximately seventy feet below the surface of the ground near Titusville in northwestern Pennsylvania in 1859. Chemists and other scientists, engineers, and inventors soon began finding a multitude of uses for crude oil refined through various processes. In the late nineteenth century, as machinery came to dominate the economy, the need for fuel and lubrication created an insatiable need for more oil. Individuals and companies soon attempted to replicate Drake's successful oil well, quickly finding success in the United States and around the world. As early as 1865, John D. Rockefeller founded Standard Oil Company to develop and market crude oil. Even as Rockefeller came to dominate the American oil industry by the 1870s, independent prospectors, occasionally lured by rewards from states that hoped to be the nation's next major source of oil, continued to drill exploratory wells. The most famous of these new wells was found in 1901 in Spindletop, Texas, which led to the rapid construction of wells throughout eastern Texas.

The first attempts to find oil in Florida came in the panhandle of the state, near Pensacola, in 1901. Many wells were created throughout the panhandle in the first two decades of the twentieth century. Some wells reached to depths of nearly 5,000 feet, and all of them were

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<sup>17</sup> Frank and Audrey Peterman, *African Americans and The Sawmills of Big Cypress—A Brief History*, prepared for Big Cypress National Preserve, 2002.

unsuccessful. The land speculator and builder of the Tamiami Trail, Barron Collier, owner of more than one million acres in Collier and Hendry Counties and Big Cypress Swamp, became convinced that oil existed somewhere beneath his lands. Beginning in the late 1920s, Collier had crews drilling wells throughout the region and, in the mid-1930s, negotiated a lease with Gulf Oil Company to continue the work. Gulf Oil set up a headquarters in Everglades City on the Gulf coast and began conducting seismic testing for oil throughout the Big Cypress area. Gulf Oil's explorations also turned up empty, and they ceased work in 1938. Another company, Peninsular Oil and Refining Company, then leased land in Monroe County, Florida, and began drilling test wells, some going beyond 10,000 feet deep, but, again, without success. Peninsular Oil and Refining assigned their lease to the Humble Oil and Refining Company, which began explorations near Sunniland, Florida. Finally, in 1943, the Humble Oil and Refining Company found success in Sunniland, approximately twelve miles south of the community of Immolakee in Collier County, Florida, just inside the northern boundary of Big Cypress Swamp, with a well that reached down more than 11,000 feet.<sup>18</sup> Other wells quickly followed nearby.

The oil and gas extraction industry in Collier and Hendry Counties expanded through the 1950s and 1960s as more explorations identified new fields. Much of the explorations were, and continue to be, conducted with seismic technologies in which dynamite or other explosives were sunk in the ground and detonated, causing shock waves that could be interpreted by sensitive detectors to identify the types of bedrock formations known to contain oil. Although this approach avoids direct ground disturbance and a landscape scarred with unused exploratory wells, the powerful seismic waves can be detrimental to a variety of plant and animal species. Nonetheless, the exploration for and drilling of oil and gas was well established within the boundaries of Big Cypress Swamp by the mid-1960s.

Despite the loss of nearly all old-growth cypress trees from the region's lumbering operations and the legacy of oil exploration and drilling, the land of Big Cypress Swamp itself remained relatively intact. It stands in contrast to the adjoining Everglades, which, by the 1960s, had been compartmentalized by dikes and gates, with the flow of water from Lake Okeechobee and through the northern Everglades nearly completely controlled. After noting the extent of lumbering activities, for example, an Environmental Impact Statement prepared in 1968 observed that "Most of the Big Cypress has been little disturbed by people and within it are nearly all of the wildlife species native to semi-tropical Florida."<sup>19</sup> After surviving the Tamiami Trail, lumbering, and oil drilling, however, Big Cypress Swamp faced a threat in the late 1960s that challenged the most important element of Big Cypress and the Everglades: the flow of water itself. A proposed new airport five times the size of LaGuardia Airport in New York City to be located within Big Cypress Swamp and near the northwestern edge of Everglades National Park, gained the attention of environmentalists in Florida. This crisis gave environmentalists the opportunity to flex their new political muscles, and it became one of the defining causes of the nascent environmentalist movement in the late 1960s. Big Cypress National Preserve was the result.

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<sup>18</sup> "First Florida Oil Well," in American Oil and Gas Historical Society website, [www.aoghs.org/petroleum-pioneers/first-florida-oil-well/](http://www.aoghs.org/petroleum-pioneers/first-florida-oil-well/).

<sup>19</sup> United States Department of the Interior, *Environmental Impact of the Big Cypress Swamp Jetport*, September 1969, 21.



## Chapter 2: Origins of Big Cypress National Preserve and Legislative History

The creation of Big Cypress National Preserve is due in large part to the emergence of a new environmental awareness in Florida in the 1960s. While many throughout the state had decried the devastation of the Everglades since the 1920s and 1930s, early opposition to the works of the U.S. Army Corps of Engineers was attenuated by several factors. These included decades of progressive changes to the Everglades and its water flow without a single, catalyzing threat; the presence of Everglades National Park, which gave comfort to many who assumed that NPS would stop the most egregious abuses; and the magnitude of the Everglades and difficulty of seeing the entire scope of changes. In addition, the nation's environmental movement was in its infancy in the late 1940s when USACE was given approval to begin its major water-control work in the Everglades. As discussed in Chapter 1, even among those who were fighting to protect the Everglades and its ecosystem, Big Cypress Swamp was a background issue, not a pressing matter. By the early 1960s, as the national environmental movement was gaining adherents and political clout at the state and national levels, there were bigger issues to deal with than Big Cypress; its watershed faced relatively minor threats compared to the near-complete compartmentalization of the Everglades, widespread logging had largely ceased, and exploration and drilling for oil had barely entered its growth phase. Finally, the booster mentality in Florida, what David McCally has defined as the "Florida Dream," had a strong hold on the state's political and commercial leaders and on the public. This concept, which McCally argues rests on belief in a combination of "idyllic days of beachside ease," "the promise of subtropical agriculture," and "the vision of a verdant suburbia," relied on drawing more and more people to Florida, creating new and beautiful places where they could live and recreate, and moving people and goods about the state with ease.<sup>1</sup> It required great effort to dislodge this ideal when new projects were proposed. Finally, however, in the late 1960s, south Florida's proponents of growth proposed a project that was so bold, vast, and daring that it crystallized the nascent environmental movement into a political force strong enough to challenge it, bringing the threat to environmental values posed by the relentlessly pro-growth mindset into razor-sharp focus. This issue was the proposed Miami-Dade Jetport.

### *The Jetport Proposal*

Florida generally and the Miami area in particular have a long tradition of air travel and flight training. South Florida has more average clear flying days per year than anywhere in the United States except Arizona, a condition which drew some of the nation's early aviation pioneers in the early twentieth century. Pensacola, in the Florida panhandle, hosted the U.S. Navy's first flight school in 1914, and the aviation pioneer Glenn Curtiss established a flight school in Miami in early 1917. The advent of World War I created a need for trained aviators, and flight and gunnery training sites opened throughout Florida. The first Marine flight training program began at Glenn Curtiss' training field in Miami in 1918, while Cutler Airfield provided gunnery training for Navy pilots. The Miami area remained active in aviation through the 1920s, and, in 1927, Pan American Airlines relocated its base there from Key West. The company bought 116 acres near Miami Springs, which Glenn Curtiss had founded in 1926, and built an

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<sup>1</sup> David McCally, "The Everglades and the Florida Dream," in David and Arsenault, *Paradise Lost?* page 142.

airfield that began operations in 1928. Pan American began expanding its airfield in 1930, adding a third runway and additional hangars. Eastern Airlines then began operating from Pan American Field in 1937, and National Airlines followed soon after.<sup>2</sup>

Miami was again used for military aviation training before and during World War II. The 21<sup>st</sup> Observation Squadron of the Army Air Service relocated to Miami from Langley Field, Virginia, in 1939, where it conducted coastal patrol and antisubmarine missions. The USACE built the Miami Army Airfield one mile southwest of Pan American Field, where more than 100,000 military pilots were trained before the Army abandoned the field in 1946. In 1945, Dade County purchased Pan American Field after being certified as a Port Authority, and, in 1947, the Dade County Port Authority (DCPA) purchased the former Army airfield to create Miami International Airport. Air travel expanded rapidly in the post-World War II years, and DCPA embarked on ambitious expansion plans in the early 1950s, its airport growing to nearly 3,000 acres with a major new terminal opening in 1959. By 1960, Miami International Airport handled more than four million passengers per year, and there seemed no end to the increasing demand for passenger flights and pilot training.<sup>3</sup>

As early as 1952, the Civil Aeronautics Administration, which was abolished in 1958 in favor of the current Federal Aviation Administration (FAA), initiated plans for a major training airfield in the southeast. Deliberations by FAA continued into the 1960s. In 1964, the Dade County Board of County Commissioners and the Florida State Road Department jointly began a major transportation planning study, the Miami Urban Area Transportation Study (MUATS), with the majority of funds provided by the Department of Housing and Urban Development (HUD). Work on the MUATS continued through the mid-1960s, and a preliminary report was presented to Dade County in 1968. The study predicted that Miami International Airport would be unable to serve all the air traffic projected for 1985 with the existing facilities. The report placed the same importance on the ability of airports to handle ground transportation as it did on the capacity of the airport itself and urged development of high-speed rail connections to allow people to travel to and from both new and enlarged existing airports.<sup>4</sup>

The anticipated future needs of Miami and Dade County for airport capacity and the FAA search for a new flight training facility coincided in April 1966, when FAA, the Air Transport Association, and DCPA announced the location of what the MUATS referred to as the “New Transition Training Supplemental Airport” in western Dade County and eastern Monroe County. Its initial purpose was to alleviate the need for additional flight training facilities in south Florida. Nearly a year later, in February 1967, DCPA Director Alan Stewart announced plans to build a supplemental airport at that location adjacent to the northern boundary of Everglades

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<sup>2</sup> “History of Miami International Airport,” publication by Miami International Airport, c. 2019; <http://www.miami-airport.com/library/pdfdoc/MIA%20History%20Book%202020%20small.pdf>. See also Kathryn Rinehart, “Naval Aviation in Florida,” in “Florida in World War I,” online publication edited by Barbara Gannon, University of Central Florida, February 9, 2017; <https://floridawwi.cah.ucf.edu/?p=342>.

<sup>3</sup> “History of Miami International Airport.”

<sup>4</sup> *Miami Urban Area Transportation Study, Status Report, March 1968* (Staff Report to Dade County Board of County Commissioners), March 1968, available at <http://www.miamidadetpo.org/library/reports/historical/muats-1985-status-report-book1-1968-03.pdf>. See also Robert S. Gilmour and John A. McCauley, “Environmental Preservation and Politics: The Significance of ‘Everglades Jetport,’” *Political Science Quarterly*, vol. 90, no. 4 (Winter 1975-1976), 719-729.

National Park and within Florida Flood Control District (FCD) No. 3. The DCPA failed to consult with FCD, however, and FCD quickly refused to issue a permit for the project. In response, DCPA sought additional sites; seventeen potential locations were identified, but all except one were located too close to urban populations, which would have prompted protests from residents. Instead, DCPA selected an area in Dade and Collier Counties. The new “jetport” announced in November 1967 would cover thirty-nine square miles six miles north of the Everglades and within Big Cypress Swamp (Figure 3).<sup>5</sup>

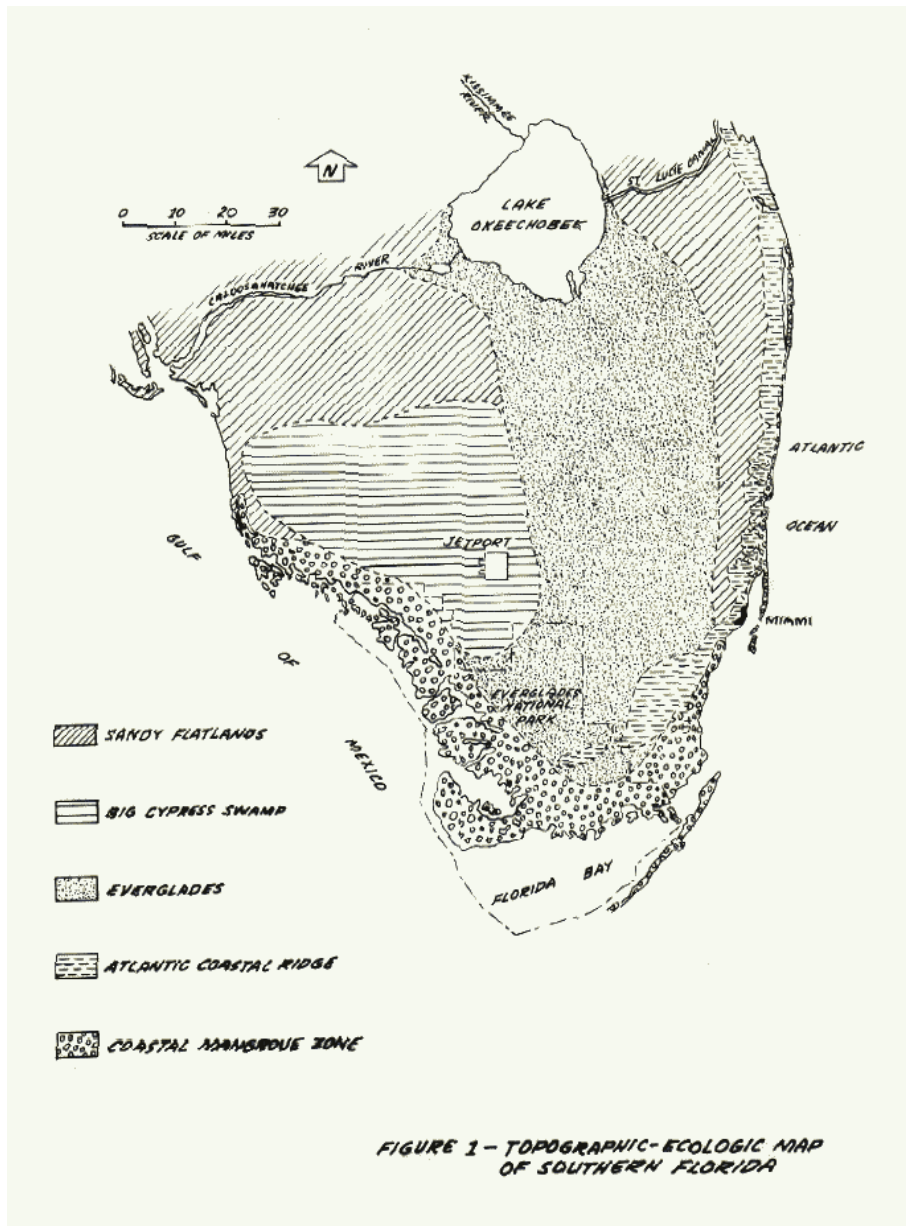


Figure 3. Diagram from Jetport EIS (1969) showing the location of the jetport within Big Cypress Swamp.

<sup>5</sup> Gilmour and McCauley, 723; Jean George, “How the ‘New Vigilantes’ Saved the Everglades,” *Family Weekly* insert in *Sarasota Herald-Tribune*, July 5, 1970, 111.

The DCPA quickly lined up the support of local political and business leaders, which helped to garner \$500,000 in funding from FAA, and the agency also secured a \$14 million bond issue to fund initial construction.<sup>6</sup> Any opposition to the proposed jetport, which was approximately six times the size of LaGuardia Airport in New York City, was small, local, and easily controlled. In September 1968, less than a year after first announcing the project, DCPA broke ground on the new project. Sarasota's leading newspaper, the *Herald-Tribune*, manifested the sense of optimism that the new jetport presaged in reporting on the ground-breaking: a blast of dynamite signaled "the start of construction of a jetport its builders expect to become the mightiest of the supersonic age of air travel. Embracing 38 [sic] square miles of still-primitive hunting grounds of the Miccosukee tribe of Seminole Indians, the port is so big that the Los Angeles, San Francisco and Washington international airports all could be fitted into it." The runways and facilities were so vast, the article continued, that the jetport need not be constrained to just airplanes, "and its designers even are planning forward to the era of space travel. 'We've got plenty of room out there for gantries,'" according to the director of DCPA. Transportation to and from the new jetport would be by way of a proposed extension of Interstate 75 from Tampa to Miami, along with an electric railway and a hovercraft between the jetport and Miami.<sup>7</sup>

The DCPA and its supporters clearly assumed that any opposition to the vast jetport would remain muted and in the background. An editorial in the Panama City newspaper in October 1968 summed up the approach of the jetport's supporters while acknowledging the costs. After citing the enormous scale of the jetport, which was to be the size of at least four other major U.S. airports combined, with two parallel runways each extending six miles to handle what was expected to be ever-larger airplanes and supersonic jets, the editors fixed their eyes on any potential opposition:

Perhaps there are some who fail to achieve immediate excitement—may even cringe a little—at adjectives like 'greatest,' 'biggest,' 'most advanced,' who may think more about 24,320 acres of irreplaceable [sic] Everglades that are doomed to go under concrete and combustion engines and less about the fantastic economic potential of such an airport. If so, they had better admit they are growing old. The world belongs to younger men, who will be getting to Florida and everywhere else faster and in grander style than ever in history—although they may be finding less and less to see when they get there.<sup>8</sup>

### ***The Emergence of a Conservation Opposition***

Although NPS had objected to the proposed jetport, its complaints were easily ignored. Franklin Adams, a long-time conservationist, educator, and guide in south Florida, recalled that the odds were stacked in favor of the jetport by the time that he and others became aware of the DCPA plans, given the lack of influence held by the NPS.

The rails had been greased, and they [DCPA] owned the property already. We really didn't think we were going to stop it. And we had a devil of a time getting

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<sup>6</sup> George, 112.

<sup>7</sup> "Biggest Jetport of Supersonic Age Under Way in Everglades," *The Herald-Tribune* (Sarasota and Manatee Counties, FL), September 19, 1968, 1.

<sup>8</sup> "Florida's Super Airport," *Panama City Herald*, October 8, 1968, 4.

the federal government involved in doing anything about it themselves, the National Park Service. They were just very, very cautious... They were very reticent and we used to be really frustrated with them sometimes.”<sup>9</sup>

Instead, widespread opposition to the jetport was initiated by FCD Chairman Robert Padrick. First told that the jetport would be served only by a small road, Padrick soon discovered that a much larger scale of construction was planned: as much as eighty square miles of paved roads that would directly impact the FCD conservation area. Padrick was also concerned for the safety of a pipeline that would deliver fuel to the jetport from Miami. Rather than confront DCPA on his own, however, Padrick wrote to approximately one hundred leaders of public and private conservation organizations throughout the nation. The prominent Everglades activist Joe Browder, a former television reporter and producer and by then on the staff of the Florida Audubon Society, recalled that “It was Bob Padrick that sounded the alarm that got us to take action.”<sup>10</sup>

In January 1969, as supportive responses to Padrick’s letters were coming in, Padrick also met with Nathaniel Reed, Chairman of the Governor’s Commission on Air and Water Pollution Control. Reed had not been aware of the jetport project, and, after an aerial tour of the construction area with Padrick, he arranged a meeting in February 1969 with 150 federal, state, and private conservationists who submitted questions in advance. The DCPA rebuffed all questions and refused to stop construction on the jetport.<sup>11</sup> At the same time, in early February, Everglades National Park Superintendent John C. Rafferty spoke to the annual Florida Audubon Society convention in Fort Lauderdale, explaining that, in addition to the potential destruction of land in the Everglades, the new jetport created the risk of fuel being jettisoned, and that the “thousands of acres of cement runways, screaming jet engines and sonic booms,” along with the eventual drainage and subdivision of Big Cypress Swamp, could lead to the devastation of the Everglades.<sup>12</sup>

By late winter of 1969, the scale of opposition to the jetport became apparent. In the wake of the meeting between the nation’s leading conservationists and DCPA, national newspapers, including the *New York Times*, began to report on the story and the attitude of DCPA.<sup>13</sup> The response was overwhelming. Twenty-four thousand letters from around the world were delivered to Florida Governor Claude Kirk and Secretary of the Interior Walter Hickel, and local and state newspapers began to run stories on the issue. In April 1969, for example, the *Herald Tribune* in Sarasota picked up an Associated Press story about national conservationists rising in opposition to the jetport. The article cited the head of the National Parks Association who discussed the likelihood of air and water pollution arising from the jetport and that “the noise would be intolerable for animals and people.”<sup>14</sup> The national coalition that quickly formed in opposition to the jetport in the spring of 1969 was mirrored by a series of local and national organizations that emerged to fight the jetport and protect Florida’s environment. The Friends of

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<sup>9</sup> Franklin Adams, oral history interview, November 8, 1997; South Florida Collections Management Center, Catalog No. BICY 9763.

<sup>10</sup> Joe Browder, oral history interview, December 7, 2007, collections of South Florida Collections Management Center, Catalog No. EVER 56622.

<sup>11</sup> George, 112.

<sup>12</sup> “Everglades Destruction Going On at a Fast Pace,” *Herald-Tribune* (Sarasota, FL), February 2, 1969, 1.

<sup>13</sup> Gilmour and McCauley, 725.

<sup>14</sup> “Conservation Group Opposes Huge Jetport West of Miami,” *Herald-Tribune* (Sarasota, FL), April 24, 1969, 18.

the Everglades was founded in early 1969 by Marjory Stoneman Douglas, a prominent and long-time fixture in Miami's literary and political life who, in 1947, wrote the influential *The Everglades: River of Grass*. Douglas was persuaded to form the organization when Judy Wilson, an assistant to Joe Browder at the Florida Audubon Society, approached her in a grocery store. Browder was already actively involved in opposition to the jetport. Following a meeting with Browder, Marjory Stoneman Douglas organized the Friends of the Everglades as a private, non-profit membership-based organization, initially with the intent of fighting the jetport as a way of protecting the Everglades.<sup>15</sup> At the same time, the Everglades Coalition was created by National Parks Association president Anthony Wayne Smith and National Audubon Society president Elvis Stahr. The Everglades Coalition consisted of twenty-three national conservation and labor organizations dedicated to saving the Everglades by working against the jetport. Later in 1969, another conservation organization, Conservation 70s, was organized as a coalition of conservation groups focused on conservation legislation throughout the state for a range of environmental issues in addition to the jetport project.<sup>16</sup>

With this kind of rapid attention at the local, state, and national levels, and with the growing importance of environmental concerns throughout the nation, the Nixon White House soon became involved. By April 1969, members of those who would soon form the Everglades Coalition had begun lobbying Secretary of Transportation John A. Volpe, whose department was then considering routing the proposed extension of Interstate 75 past the jetport, to call a halt to road construction through the Everglades.<sup>17</sup> In June 1969, Senator Henry M. "Scoop" Jackson (D-WA), Chairman of the Senate Interior and Insular Affairs Committee and a vigorous environmental advocate, sided with jetport opposition and called the committee into session to investigate south Florida's water problems. Despite the growing national attention the jetport was drawing, many opponents of the jetport recognized the need for hard scientific evidence regarding the impact that its construction would have. As Joe Browder recalled, "one of the more important elements that made the Everglades Jetport issue work, and work in a way that helped the Everglades National Park in broad ways, in addition to helping Everglades National Park by restoring Big Cypress to the national park system [sic] was that we were forced to look for good science and big science to defend the Everglades and the Big Cypress against the Jetport."<sup>18</sup>

Although passage of the National Environmental Policy Act (NEPA) was still nearly a year away, in the early summer of 1969, the Department of the Interior began work on what was essentially an Environmental Impact Statement (EIS) of the jetport. As Browder recalled, Senator "Scoop" Jackson, who was the lead sponsor for NEPA, "was interested in NEPA as a tool, not so much to stop development, but to let the federal government understand what it was doing, and Everglades was one of his case histories." With two federal agencies, the Department of Transportation and NPS, taking a different approach to the jetport, Browder recalled, what would become the NEPA process allowed the federal government to reconcile the differences: "I think the evolution of the National Environmental Policy Act is one of the frequently overlooked

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<sup>15</sup> Browder, oral history interview, December 7, 2007.

<sup>16</sup> *Panama City News*, November 18, 1969, 2.

<sup>17</sup> *Ibid.*

<sup>18</sup> Browder, oral history interview, December 7, 2007. Franklin Adams recounted a similar story in his 1997 oral history interview.

issues that helped bring more congressional attention to the Everglades.”<sup>19</sup> Led by accomplished hydrologist and geomorphologist Luna B. Leopold of the United States Geological Survey (USGS), the EIS was one of three studies conducted during 1969.<sup>20</sup> Of the other two, one was conducted by the National Academy of Sciences, and one was led by former Secretary of the Interior Stewart Udall with funding provided by DCPA. The study by the National Academy of Sciences argued that full development of the jetport posed a grave danger to the Everglades, but, if the jetport served only as a training facility, the risks would be acceptable. The Udall report, meanwhile, argued that the jetport could be safely developed if it had no hangars, terminals, or parking, and instead relied on mass transit directly from Miami International Airport. This report was quickly derided by conservationists as unrealistic.<sup>21</sup>

The Department of the Interior’s EIS was, by far, the most critical of the jetport and minced no words in its assessment. The proposed jetport to be located in Big Cypress Swamp, according to the opening sentence of its management summary, “will lead to land drainage and development for agriculture, industry, housing, transportation, and services in the Big Cypress Swamp which will inexorably destroy the south Florida ecosystem and thus the Everglades National Park.”<sup>22</sup> The authors of the EIS consulted with local environmental professionals to understand the potential scope of impacts that would result from the proposed three stages of the jetport’s development: a flight training facility, a cargo facility, and, finally, a full commercial airport. Although the EIS deliberately did not include specific recommendations, the litany of expected devastating effects was a type of recommendation. The authors of the EIS were aware that they were embarking on a new approach to evaluating proposed developments. The report, they hoped, by considering losses and gains to the environment rather than to the economy and by taking into consideration the likely long-range impacts, would “point a direction of thinking which might also be used when considering developments of this magnitude in other areas.” “The relationship of the airport to the Everglades ecosystem,” the report continued, “is a problem typical of the impingement of technological development on special environmental features.”<sup>23</sup>

The EIS provides an extensive overview of the ecology of the Everglades and Big Cypress Swamp. Although including discussions of plant and animal life, the focus was on water. Water is the fundamental component of the entire south Florida ecosystem, linking the Everglades and Big Cypress Swamp and defining the types of flora and fauna found throughout them. Observing that “the Big Cypress may well be thought of as an aquatic rather than a terrestrial environment,” the EIS concludes that “The most important fact about the Big Cypress is that it is an integral part of the biological functioning of south Florida’s ecosystem.”<sup>24</sup> Not just the quantity of water is important to this ecosystem, but its timing, what the EIS refers to as the

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<sup>19</sup> Ibid.

<sup>20</sup> An accomplished scientist on his own merits, Leopold was the son of Aldo Leopold, one of the nation’s leading foresters and environmentalists through the early and mid-twentieth century, a prolific author and professor of wildlife management at the University of Wisconsin. Browder, in his oral history interview, argues that, while Leopold directed the study, the prominent south Florida ecologist Arthur Marshall took on the primary role of coordinating the several scientists who conducted the study.

<sup>21</sup> George, 112.

<sup>22</sup> *Environmental Impact of the Big Cypress Swamp Jetport*, United States Department of the Interior, September 1969, 1.

<sup>23</sup> Ibid., 11.

<sup>24</sup> Ibid.

hydroperiod, those parts of the year when water covers much of the land. With the nearly imperceptible slope from Lake Okeechobee to the south and southwest, this hydroperiod and the slow passage of water toward the Gulf of Mexico critically influences the entire ecosystem. A balance of wet and dry periods of the year, the EIS observes, sustains the complete development of the overall ecosystem: the hydroperiod allowing aquatic species to flourish, and the dry periods allowing terrestrial plants to thrive, all to maintain the balance of species. “This seasonal wet-dry cycle,” the EIS concludes, “must coincide with the natural reproductive cycles of the predatory fishes, amphibians, reptiles, birds, and mammals that feed upon small aquatic animals. Otherwise, the reproduction of these larger animals at the top of the food chains will fail.”<sup>25</sup>

The proposed jetport would threaten this seasonal cycle of wet and dry periods, according to the EIS. The EIS provided a thorough discussion of the plans for the jetport drawn primarily from a 1968 report by DCPA. At the time that the EIS was being written in the summer of 1969, one runway had already been built. Designed for training flights, it was 10,500 feet long, running east-west approximately one mile north of the jetport’s southern border. A second training runway was planned but not yet under construction. This runway was to be parallel to, and the same length as, the first but one mile to the north. The EIS outlined the pressures that DCPA was facing from rapid growth, not just in air travel but in the needs for training flights, which then accounted for approximately forty percent of all take-offs and landings at Miami International Airport. While acknowledging the substantial needs of DCPA for additional space, much of the EIS was taken up with the catastrophic environmental impacts that would result from constructing the jetport in its present proposed location.

The authors of the EIS noted direct impacts that would result from the jetport itself, including severe air, water, and noise pollution from aircraft, the blockage of water as a result of such an enormous area being paved, the rise in bird strikes by airplanes, and the displacement of the Miccosukee Indians. Even more significant, however, were the changes that the new airport would bring with it, what the EIS referred to as “Collateral Developments” and now generally identified as cumulative impacts. This included new developments that would emerge either to serve the needs of travelers and jetport workers or to take advantage of their presence. As the EIS observed, “large aviation facilities almost universally induce residential, commercial, and industrial growth around them.” The results of such development would likely be even worse than the results of the jetport itself, as increased drainage of inundated lands would be required to provide land for new buildings, the flow of water would be further blocked by roads, and air and water pollution would increase substantially. The DCPA had promised a limited, unspecified amount of regulation of development in a three-mile zone around the jetport, but the EIS noted that development “beyond the three-mile zone is a matter of prime significance to Big Cypress and the dependent ecosystem.”<sup>26</sup> The EIS discussed the possibility of land-use zoning in the region and concluded that existing local, regional, and state regulations were not sufficiently strong to protect Big Cypress Swamp.<sup>27</sup>

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<sup>25</sup> Ibid., 30.

<sup>26</sup> Ibid., 51-52.

<sup>27</sup> Ibid., 152.



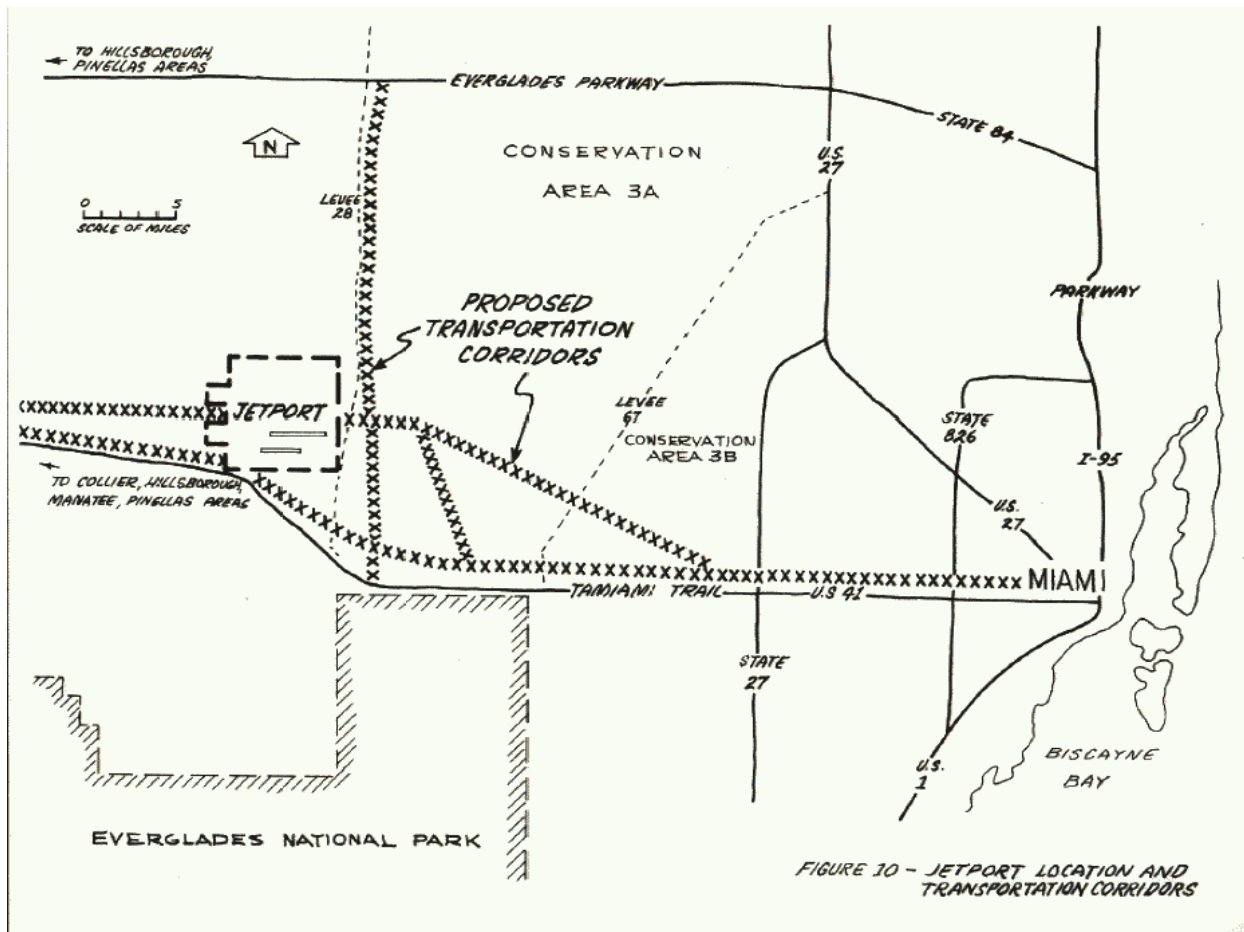


Figure 4. Figure from Jetport EIS (1969) showing proposed transportation corridors to the jetport.

In addition to probable development of the surrounding area, the EIS considered impacts from transportation (Figure 4). Although the most direct route would be to cut across FCD Conservation Area 3A, which lies between Miami and the proposed jetport, this would face strong opposition from FCD. Instead, the more likely transportation corridor would be along the Tamiami Trail, with a combination of cars and a proposed, innovative, high-speed bus system intended to bring millions of people to the jetport every year. In addition, plans for the jetport's transportation needs included providing a right-of-way for the proposed extension of Interstate 75 from Tampa to Miami.<sup>28</sup>

In its conclusion, the EIS urged an understanding of likely impacts from the jetport on the level of the entire ecosystem rather than on any particular species of plant or animal that might be threatened. Consistently looking beyond the jetport itself to the broader developments that it would necessarily entail, the EIS argued that collateral effects of all three phases of development—training, cargo handling, and full commercial airport—“will lead inexorably to urbanization and drainage which would destroy the ecosystem.”<sup>29</sup> Its effect on the nature of the water would be devastating:

<sup>28</sup> Ibid., 48-49.

<sup>29</sup> Ibid., 152.

Any resemblance of the new hydroperiod of the entire Big Cypress drainage to the present one would be accidental and incidental. Thus, the single most significant element of the natural, complex, and highly diverse environment—the hydroperiod—would be lost. The intersection of water, plants, and animals would bear little resemblance to its present condition and the south Florida ecosystem as it presently functions would be destroyed.”<sup>30</sup>

The EIS was released in September 1969 and quickly provided support to the growing coalition of environmentalists who opposed the jetport. It was a pathbreaking document, setting the standard for future Environmental Impact Statements required by NEPA starting in 1970. Russell Train, President Nixon’s principal environmental adviser and the first chairman of the Council on Environmental Quality, argued that the jetport EIS “represented a pioneer effort to analyze a proposed major public action from a broadly ecological standpoint.”<sup>31</sup> In the fall of 1969, following the release of the EIS, the Everglades Coalition put increased pressure on Secretary of Transportation John Volpe to disapprove the jetport under the authority of the Mass Transportation Act of 1964 (P.L. 88-366), Section 11, which allows the Secretary of Transportation to take into consideration the degree to which a project has been designed to prevent and control air pollution. In November 1969, the scheduled opening of the jetport was postponed pending a meeting among Secretary of the Interior Hickel, Secretary of Transportation Volpe, and Governor Kirk.<sup>32</sup> In the meeting, Governor Kirk requested that Secretary of the Interior Hickel conduct an additional water resource study of Big Cypress Swamp in order to understand “the implications of the potential destruction of this major watershed for the state and the national park.”<sup>33</sup>

In December 1969, however, Secretary of Transportation Volpe approved the first phase of the jetport, consisting of the single runway that had already been constructed. In contrast, Secretary of the Interior Walter Hickel strongly opposed the jetport. With the pertinent members of his cabinet so at odds, President Richard M. Nixon decided to intervene.<sup>34</sup> Influenced in large part by John Ehrlichman, the Assistant to the President for Domestic Affairs and a former land-use attorney, President Nixon sided with the opponents of the jetport in wishing to halt any further approvals.<sup>35</sup> Seeking to avoid seeming to be heavy-handed, however, he directed Ehrlichman to broker a deal among the Departments of Transportation and the Interior and DCPA. The deal, which was announced in January 1970, forbade all new construction at the jetport but allowed training flights to continue from the one runway that had already been built until a new site could be found. The area surrounding the existing jetport would be subject to environmental monitoring. While President Nixon hailed the agreement as “an outstanding victory for conservationists,” the Everglades Coalition was more cautiously optimistic. Although obviously pleased to have the immediate threat of the jetport eliminated, the Coalition realized that more needed to be done to protect the Everglades and Big Cypress Swamp from future developments. New real estate development in Big Cypress Swamp, and the drainage that came

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<sup>30</sup> Ibid., 9.

<sup>31</sup> Train, “The Environmental Record of the Nixon Administration,” 187.

<sup>32</sup> “Everglades Jetport Opening Delayed Until Wednesday,” *Herald-Tribune* (Sarasota, FL), November 6, 1969, 14.

<sup>33</sup> “Kirk Hints Implications in Federal Swamp Study,” *Herald-Tribune* (Sarasota, FL), November 8, 1969, 4.

<sup>34</sup> Gilmour and McCauley, 730-731.

<sup>35</sup> Train stated that “it was Ehrlichman who led White House support to Interior in the controversy over the Miami jetport,” “The Environmental Record of the Nixon Administration,” 187.

with it, would have to stop, the Everglades Coalition argued, demanding that “the entire swamp be acquired and taken into protective public ownership to provide pure water for the park and the gulf coast communities”<sup>36</sup> This suggestion of public ownership of Big Cypress Swamp, however, remained at the fringes of discussion for the time being.

### ***Protecting Big Cypress Swamp: Initial Studies and Oil Exploration***

In a sign of the strength and intensity of concerns for the environment in south Florida, the protection of Big Cypress Swamp remained an active topic for state and federal political leaders after the initial deal regarding the jetport was sealed in January 1970. In May of that year, a follow-up agreement among the Departments of Transportation and the Interior, Governor Kirk, and DCPA stipulated that the Department of the Interior would assist in selecting an alternate location for the Miami Dade jetport while also conducting an ecological study of Big Cypress Swamp. Helmed by long-time NPS executive Russell F. Gibbs, NPS would lead a special task force based in Miami and consisting of representatives from several Interior agencies including the Bureau of Commercial Fisheries, the Federal Water Quality Administration, the Bureau of Sport Fisheries and Wildlife, the U.S. Geological Survey, the Bureau of Outdoor Recreation, and the Bureau of Indian Affairs. Task force staff would be based in Miami, but the director of each of these agencies would meet weekly in Washington, DC “to stay on top of events in the burgeoning battle to hold the line on environmental quality in South Florida.”<sup>37</sup>

The study got under way quickly, and the report was in production by October 1970. The task force’s charge, as required under the agreement brokered by Ehrlichman in January, was to provide guidance for future land use in Big Cypress Swamp. The intent was to consider four aspects related to potential land uses: the government and ecological systems that merited protection, the relationship between Big Cypress Swamp and the Everglades, the relationship between Big Cypress Swamp and water supplies in south Florida, and the marine environment of the adjacent estuaries that received water from Big Cypress Swamp.<sup>38</sup> The goal, according to an NPS spokesperson, was to determine how much area was needed to protect both the Everglades and Big Cypress Swamp. There had been no decision yet regarding a federal or state purchase of any portion of Big Cypress Swamp, but the issue had become a live one.<sup>39</sup> Several months before, in July 1970, Governor Kirk spoke to the first anniversary conference of Conservation 70s in Orlando, giving “what was probably the strongest pro-conservationist speech since he took office.” Kirk was adamant that the State of Florida and/or the federal government should buy Big Cypress Swamp for public use. His aim for this action, he claimed, was to protect Big Cypress Swamp for its own sake and to protect the water supply of south Florida. “We simply

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<sup>36</sup> Both President Nixon and a spokesperson for the Everglades Coalition in this paragraph were quoted in “Conservation Groups Cheer Ban on Jetport Construction,” *Naples Daily News*, January 18, 1970, 1; see also Gilmour and McCauley, 732; and “Interior Department to Open Miami Ecological Field Office,” *Herald-Tribune* (Sarasota, FL), June 2, 1970, 23.

<sup>37</sup> “Environment Study Set for ‘Glades, Jetport,” *News-Tribune* (Fort Pierce, FL), May 27, 1970, 2; see also “Interior Department to Open Miami Ecological Field Office,” *Herald-Tribune* (Sarasota, FL), June 2, 1970, 23.

<sup>38</sup> “Big Cypress Swamp Study Under Way,” *Naples Daily News*, October 11, 1970, p. 1.

<sup>39</sup> “Federal Study of Big Cypress Wilderness is Begun,” *News-Tribune* (Fort Pierce, FL), October 14, 1970, 21.

cannot afford to lose this watershed,” he argued; “If we do, all of Southwest [sic] Florida will dry up.”<sup>40</sup>

Although several members of the Collier County Commission were opposed to the federal acquisition of Big Cypress Swamp for fear of lost taxes and concerns for spreading federal control over south Florida, the tide was turning in favor of protection.<sup>41</sup> Secretary of the Interior Rogers Morton, who succeeded Walter Hickel, admitted the possibility of federal acquisition during a fact-finding trip to south Florida in February 1971, though he remained uncommitted. During the period of waiting in early 1971, however, Big Cypress Swamp remained in the news because of oil. After the Humble Oil Company successfully drilled for oil at Sunniland in Collier County in 1943, as discussed in Chapter 1, more than 200 wildcat wells were drilled with no results until 1964, when the Sun Oil Company (later known as Sunoco) struck oil approximately twenty miles south of Sunniland. The company quickly drilled another fifty-five wells, striking oil at twenty of them. By the late 1960s, Sunoco’s wells were producing approximately 3,000 barrels of oil per day, while the original Sunniland well was producing approximately 1,500 barrel per day.<sup>42</sup> Although the nation’s oil crisis of 1973 remained in the future, the interest in American sources of oil was already high. In early 1971, Phillips Petroleum Company hoped to enter the region, and, though it had an oil lease in Big Cypress, it needed approval from the State Cabinet to begin drilling.<sup>43</sup> Local supporters of oil drilling sought to reassure state political leaders that drilling would not harm the environment, but advisers to Governor Reubin Askew, who had defeated Claude Kirk in the elections in November 1970, remained nearly as opposed to oil exploration and drilling in Big Cypress Swamp as those of his predecessor had been. The threat from oil wells, as described by George Gardner, assistant to Chairman of the State Pollution Control Commission Nathaniel Reed, was less from the well itself than from the access roads to the wells. As Gardner explained, “any causeways or access roads could potentially interrupt the natural flow of water in the basin.”<sup>44</sup>

Debates over the Phillips Petroleum drilling permit continued through the spring of 1971. Conservationists railed against the irreparable damage that drilling would cause to Big Cypress Swamp, while oil industry experts argued that proper safeguards would be in place for drilling and for the necessary access roads. The decision fell to the Cabinet and Governor Askew and soon rested on the question of whether the State of Florida could legally deny the permit request on environmental grounds. With a decision expected in late June, the Cabinet postponed taking a vote until State Attorney General Robert Shevin could provide a legal opinion on the matter. Shevin had previously spoken against the possibility of additional drilling in Big Cypress Swamp but not in his capacity as Attorney General. Askew’s position was, “The stronger the opinion

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<sup>40</sup> “Kirk to Determine State Ownership of Mineral Rights,” *Sarasota Herald-Tribune*, July 12, 1970, 2A.

<sup>41</sup> “Cool Reaction to Swamp Buy,” *Naples Daily News*, October 13, 1970, 1.

<sup>42</sup> “Oil Men Still Hoping for Another ‘Hit’,” *Naples Daily News*, March 17, 1970.

<sup>43</sup> From the post-Civil War years into the late 1990s, the Florida cabinet consisted of the six elected positions of Attorney General, Commissioner of Agriculture, Commissioner of Education, Comptroller, Secretary of State, and the State Treasurer, each elected independently and with an equal vote to the Governor in making executive decisions. In 1998, the State Cabinet was reduced to three elected positions: Attorney General, Commissioner of Agriculture, and the Chief Financial Officer.

<sup>44</sup> “Florida Politics,” *News-Tribune* (Fort Pierce, FL), March 10, 1971, 19; “Big Cypress Oil Drill Permit Sought,” *Sarasota Herald-Tribune*, March 11, 1971, 51.

would be then the stronger my inclination would be to deny applications for drilling.”<sup>45</sup> Despite his personal opinions, however, Shevlin announced his finding on July 6, 1971 that, while the Cabinet could legally deny a permit action or promulgate specific standards for site work, it could not deny an oil drilling permit solely because of the potential impact on water flow.<sup>46</sup> In response to Shevlin’s finding, the Cabinet the next day issued a permit to drill for oil to Phillips Petroleum but with the condition that Phillips could not begin work until the federal government made a decision as to whether to acquire land in Big Cypress Swamp. This settlement, which conservationists hailed as a victory, had been suggested by Governor Askew, who recognized the political reality of the situation: “The governor said outright denial of the permit would likely result in quick court action with a possible decision allowing Phillips to begin immediate drilling. The conditioned granting allows time to develop plans for protection of the area.” Because Phillips Petroleum’s lease required that any drilling must be complete by October 15, 1971, the delay was, in effect, a denial.<sup>47</sup>

### ***Legislative History: Federal Acquisition of Big Cypress Swamp***

Under pressure from Phillips Petroleum, however, the Cabinet shifted its position later in July and set a period of six weeks before it could begin any drilling work. Even this shortened delay, however, gave conservationists time to encourage the federal acquisition of Big Cypress Swamp. Later in July 1971, Governor Askew announced at a Cabinet meeting that he had written to Secretary of the Interior Morton recommending that the federal government purchase 547,000 acres together with the Ten Thousand Islands chain that lies immediately off the state’s southwest coast, and the State would begin negotiations to purchase the Fakahatchee Strand within Big Cypress Swamp.<sup>48</sup> Although the Cabinet allowed Phillips Petroleum the opportunity to begin drilling in early September, the company was unable to take advantage of the offer due to the deadline of October for drilling to be complete. In the meantime, efforts to protect Big Cypress Swamp continued. In early August 1971, at the request of Governor Askew, Representative Claude Pepper (D-FL) introduced legislation to authorize the Department of the Interior to purchase Big Cypress Swamp and Ten Thousand Islands, but it failed to gain support. A week later, the Collier County Board of Commissioners reinstated a one-year moratorium on development in Big Cypress Swamp, halting all construction except single-family homes and also prohibiting any zoning changes for the same period. In early November 1971, Attorney General Shevlin, in the absence of movement by the federal government, urged that the State of Florida purchase all available land in Big Cypress Swamp.<sup>49</sup>

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<sup>45</sup> “Governor Raps ‘Inadequacy’ of the New Florida Budget,” *Herald-Tribune* (Sarasota, FL), July 2, 1971, 3A; see also “Cabinet Delays Oil Permit Action,” *Herald-Tribune* (Sarasota, FL), Jun 30, 1971, 18.

<sup>46</sup> “‘State Could Deny Permit’—Shevlin,” *Naples Daily News*, July 6, 1971, 1.

<sup>47</sup> Quote in “Cabinet Okays Drilling Permit,” July 7, 1971, 1; see also “Cabinet Grants Oil Drilling Permit,” *Herald-Tribune* (Sarasota, FL), July 7, 1971, 31.

<sup>48</sup> “Nation Offered Swamp Land as State Ecology Safeguard,” *Playground Daily News* (Fort Walton Beach, FL), July 21, 1971, 3.

<sup>49</sup> “Rep. Pepper Asks Big Cypress Buy,” *Naples Daily News*, August 6, 1971, 2; “Big Cypress Development is Halted,” *Naples Daily News*, August 11, 1971, 3; “Shevlin Advocates Purchasing All Big Cypress Land,” *Naples Daily News*, November 7, 1971, 5.

On November 23, 1971, President Nixon announced his support for proposed legislation to create what was then called the Everglades-Big Cypress National Recreation Area. Senators Henry Jackson (D-WA) and Lawton Chiles (D-FL) co-sponsored legislation in the Senate (S.2465) that authorized federal acquisition of approximately 585,000 acres with a price tag of \$156 million. In his support for the bill, Senator Jackson drew upon arguments made in 1970 by Governor Kirk that Big Cypress Swamp is valuable for its own sake as a unique ecosystem and as vital component necessary to protect the water supply of south Florida. Jackson continued by arguing that the waters of Big Cypress and its runoff also provided exceptional recreational opportunities for such activities as fishing, hunting, hiking, and bird watching. In addition, Big Cypress Swamp also “has taken an integral and vital place in the lives of the Miccosukee and Seminole Indians who reside on or near the watershed.”<sup>50</sup> The process would be fraught with complications, Collier County officials were quick to point out, as there were an estimated 30,000 landowners in Big Cypress Swamp, many of them out of state or even in different countries.

The bill was referred to the Senate Committee on Interior and Insular Affairs, which held a special hearing in Miami on November 30, 1971, regarding the federal purchase of Big Cypress Swamp. In testimony at the hearing, Collier County Manager W.H. Turner pledged cooperation to the several federal agencies that were then conducting studies of the area, including one being conducted by the NPS study team and a broader three-year study of the entire Big Cypress watershed. He tempered his support, however, by encouraging the committee members to wait for all of these studies to be completed before taking any action.<sup>51</sup> Other members of the Collier County Commission who spoke at the hearing repeated their fears of a loss of tax revenue, though offering their support for the purchase if the county were reimbursed for the tax losses. County Manager Turner also urged the committee members to allow the present landowners to maintain their oil and mineral rights, citing the growing number of oil wells that had been opened in the area.<sup>52</sup> Chairman Buffalo Tiger of the Miccosukee Tribe spoke in favor of the bill, though he wanted assurances that his Tribe could continue to live and operate businesses within the federally-acquired area. Other participants in the hearing, however, in particular a group of landowners in Collier County, resorted to boos and catcalls with accusations of “land-grabbing” shouted when Senator Chiles spoke in favor of the bill.<sup>53</sup>

In the weeks following the Senate Committee hearing in Miami, Collier County landowners began organizing resistance to the proposed federal acquisition of Big Cypress Swamp, urging citizens to write to their Congressional representatives and submit petitions. The petition to stop the federal acquisition of Big Cypress continued to gain signatures through early January 1972, with supporters expanding from Collier County north toward Naples. In late January, the East Collier County Landowners’ Improvement Committee prepared a brochure containing a map showing water flow in Big Cypress, claiming that Big Cypress Swamp is

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<sup>50</sup> “‘Glades Rec Area’ Hearing Slated,” *Naples Daily News*, November 15, 1971, 13.

<sup>51</sup> “It Could Take a Few Years to Purchase Big Cypress,” *Naples Daily News*, November 25, 1971, 1.

<sup>52</sup> “Big Cypress Hearing Today,” *Naples Daily News*, November 30, 1971, 1.

<sup>53</sup> “Big Cypress Proponents Booed,” *Naples Daily News*, December 1, 1971, 1.

mostly high and dry land, not a true swamp. The group planned to mail the brochure to every member of Congress and members of the Nixon administration.<sup>54</sup>

The bill to purchase Big Cypress Swamp was re-introduced in the Senate on February 8, 1972, as S.3139. Again proposed by the Nixon administration, the bill to create what was then identified as Big Cypress National Fresh Water Reserve called for federal acquisition of 547,000 acres of privately-owned land and 37,000 acres of publicly-owned land. It was co-sponsored by Senators Chiles and Jackson as before, joined by Senator Edward Gurney (R-FL) and Gordon Allott (R-CO), to emphasize consensus on the need to protect the Big Cypress Swamp ecosystem.<sup>55</sup> Through the winter and early spring of 1972, proponents and opponents of the bill laid out their arguments. Those opposed to the federal acquisition of Big Cypress Swamp focused on what they claimed would be a dramatic loss of tax revenues, more than \$700,000 per year, and on claims that Big Cypress Swamp was not really a swamp but was mostly dry through most of the year and was suitable for residential and recreational development. Many of these opponents to the bill were not actually in favor of development of the area but, instead, wanted to allow private landowners to continue using their land for hunting, fishing, and other recreational activities. Those who supported the measure placed a strong emphasis on water quality and the importance of Big Cypress Swamp for protecting the drinking water in south Florida and for protecting the Everglades.

The Senate Committee on Interior and Insular Affairs, of which Senator Jackson was chairman, referred S.3139 to the Subcommittee on National Parks and Recreation. The subcommittee then held hearings on the bill on April 20 and 21, 1972. On the first day of testimony, Governor Askew supported the bill without reservations, noting the threats from development and explaining the vital role that Big Cypress Swamp plays in south Florida's water supply and in the health of the Everglades. He made five additional recommendations to the committee: outright purchase by the federal government was the most effective way to protect the area; appropriations should be sufficient to make prompt payments to landowners; priority should be given to acquiring those lands immediately north and south of the Tamiami Trail, adjacent to Everglades National Park, and adjacent to the jetport; federal and state governments should work out a cooperative management program that would allow hunting, fishing, and other recreational activities; and the Miccosukee and Seminole Indians should be given the opportunity to participate in the management of the watershed. The subcommittee also heard testimony from Rep. James A. Haley (D-FL), who supported the objective of protecting Big Cypress Swamp and its watershed but was concerned about the size of the proposed federal acquisition and wondered how much land was necessary to afford sufficient protection.<sup>56</sup>

On the second day of testimony, Collier County Manager Turner again stated that the County Commission was not opposed to the legislation, but the loss of tax revenue remained a concern. Turner also repeated his request to wait for the conclusion of the several studies into the

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<sup>54</sup> "Big Cypress Landowners to Meet," *Naples Daily News*, December 15, 1971, 3-A; "Landowners Circulate Petition Opposing Big Cypress Land Buy," *Naples Daily News*, January 28, 1972, 1; "Map to Show Big Cypress Water Flow," *Naples Daily News*, January 30, 1972, 1.

<sup>55</sup> "Bill in Senate Seeking Big Cypress Acquisition," *Herald-Tribune* (Sarasota, FL), February 9, 1972, 27; "Bill for Big Cypress Buy Debuts in Senate," *Naples Daily News*, February 10, 1972, 10.

<sup>56</sup> "Askew, Haley Take Stands on Big Cypress," *Daily Herald-News* (Port Charlotte, FL), April 20, 1972, 1.

ecology of Big Cypress, questioning the degree to which the water from Big Cypress affects the Everglades. Turner also urged “advance planning to decide if the land purchase is for park protection, water preservation or recreation,” and called for land appraisals, protection of oil resources, and repayment of lost taxes.<sup>57</sup> In contrast, the executive director of the Collier County Conservancy, Edward T. LaRoe, speaking on behalf of other local and regional conservation organizations and “just plain concerned citizens,” argued that the studies completed to date showed the vital role that Big Cypress Swamp plays in the south Florida ecosystem. LaRoe also took aim at the claim by the Collier County Commission regarding lost tax revenues. The costs to provide public services to the landowners in Big Cypress, he estimated, nearly offset the tax revenue gained from them. The net loss would be close to \$100,000 per year, less than one percent of the County’s budget, which, in turn, would be almost completely offset by revenues from an increase in tourism.<sup>58</sup> Franklin Adams recalled making similar arguments in public meetings, that “by the time citizens pay for roads and police and fire and drainage and all that infrastructure, it cost you a lot more ultimately in the long run than just to leave it out there.” This argument is more widely accepted now, he claimed, “but back then...people like myself in public meetings...were called communists and socialists.”<sup>59</sup>

The issue lay mostly dormant through the summer of 1972, with proponents and opponents making only occasional public statements. The Senate bill remained in the hands of the Senate Subcommittee on National Parks and Recreation, where the subcommittee chairman, Sen. Alan Bible (D-NV) seemed uninterested in moving it forward. In mid-August, Robert Vernon, director of the Division of Interior Resources for the Florida Department of Natural Resources, made an off-the-cuff comment to a group of community college students, clarifying the amount of water that flowed from Big Cypress into the Everglades. Newspapers in Fort Lauderdale then printed his comment as an expression of opposition to the federal acquisition of Big Cypress Swamp. Vernon vigorously denied the implication, but it created a sense of disunity among Florida officials with regard to the Senate bill.<sup>60</sup> Attorney General Shevlin and Governor Askew continued to assert unity within the state government in support of the Senate bill through September, urging Senator Bible to release the bill from subcommittee. The Senate Subcommittee finally announced hearings on the bill in late September 1972. Before hearing any testimony, however, Rep. Wayne Aspinall (D-CO), chairman of the House Interior Committee, told the Senate Subcommittee that it would be unable to work on the Big Cypress bill before the end of the Congressional session. The subcommittee continued hearing testimony, however, and proponents of the bill appeared to impress the Senators. In particular, Assistant Secretary of the Interior Nathaniel Reed, who had earlier served as conservation adviser to Governor Kirk and Governor Askew, spoke forcefully about the seriousness of the threats that faced the Everglades and Big Cypress Swamp.<sup>61</sup>

In the waning months of 1972, Big Cypress Swamp temporarily ceased to be a vital issue, replaced by renewed discussions regarding the route of the proposed extension of Interstate 75

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<sup>57</sup> “Big Cypress Controversy Still Rages in Washington,” *Naples Daily News*, April 21, 1972, 1.

<sup>58</sup> “Conservationist Speaks Out for Acquisition of Swamp,” *Naples Daily News*, April 23, 1972, 2.

<sup>59</sup> Franklin Adams, oral history interview, November 8, 1997.

<sup>60</sup> “Officials Remarks About Big Cypress Blasted by Shevin,” *Herald-Tribune* (Sarasota, FL), August 15, 1972, 28.

<sup>61</sup> “Big Cypress Water Plans are Deferred,” *Naples Daily News*, September 27, 1972, 26; “Big Cypress Fund Denial Not Discouraging to Staff,” *Naples Daily News*, September 28 1972, 4.



from Tampa to Miami. Conservationists became alarmed that, if the interstate were routed along “Alligator Alley,” the northern of two potential routes that ran through Big Cypress Swamp, rather than following the more southerly Tamiami Trail (U.S. Route 41), costs for land in Big Cypress would escalate to the point that federal purchase of land would not be feasible. Despite this, the year 1973 opened with great promise for the protection of Big Cypress Swamp. Representative Wayne Aspinall, the long-time Democratic Congressman from Colorado, had held the Chairmanship of the powerful House Committee on Interior and Insular Affairs since 1959 with a decidedly pro-development agenda. Aspinall was reluctant to embrace the rapidly-growing environmental movement of the late 1960s, and his defeat in the Colorado Democratic primaries in November 1972 opened the door for a stronger conservationist agenda. In January 1973, Sarasota-based James Haley (D-FL) was named to chair the Committee. Although Haley strongly supported the need to protect the Big Cypress watershed, he was initially uncertain about the need for such a vast area to be acquired; when he embraced the scale of operations, he initially thought that the goal of protecting the watershed could be accomplished primarily through the acquisition of easements rather than through fee ownership.

The environmental movement continued to gain strength throughout the early 1970s, and Haley clearly was a part of this movement, giving additional significance to his appointment as Chairman of the Interior and Insular Affairs Committee. Assistant Secretary of the Interior Reed, speaking in late January, saw a growing future for environmental causes: “In this deepening interest and commitment, I sense fuel for the powerful grassroots support which environmental causes command today.” Even municipal and commercial leaders were coming to understand the importance of environmental issues to the region’s overall development, and, when such leaders “can make us believe that city budgets and wood storks are equally valid environmental indicators, the little old lady in tennis shoes and the hard-nosed municipal comptroller move light years closer together.”<sup>62</sup>

As part of the nation’s growing conservationist mood, protection for Big Cypress Swamp through federal acquisition gained widespread support. The best way to protect this watershed, however, and how it would be managed once in federal ownership, was an extremely complicated issue that remained subject to debate. On the opening day of Congress in 1973, Haley and the entire Florida House delegation co-sponsored a bill “which would authorize federal acquisition of Big Cypress as a national fresh water reserve.”<sup>63</sup> In early February, meanwhile, Senators Chiles and Jackson re-introduced their Big Cypress protection bill, now identified as S.783. In addition, two other bills were introduced in the Senate in early 1973, S.334 and S.920, both of which would create a Big Cypress National Fresh Water Reserve.<sup>64</sup> In February, meanwhile, President Nixon delivered his State of the Union message to Congress in several stages pertaining to different topics. On February 15, in his “State of the Union Message to the Congress on Natural Resources and the Environment,” Nixon included Big Cypress Swamp as one of his top priorities. Referring to it as the Big Cypress National Fresh Water

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<sup>62</sup> Reed, quoted in “Big Cypress Bill Support Pledged by Department Aide,” *Naples Daily News*, January 26, 1973, 5B; see also “Haley to Chair House Interior Panel,” *Herald-Tribune* (Sarasota, FL), January 31, 1972, 27.

<sup>63</sup> “Haley to Chair House Interior Panel.”

<sup>64</sup> Secretary of the Interior “Jack” Horton to Chairman [Senate Committee on Interior and Insular Affairs], March 21, 1974; files of Big Cypress National Preserve, South Florida Collections Management Center (BICY 14605 Coll 00002-003-001-010, Box 2.

Preserve, Nixon urged the creation of a preserve “in order to protect the outstanding wildlife in that area, preserve the water supply of Everglades National Park and provide the Nation with an outstanding recreation area.”<sup>65</sup>

Clouds soon appeared on the horizon, however. Locally, the opposition to federal acquisition continued to gain strength. The widespread concern over outside control and seizure of property coalesced into two groups: the Landowners’ Conservation and Protective Association, based in Miami, and the East Collier County Landowners’ Improvement Committee, headed by realtor and developer Ellis Chism of Miami. The concerns of the members of these groups varied and included a general distrust of the federal government, a belief that local control would better protect resources, and a conviction that the federal government sought to benefit either oil companies or large outside developers on the perimeter of the federal acquisition area by prohibiting local development within Big Cypress that could serve as competition.<sup>66</sup>

A second threat emerged from the White House. Just weeks after including protection for Big Cypress as one of its top priorities, the Nixon administration announced in late February that any funding for Big Cypress would have to wait until at least 1974, perhaps 1975. While strong on environmental protection, Nixon was also facing an economic recession accompanied by quickly rising inflation and sought to restrain federal spending. Senator Chiles expressed his dismay at the announcement, claiming that “It removes the sense of urgency if you know even if you pass the bill, there won’t be any money to fund it.” Senator Edward Gurney (R-FL), however, saw good news in the announcement, saying that it signaled the administration’s commitment to protect Big Cypress. In the meantime, he advised, “the state of Florida will be asked to take appropriate steps to protect the area from commercial development until acquisition begins.”<sup>67</sup>

Governor Reubin Askew took up the challenge which the Nixon White House posed. Late in March 1973, Senator Gurney announced that Governor Askew and President Nixon had reached an agreement: if the State of Florida would put up some of its own money, the White House would seek speedy federal funding for the purchase of land in Big Cypress Swamp. At the same time, Governor Askew urged the Florida legislature to appropriate \$40 million to purchase land in Big Cypress. Askew combined this request with his decision to use the northern Alligator Alley corridor for the extension of Interstate 75 from Tampa to Miami, a move that disappointed conservationists who feared that it would raise the price of acquiring land, and landowners who disliked the limitations on access to their property that would come with the replacement of the

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<sup>65</sup> Richard M. Nixon, “State of the Union Message to Congress on Natural Resources and the Environment,” February 15, 1973; <https://www.presidency.ucsb.edu/documents/state-the-union-message-the-congress-natural-resources-and-the-environment>.

<sup>66</sup> In his November 8, 1997 oral history interview, Franklin Adams recalled that “A lot of people from Everglades City said the government wanted it [land in Big Cypress] because there was a[n oil] well here in the Big Cypress. They were going to...be bringing tankers into the Barron River and we were going to have an oil port here, and I mean just, ludicrous things, but people believed it. People got all stirred up.”

<sup>67</sup> “Cypress Swamp Buy Postponed,” *Naples Daily News*, February 23, 1973, 1.

state highway with a limited-access interstate. The Collier County Commission, however, lauded the move.<sup>68</sup>

When the Florida legislature convened in early April 1973, Governor Askew presented a broad, reformist agenda that included a strong conservationist component. With regard to Big Cypress Swamp, Askew proposed that, in addition to providing \$40 million to begin purchasing land in Big Cypress, the legislature designate Big Cypress Swamp as an Area of Critical State Concern, which would allow the state to establish additional land-use regulations.<sup>69</sup> A hearing on the proposed legislation was held at the Collier County Courthouse in mid-April, drawing supporters who applauded the Governor's support for protecting the Big Cypress watershed and opponents who protested the loss of property rights and who "argued against proposed federal and state takeover of their lands for conservation purposes." Many of these opponents repeated their claim that Big Cypress Swamp "is not a swamp at all," and that vast portions of the area remained dry throughout the year and support logging and agriculture. The Collier County Commission, meanwhile, adopted a resolution that supported federal and state acquisition of land in Big Cypress Swamp. In doing so, the County Commissioners also requested that existing dwellings be allowed to remain for the life of their owners (not to exceed twenty-one years) and that the county be compensated for lost ad valorem (property transaction) taxes.<sup>70</sup>

As the bill was being discussed in committee, representatives of the Miccosukee and Seminole Tribes expressed concern over their loss of rights regarding their traditional uses of Big Cypress Swamp and the businesses they had established to take advantage of the tourist trade. In response, the bill was drafted to allow the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to "continue their usual and customary use and occupancy of lands and waters within the Big Cypress Area, including hunting, fishing and trapping on a subsistence basis and traditional tribal ceremonies," though the bill did not address their concerns over commercial enterprises. The bill as discussed by the Florida legislature's House Environmental Protection Subcommittee included this provision together with designation of Big Cypress Swamp as an Area of Critical State Concern, instructing the Cabinet to set the boundaries of the area and giving the State Land Planning Agency the exclusive right to submit land use regulations within the area to the Cabinet. The subcommittee unanimously approved the bill in early May 1973. Later that month, the Florida Senate's Ways and Means Committee approved allocation of \$40 million for acquisition of land in Big Cypress Swamp, and, on June 1, 1973, the Florida Senate passed the bill, stipulating that the \$40 million be raised through a bond sale. Much of the land to be acquired, the Florida Senate expected, would be located on the edges of Big Cypress Swamp to provide a buffer around the federal acquisition area. Both houses of the Florida legislature passed the bill on May 31, 1973, and Governor Askew signed the Big Cypress Conservation Act into law on June 7, 1973.<sup>71</sup>

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<sup>68</sup> "Gurney Says Askew, Nixon to Aid Big Cypress," *Herald-Tribune* (Sarasota, FL), March 29, 1973, 11; "Askew Oks I-75 'Alley' Route, \$40 Million Sought for Big Cypress," *Naples Daily News*, March 29, 1973, 1; "I-75 Route Draws Praise," and "Cypress Landowners Unhappy," *Naples Daily News*, March 30, 1973, 1.

<sup>69</sup> "Legislature is Convened by Governor's Address," *Playground Daily News* [Fort Walton Beach, FL], April 4, 1973, 5A.

<sup>70</sup> "Big Cypress Hearing On," *Naples Daily News*, April 18, 1973, 1; "Controversy Rages Over Big Cypress," *Naples Daily*, April 19, 1973, 5.

<sup>71</sup> "Committee Approves Big Cypress Bill," *The News Tribune* [Fort Pierce, FL], May 10, 1973, 6; "Surprise (?)—Session is Being Extended," *The News Tribune* [Fort Pierce, FL], June 1, 1973, 2; "Senate Sends Big Cypress

At the same time that the Florida legislature was considering the Big Cypress Conservation Act, Congress was again making moves on its Big Cypress legislation. In early May, the House Subcommittee on National Parks held hearings on federal acquisition to create Big Cypress National Fresh Water Reserve, one of four bills before Congress designed to protect Big Cypress Swamp. Secretary of the Interior Morton started the hearing by pledging that the protection of Big Cypress was a high priority for the Nixon administration. Rep. L.A. Bafalis (R-FL) offered strong support for the bill but suggested amendments that would provide compensation for lost taxes to Collier County and a life tenancy arrangement for those actually living in the federal acquisition area. In its testimony, the Florida Wildlife Federation proposed allowing mineral, oil, and gas rights to remain with the present owners. Those opposed to the legislation, meanwhile, continued to argue that Big Cypress Swamp was not truly a swamp but productive farmland and that large developers in the area such as General Acceptance Corporation, Deltona Corporation, and the Collier Development Corporation stood to gain at the expense of individuals who sought to develop smaller parcels. In addition, they claimed that the action would disproportionately harm African Americans, indigenous peoples, and Cuban immigrants who had bought small parcels there.<sup>72</sup>

Although the Secretary of the Interior remained optimistic regarding passage and funding of a bill to protect Big Cypress Swamp, there were reports in the summer of 1973 that the Nixon administration was again considering cost-cutting measures that would leave any Big Cypress bills without the necessary funds. Despite these concerns, the House Committee on Interior and Insular Affairs unanimously approved the bill as proposed by Representative Haley. In the two months since the Subcommittee on National Parks had recommended it, however, the bill had undergone substantial changes. Perhaps the most substantial change was the name of the proposed entity. Rather than creating the Big Cypress National Fresh Water Reserve, the House bill would create the Big Cypress National Preserve and, in the process, create a new category of units in the National Park System. Representative Haley re-introduced the revised bill in the House of Representatives on September 6, 1973, as H.R. 10088, and the Committee Report that accompanied the bill defined the new category of National Preserve. A National Preserve, the committee explained, is a category “which can serve as a feasible and desirable vehicle for the consideration of other nationally significant natural areas which differ from the qualities attributed to national parks and national recreation areas.” By identifying Big Cypress Swamp as a preserve rather than a reserve, the committee sought to make a distinction between a reserve as “a commodity held for future use” and a preserve in which the goal is “keeping or safeguarding...something basically protected and perpetuated for an intended or stated purpose.” The committee then went on to define a national preserve as “areas of land and or water which may vary in size, but which possess within their boundaries exceptional values or qualities illustrating the natural heritage of the Nation.” These qualities could include scientific values, habitats supporting threatened species or ones that reflect an earlier period, or “scientific,

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Swamp Bill to Governor,” *Herald-Tribune* (Sarasota, FL), June 1, 1973, 8-B; “Askew Seeks Grand Jury Probe of Organized Crime,” *The News Tribune* [Fort Pierce, FL], June 8, 1973, 2.

<sup>72</sup> “Big Cypress Purchase Fund Promised,” *Naples Daily News*, May 11, 1973, 1; “County Tax Loss Payment Sought in Swamp Buy Bill,” *Naples Daily News*, May 11, 1973, 3A; “Conservationists Supporting Big Cypress Land Acquisition,” *Herald-Tribune* (Sarasota, FL), May 12, 1973, 5A; “Cypress Reserve Opposed,” *Naples Daily News*, May 13, 1973, 4.

geologic, geomorphic or topographic” values. Where they differed from national parks was in administrative policies that may allow “significant recreational uses” that include such activities as hunting, together with the “extraction of minerals, and gas.” These activities, however, may be subject to “reasonable regulations” so that they can be conducted “without jeopardizing the natural values which the area seeks to preserve...All management activities within these areas should be directed toward maintaining the natural and scientific values of the area.”<sup>73</sup>

The House committee, in its report, clearly sought to address the concerns that local landowners and others had raised during Congressional and state legislative hearings. The report provided an extensive description of the entire Big Cypress watershed, including its several sub-basins, the relationship between the Everglades and Big Cypress Swamp, and the seasonal variations of water flow across both areas. The area proposed for inclusion in Big Cypress National Preserve consisted of 522,000 acres in private hands and 48,000 publicly owned acres. Some areas within this area, the report observed, are seldom flooded, with higher grounds that support a range of pine, saw palmetto, and mixed hardwoods, while only the sloughs, cypress ponds, and manmade canals are permanent water areas. According to the report, despite large portions of the land being dry for large parts of the year, as the opponents claimed, it is the seasonal flow of water through the swamp as it drains toward the Gulf of Mexico, mixing with salt water to create multiple habitats, that is vital: “Naturally, anything that interferes with the natural flow of fresh water will radically alter this sensitive subtropical environment,” the report observed. In addition to the water, however, the committee noted that Big Cypress Swamp has many other values that make it a significant area. “It is difficult to imagine,” the committee argued, “an area with more outstanding scientific values than Big Cypress-Everglades ecosystem.” Biological evolution and botanical diversity are on full display in this area, which is also significant as a wildlife sanctuary for migratory birds and as “the proper habitat for more than twenty animals whose status has been listed by the Secretary of the Interior as rare, endangered, or otherwise in jeopardy.”<sup>74</sup>

Beyond the extraordinary natural values of Big Cypress Swamp, the committee promoted the area’s recreational potential as well. The committee observed that the area remained largely undeveloped and mandated that the lands “will be managed in a manner which will assure its return to the true wilderness character which once prevailed,” allowing a variety of recreational opportunities including primitive camping, hiking, and bird- and animal-watching. The committee agreed that the use of all-terrain (or off-road) vehicles would not be prohibited, though it would be regulated “to protect the natural, wildlife, and wilderness values of the preserve.”<sup>75</sup>

Regarding the acquisition of lands, the committee continued to propose that it be accomplished through legislative taking, in which title to all lands within the area, with certain exceptions, be immediately vested in the federal government. The federal government would then be liable to pay just compensation to the former owners, with sales taking place over an undefined period. The appropriate U.S. District Court for the various parts of Big Cypress

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<sup>73</sup> “Establishing the Big Cypress National Preserve in the State of Florida, and for Other Purposes,” House Report No. 93-502, 93<sup>rd</sup> Congress, 1<sup>st</sup> Session, 6.

<sup>74</sup> *Ibid.*, 4-5.

<sup>75</sup> *Ibid.*, 5-6.

Swamp would have jurisdiction to determine just compensation for each parcel. The principal exception to the legislative taking of the entire area would be parcels of three acres or less which contained a private residence or one that was under construction by November 23, 1971. Owners of these parcels would retain a life tenancy, having the right to use and occupy the parcel for a period of twenty-five years or the life the owner, whichever ended first, and receiving in exchange fair market value for the property less the value of the life tenancy. Even these parcels, however, could be acquired by eminent domain if the Secretary of the Interior determined that they were being used in a way that harmed the values of the preserve. Members of the Miccosukee and Seminole Tribes, meanwhile, could continue to exercise their traditional uses of the land, and those who had existing businesses related to visitor services would have a first right of refusal for any new visitor service-oriented businesses.<sup>76</sup>

In early September 1973, while the House of Representatives began considering Rep. Haley's Big Cypress bill, the State of Florida held hearings on the implementation of the Big Cypress Conservation Act of 1973. Originally scheduled for August, the Division of State Planning announced that it would postpone the hearings until early September to allow distribution of the draft report, which included recommended boundaries. The announcement of the pending hearings informed readers that, in addition to the \$40 million in bond funds to purchase lands in Big Cypress Swamp area, the legislation directed the Division of State Planning to recommend boundaries for the Area of Critical State Concern that would include the federal purchase area and areas surrounding it that were "ecologically linked" to it; this entire area would then be subject to additional regulatory guidelines.<sup>77</sup> Although this regulatory aspect of the legislation was discussed and made public earlier in the summer, the potential size of the area subject to regulations and the possible scope of the regulations caught many people by surprise. Outrage over what was perceived as an unreasonable "land grab" by the state and federal governments grew quickly in late August and early September 1973, as it emerged that up to ninety percent of Collier County was within the "ecologically linked" areas that would be subject to regulations, an area that included approximately 500,000 acres in Big Cypress and another 500,000 acres surrounding it. More than 600 citizens attended the first hearing in Everglades City on September 5, most of them angry and opposed to the measure. Several state legislators took part in the opposition, claiming that, despite their vote in favor of the act, its proponents in the legislature had not made clear the full regulatory impact and had misled them. The Collier County Commission, which continued to affirm its support for the federal acquisition of Big Cypress Swamp, adopted a resolution requesting that the Area of Critical State Concern exclude the communities of Immolakee and Ochopee, together with the lands in Collier County north of Alligator Alley. In the face of this overwhelming public response, Governor Askew, in late September 1973, agreed to reduce the buffer area around Big Cypress Swamp by more than 200,000 acres.<sup>78</sup> In early October, the chief of the State of Florida's Land Planning Bureau formally recommended a buffer zone of 285,000 acres around Big Cypress Swamp, rather than the 500,000 acres originally proposed. The area where new state land-use regulations could go

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<sup>76</sup> Ibid., 8-10.

<sup>77</sup> "Big Cypress Hearings Postponed," *Naples Daily News*, August 12, 1973, 45.

<sup>78</sup> "County Asks Change in Big Cypress Control," *Naples Daily News*, September 5, 1973, 1; "Irate Citizens Jam Cypress Meet," *Naples Daily News*, September 6, 1973, 1; "Act 'Fatally Defective'—Randall," *Naples Daily News*, September 9, 1973, 1; "Cypress Swamp Buffer Zone Will Be Reduced, Askew Says," *Herald-Tribune* (Sarasota, FL), September 22, 1973, 5-C.

into effect included areas of clear and unambiguous ecological sensitivity such as the Fakahatchee Strand, the Okaloachee Slough, the Ten Thousand Islands, and the coastal area between Everglades National Park and Caxambas Pass near Marco Island on the Gulf Coast.<sup>79</sup>

This revision of the Area of Critical State Concern for Big Cypress Swamp was seen as a victory by the area's farmers and landowners and helped to settle the issue. It allowed the state to proceed with identifying parcels to acquire. At the same time, the House of Representatives, in early October, passed H.R. 10088 by a vote of 376-2. The merits of the bill and the care and precision with which it was written were praised by all who spoke on the floor of the House on October 3, 1973. Rep. Roy A. Taylor (D-NC) in particular, in discussing the provision for legislative taking, averred that this "goes as far as any bill in recent years to give landowners equitable consideration...it assures landowners that they will be entitled to just compensation within a reasonable period of time from funds appropriated by the Land and Water Conservation Fund" rather than letting the bureaucratic process of acquisition drag on. He also gave praise to the provision that allowed owners of single residences to continue living at their properties. With such measures, he argued, the Secretary of the Interior "can successfully preserve and protect the hydrologic, natural, and environmental values of a large portion of this area without significantly disrupting the status quo."<sup>80</sup> The combination of these two developments gave Governor Askew and others in Florida hope that the Senate would pass the bill quickly, and the protection of Big Cypress Swamp would be assured.

When the bill was referred to the Senate Committee on Interior and Insular Affairs on October 4, however, progress stopped. Instead, the members of the Senate committee, recognizing the complexity of the issue and the possibility of establishing precedent for NPS, sought further study and input. Through the rest of 1973, the Senate Committee held H.R. 10088 and the three other bills that sought to protect Big Cypress Swamp. In early 1974, the Committee requested comments and analysis from NPS on all four bills. Secretary of the Interior Morton responded on behalf of the Department of the Interior with a substantial letter report in late March 1974. The analysis included S.334 and S.920, which authorized the acquisition of land to create Big Cypress National Fresh Water Reserve; S. 783, which authorized Everglades-Big Cypress National Recreation Area, and H.10088 which, as previously described in detail, authorized Big Cypress National Preserve. The report included a discussion of the merits and deficiencies of each bill, noting their similarities and divergences. The common feature among all of them was for the federal government to acquire 570,000 acres in Big Cypress Swamp, though S.783 would allow boundary changes to accommodate up to 585,000 acres, an addition that the Department of the Interior did not find justified to protect Big Cypress Swamp.<sup>81</sup>

The Department of the Interior's letter provided extensive analysis of the different methods of federal acquisition in the bills. The Department of the Interior was firmly opposed to the provision for legislative taking in H.R. 10088 and urged a regular land acquisition process. Legislative taking, Secretary Morton feared, would result in "uncontrollable budgetary obligations." Because of the obligation to purchase the properties, he speculated, interest

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<sup>79</sup> "Big Cypress Critical Area is Urged," *Herald-Tribune* (Sarasota, FL), October 11, 1973, 8-A.

<sup>80</sup> *Congressional Record*, October 3, 1973, H8605.

<sup>81</sup> Secretary of the Interior "Jack" Horton to Chairman [Senate Committee on Interior and Insular Affairs], March 21, 1974.

payments might exceed inflation rates, and the proposed process would reduce “the opportunity for the most efficient use of available acquisition funds by requiring payment whenever a final judgement is rendered.” Instead, the report recommended a process that “would be authorized if necessary to acquire by eminent domain proceedings any property which is in immediate threat of development in derogation of the ecosystem within the Big Cypress area.” The Department of the Interior took no issue with permitting the owners of improved properties consisting of detached one-family dwellings to occupy and use the property for life or a fixed period. The report noted that the different bills defined different periods of time for occupancy, and recommended that twenty-five years was appropriate. The Department of the Interior concurred in the allowance of traditional uses of the area such as hunting, fishing, and trapping, and the continued traditional use of the Miccosukee and Seminole Tribes according to their custom. The Department of the Interior also supported the preferential rights of the Miccosukee and Seminole Tribes with regard to commercial operations in Big Cypress Swamp.<sup>82</sup>

The Department of the Interior had few comments regarding the creation of the new category of National Preserve. In discussing the different names of the new unit, the Department of the Interior held that National Freshwater Reserve was the most descriptive but had no objection to using the term National Preserve for the new unit. However, the Department of the Interior opined that the new unit ought not be classified as a national recreation area since the purpose of the legislation was to protect the environmental resources of Big Cypress Swamp, not to provide recreational opportunities. In conclusion, the Department of the Interior favored either the Administration’s original bill, S.920, or H.10088 if amended.<sup>83</sup>

Armed with these recommendations, the Senate Committee on Interior and Insular Affairs crafted a bill that was a revision of H.R. 10088 that the House of Representatives had passed so overwhelmingly in October 1973. The committee released its report on the bill in late August 1974, which, itself, was a revision of the House Report for H.10088 the previous September. The Senate Report of August 1974 incorporated the descriptive content of the House Report from a year earlier, including a discussion of the Big Cypress watershed and its importance on its own and in conjunction with Everglades National Park, and the definition of a National Preserve. Following these descriptive parts, the report included a discussion of the amendments to the original House bill. The most important of these amendments was to remove the provision for legislative taking in the original bill and replace it with normal acquisition procedures. The Senate committee urged and expected, however, that acquisition would be complete within six years. The Senate committee also required that all sales be from willing sellers only and forbade the use of condemnation for residential and commercial properties “unless such property is threatened with or subject to a use detrimental to the Preserve.” The committee also accepted the recommendation from the Department of the Interior to amend the federal government’s standard requirements for appraisals. Because of the scale of the acquisition process, with an estimated 35,000 small landowners whose property would be subject to acquisition, and with many of these owners living outside of Florida or, in many cases, outside of the United States, the standard requirement for appraisals that included affording the owners the opportunity to accompany the government’s appraisers, would not be feasible. Instead, the committee recommended that, for all unimproved properties under forty acres, the government

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid.



could accept an offer for the sale without requiring an appraisal. Properties which are improved, the committee observed, “will generally involve landowners who reside in the area, and accordingly, difficulties with this group are not anticipated.”<sup>84</sup>

The Senate committee also expanded access to life tenancy for property owners. The original House bill allowed property owners of three acres or less with single-family residences and commercial buildings to have a right of occupancy for life or twenty-five years in the event of federal acquisition. In the Senate committee’s proposed bill, this right would extend to improved properties used for agricultural and religious purposes. The Senate committee also “strengthened the House language by granting the Miccosukee and Seminole Tribes a right of first refusal on any concession contract in the preserve.” In addition, the Senate bill clarified that the traditional rights of the Miccosukee and Seminole Tribes would be protected within the preserve.<sup>85</sup>

During the course of the committee’s meetings, Senator J. Bennett Johnston (D-LA) proposed an amendment to the bill that would have reduced the appropriation for acquisition of land from \$116 million to \$40 million. The justification for this reduction, according to the five Senators who added their minority views to the committee report, was the contention that the 570,000 acres stipulated in the bill was excessive to achieve the goals of protecting the Big Cypress watershed. They believed that \$40 million would allow the federal government to acquire land sufficient to meet the goal. This amendment was not accepted by the majority on the Senate Committee on Interior and Insular Affairs, and the bill as described was reported to the Senate for approval.

On September 9, 1974, the full Senate unanimously passed the Big Cypress National Preserve bill as amended by the Interior and Insular Affairs Committee and sent it to the House of Representatives. The House and the Senate subsequently proposed minor amendments to the bill which were discussed and resolved in the House-Senate conference committee during September. A compromise bill was passed by the Senate on Monday, October 1, 1974, and sent to the White House for signature. Finally, on October 11, 1974, President Gerald R. Ford signed into law P.L. 93-440 establishing Big Cypress National Preserve as a unit of the National Park System.

The law enacted is substantially similar to the earlier House bill with the exception of amendments introduced by the Senate Committee on Interior and Insular Affairs, including the process of acquiring the land and arrangements with the Miccosukee and Seminole Tribes. The law required the Secretary of the Interior to prepare a plan for land acquisition within one year and expected that the process of acquiring lands would be completed within six years. The law also specified the non-traditional uses that would be permitted within Big Cypress National Preserve, subject to regulations. These uses included operation of motorized vehicles; exploration for and extraction of oil, gas, and other minerals; grazing; constructing canals or other drainage works; agriculture; hunting, fishing, and trapping; and new construction. With the route of the extension of Interstate 75 planned to cross the northern portion of Big Cypress

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<sup>84</sup> “Establishing the Big Cypress National Preserve, Florida,” Senate Report No. 93-1128, August 22, 1974, 93<sup>rd</sup> Congress, 2<sup>nd</sup> Session, 7.

<sup>85</sup> *Ibid.*, 8.

National Preserve, the law also enjoined the Departments of the Interior and Transportation to consult and cooperate to ensure that any new highways would be located “within existing or reasonably expanded rights-of-way and constructed within the reserve in a manner consistent with the purposes of this Act.”

The law that established Big Cypress National Preserve was a remarkable achievement, providing federal protection of more than a half-million acres of wilderness important not just to the survival of Everglades National Park but to the environmental health of south Florida generally. Local opinions both in favor of and opposed to the law were strongly held, but the members of Congress and their staff who wrote the bill were able to balance these opposing forces, protecting this vital watershed from development that would have had wide-ranging and devastating environmental consequences, while accommodating the concerns of those who had long used the land for many different purposes. The creation of the Preserve, in the face of the intense development pressures in south Florida that, until then, had acted mostly without restraint, showed the growing strength and maturity of the new environmental movement that had emerged barely a decade before. Writing in *Political Science Quarterly* in late 1975, Robert S. Gilmour and John A. McCauley analyzed the decision to halt construction on the Miami-Dade Jetport and support the creation of Big Cypress National Preserve in terms of a new approach to politics. In the face of a traditional “pork barrel” approach, “a vigorous alliance of preservation-minded organizations has demanded and won nearly total victory.”<sup>86</sup> Establishing this vast new park clearly was a victory for the nation’s environmental movement, but, with the victory, NPS faced a daunting challenge. Tens of thousands of individual properties would have to be purchased, many of them held by absentee landowners far distant from the park. In addition, the National Park Service was required to find a balance between, on the one hand, the desires of recreational users and sportsmen and those who retained their oil and gas rights to have access to the Preserve, and, on the other hand, the protection of natural and cultural resources. Given these constraints, the work of creating a park in this wilderness had only begun.

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<sup>86</sup> McCauley and Gilmour, 720.

## Chapter 3: Implementation

If it is possible to generalize about such a complex federal program with such diverse resources, one could suggest that the central concept underlying the National Park System is protection. When establishing a unit of the National Park System, Congress (or the president, in the case of National Monuments) has identified a particular resource or set of resources that merits protection at the nation's highest civilian level. The federal protection of this resource, moreover, is oriented toward the benefit of both present and future generations, so all might come to recognize the importance of that resource, whether natural or cultural, to America's understanding of itself. For example, during the earliest years of the National Park Service, during World War I, Acting NPS Director Horace Albright fought vigorously against those in Congress and in other federal agencies to protect Yellowstone National Park from utilitarian practices such as sheep and cattle grazing. Albright urged an understanding that the protection of this pristine natural area must be maintained and that it was a priority that could not be subjugated to the national defense. Over the course of more than a century, subsequent NPS staff, from directors through regional officials to personnel at individual parks, have maintained this tradition of keeping the parks safe and intact from actions that might put that resource at risk. The creation of national recreation areas in the 1930s began to breach the rigid separation between visitor use and resource protection, allowing uses that would not be permitted in other units of the National Park System, but in very specific circumstances, initially including man-made reservoirs and, later, expanded to urban areas where public access to open spaces was considered the primary goal.

The creation of the nation's first two National Preserves in 1974, however—Big Thicket National Preserve in Texas and Big Cypress National Preserve in Florida—offered new potential to soften the National Park Service's goal of protection in the name of public access. As described in detail in Chapter 2, the legislation that established Big Cypress National Preserve made provisions for the continuation of existing uses that included oil and gas exploration and extraction; hunting, fishing, and trapping; cattle grazing; and the use of off-road vehicles. The NPS tradition of protection, however, could not be erased, and Congress clearly modified these allowances by asserting that they be regulated so as to protect the features for which Big Cypress National Preserve is nationally significant, primarily its water relative to the adjoining Everglades National Park and the flora and fauna which it supports.

### *The First Step: Land Acquisition*

Before NPS staff could begin developing regulations, however, a more elementary form of protection was necessary: gaining ownership of the land. Land acquisition was, therefore, the first and foundational step in the Preserve's activation. The impetus for the Preserve's activation was largely defensive: to halt, or at least to slow, the encroachment of real estate developments within and on the borders of the Big Cypress Swamp. Although much of the interior of the Big Cypress Swamp was remote, with frequent flooding and difficult access, development pressures were already intense and growing stronger through the early and mid-1970s, and the potential for profits made the creation of access roads more desirable and feasible. Residential subdivision developments typically included drainage canals in their plans, which further altered the region's

natural flow of water and adversely impacted the ecosystem. By the early 1970s, south Florida was in the heyday of a burgeoning real estate market that had emerged in the mid-1950s. After the real estate boom of the early 1920s collapsed spectacularly later in the decade as a result of hurricanes, bank failures, and fraud, the nation's attention returned to south Florida in the late 1930s and 1940s as military bases and improved transportation routes brought great numbers of people to the state. When residential air conditioning became more widespread by the 1950s, the appeal of a new house in Florida's tropical paradise spread throughout the nation. Large real estate corporations, including Deltona, Arvida, AMREP, and Cavanagh, among many other, smaller companies, emerged in the 1950s through the 1970s, platting and subdividing vast tracts of land in south Florida for residential and commercial development. The market in housing to which these companies appealed lay primarily in other states, offering retirees and others interested in the explosive growth of the area an opportunity to buy land on an installment basis. Their sales techniques were aggressive and persuasive; according to a 2006 report prepared for the Appraisal Institute, "In the 1960s more Florida land was subdivided into lots than in the rest of the country combined."<sup>1</sup> Historian Gordon Harvey, in a 2005 article about Big Cypress Swamp and the new environmental politics of the 1970s, reported that the population in Florida grew from 1.8 million in 1940 to seven million in 1970, and expanded to eleven million in 1980: "With an increase of 564 percent between 1930 and 1980, Florida's population growth outpaced that of every other state." By the early 1970s, Harvey continued, prices for one-acre lots along the Tamiami Trail (U.S. Route 41) in Collier County grew to as much as \$2,500.<sup>2</sup>

A perfunctory directive from NPS Assistant Director for Legislation Richard C. Curry to the Southeast Regional Director just days after the Preserve was established in October 1974 summarized the legislation and acknowledged that the acquisition of land was the highest priority. As the memorandum noted, however, Congress would not appropriate the funds authorized in the legislation until the State of Florida entered into an agreement with the federal government to provide for the transfer of all existing state lands within the Preserve to the Department of the Interior. In December 1974, the Florida Cabinet approved the agreement worked out between NPS and state officials, under which the state would hold in trust approximately 16,000 acres of land within Big Cypress National Preserve until Congress authorized the funds, while also providing \$40,000,000 of state funds for acquisition of additional lands in the Preserve. In return, NPS agreed to advise the state regarding proposed recreation planning and development within the Preserve.<sup>3</sup>

In January 1975, Southeast Regional Director David D. Thompson, Jr., delegated management responsibility for Big Cypress National Preserve to Everglades National Park Superintendent Jack Stark. Stark, in turn, directed his division chiefs to begin planning for the work. In particular, Stark asked his staff to identify leaders in the several state agencies that would have responsibility in Big Cypress National Preserve, and the leaders of the civic and sporting groups who were interested in the area. Stark also asked Everglades staff to begin

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<sup>1</sup> J. Bruce Cumming, Jr., "A Brief Florida Real Estate History," report prepared for Appraisal Institute, West Coast Florida Chapter, September 6, 2006.

<sup>2</sup> Harvey, "We Must Free Ourselves," 352, 258. This would be equivalent to approximately \$18,000 in 2022.

<sup>3</sup> "Swamp Acquisition Approved by Cabinet," *Daily Herald-News* (Port Charlotte, FL), December 18, 1974, page 13. See also Memorandum, Associate Director, Legislation to Regional Director, Southeast Region, October 21, 1974; BICY 14605, 00002-003-001-010 Box 2.

developing priorities for land acquisition and identifying potential problems and issues in the land acquisition and management process.<sup>4</sup> The acquisition of land in Big Cypress National Preserve, however, remained under the direction of the Southeast Regional Office. As envisioned in the legislation, Big Cypress National Preserve would encompass approximately 570,000 acres of land, 522,000 acres of which were in private hands. The remaining land, 16,000 acres owned by the State of Florida would be donated to NPS. The 522,000 acres in private hands would have to be purchased from the tens of thousands of individuals and groups who owned the land. Most of these private owners owned very small parcels and, often, were absentee owners who had never even seen their property. The legislation also recommended to NPS a deadline of six years to accomplish this gargantuan task, one of the largest land acquisition programs NPS had ever undertaken at that time. In early June 1975, the Southeast Regional Office opened a temporary land acquisition office on Tamiami Trail in Naples, Florida. A permanent office at 201 Eighth Street South in Naples opened later in the summer. James Sewell accepted the offer to lead the land acquisition team, which was anticipated to grow to more than one hundred staff. Sewell was then serving as the Acquisition Officer for the Chesapeake & Ohio Canal National Historical Park, Maryland, and relocated to Naples with his family from Frederick, Maryland.<sup>5</sup>

As discussed in Chapter 2, advocates for the legislation that established Big Cypress National Preserve in the early 1970s faced strong opposition from those who feared federal ownership of the land. Despite provisions for the continuation of recreational activities in Big Cypress National Preserve, such as hunting, fishing, and off-road vehicle access, many feared that federal ownership would curtail the liberties of those who had thus enjoyed the land for so long. With the passage of legislation, federal acquisition of land was the first and highest priority, and NPS staff, both at Everglades National Park and the Southeast Regional Office, recognized the need for a public relations campaign. In a response to Stark's memorandum to Everglades division chiefs requesting input for managing Big Cypress National Preserve, Chief of Maintenance Glenn Farrar began with the recommendation that "Periodic press releases should be issued that explain the purpose of the Big Cypress preserve [sic] and which give the status of the land acquisition and other pertinent information to the South Florida residents and others that are interested in the area."<sup>6</sup> Once the land acquisition process began, regular communications would be vital, and the Regional Office and Sewell's land acquisition office both provided frequent updates to the region's newspapers.

Sewell began work in June 1975, with an initial staff of five, and, as part of the Regional Office's public relations campaign, gave an interview to the *Naples Daily News* to explain the process. The fundamental point, he explained, was that improved properties would be exempt from the requirement to sell to the NPS. Improved properties, he continued, were defined as those single-family residences that were started on or before November 23, 1971, and any other building started before that date and conforming to state and local laws. The owners of these properties could sell to NPS if they wished, with or without the right to use it, either for their lifetimes or for a designated number of years. If the owners wished to retain the use of the property for a certain period of time, the sale price, based on the fair market value of the property

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<sup>4</sup> Memorandum, Superintendent, Everglades NP to Division Chiefs, January 21, 1975; SFCMC, BICY 14661, S2, SSA, F1.

<sup>5</sup> "Park Service to Open New Land Office Here," *Naples Daily News*, May 30, 1975, page 2A.

<sup>6</sup> Memorandum, Chief of Maintenance to Superintendent, February 7, 1975; BICY 14661, S2, SSA, F1.

determined by the government appraisal process, would be decreased to account for the value of those years of continued use. However, this reduction would not be more than twenty-five percent less than the appraised fair market value. Owners who elected to retain the use of their property after selling to NPS would also be allowed to retain up to three acres and sufficient land for access. Anything above three acres would have to be sold to NPS outright. Called “inholdings,” Sewell continued, these properties were located primarily along the Tamiami Trail and were a small minority of the total lots that NPS would purchase. Any undeveloped lands, however, or properties on which improvements were begun after November 23, 1971, would be subject to acquisition by NPS, either from a willing seller or through the condemnation process. Sewell also acknowledged that the Preserve Superintendent, currently Everglades National Park Superintendent Jack Stark, had the authority to make decisions in “hardship cases,” when federal acquisition, though called for, could be halted. As Sewell explained, “if a person owns a house built after the cutoff date with a small store or business on the same land, he can be excluded for hardship reasons, if it denies surrounding residents of an essential service.”<sup>7</sup>

Sewell further explained that, although he was then working with a small staff, he expected it to grow substantially as the acquisition work would entail appraisers, mappers, lawyers, realty specialists, and clerical workers. For the first time, he quantified the scale of the operation, estimating that there were some 25,000 landowners just in Collier County and more than 11,000 in Monroe and Dade Counties. National Park Service personnel had already begun the detailed work of creating maps identifying each of the thousands of tracts with the owner’s name, so that property appraisals could begin. Sewell’s initial efforts, he explained, would be directed at large tracts of undeveloped land, at least one section (640 acres) or larger.<sup>8</sup> In response to Sewell’s interview, the editors of the *Naples Daily News* applauded the government’s efforts, calling it “A Break for the Little Man.” By allowing existing homeowners to retain their property and making exemptions for hardship cases, “the buying plan for Big Cypress makes a great deal more sense than earlier buying programs which expressed little concern for private rights and interests. Public Law 93-440 enables the government to act with uncommon compassion.”<sup>9</sup>

The initial land acquisitions throughout 1975, totaling approximately \$13,000,000, were made using the \$40,000,000 that the State of Florida had provided, because Congress had not yet appropriated the funds authorized in the Preserve’s enabling legislation. These purchases, though handled by the federal government, were made using state funds and were, therefore, state transactions in which title went initially to the State of Florida. In early 1976, however, President Gerald Ford authorized the release of \$7,000,000 from the Land and Water Conservation Fund in Fiscal Year (FY) 1976, and an additional \$15,000,000 in FY 1977, to NPS for the land acquisition program in Big Cypress National Preserve. Of that \$22,000,000 total, \$6,000,000 would be used to cover operating costs, leaving \$16,000,000 for land purchases. By early January 1976, Sewell’s office had acquired approximately 28,000 acres, most of it in Collier County. Despite early trepidation regarding federal land acquisition, ironically, most of the complaints from the public in late 1975 and 1976 focused on the slow pace of purchases. Some of these complaints took the form of accusations of preferential treatment for large landowners

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<sup>7</sup> “Big Cypress Plan Weighs Human Factor,” *Naples Daily News*, June 22, 1975, pages 1A, 3A.

<sup>8</sup> *Ibid.*

<sup>9</sup> “A Break for the Little Man,” *Naples Daily News*, June 24, 1975, page 8.

by the federal government acquiring their property quickly, while funding was available. Owners of smaller properties, the complaints went, were forced to wait, leaving the status of their land in limbo. These owners complained that they were unable to sell to the federal government but also unable to develop the land because the government might buy it.<sup>10</sup> In addition, according to Landowners Association of Big Cypress President James M. Tate, “We have a fear the money will run out before acquisition of smaller land parcels occurs.”<sup>11</sup>

Another early source of friction was the possibility of purchases in the unincorporated community of Ochopee. In late 1975, the Collier County Commissioners had requested that the Ochopee area be exempted from federal acquisition, a request that Florida Governor Reubin Askew argued against. At the same time, Everglades staff, at the direction of Superintendent Stark, examined land trends in Ochopee, recommending that, because of the level of development that had already taken place, nearly 400 acres south of Tamiami Trail not be purchased and that Collier County should enact and enforce suitable zoning laws for the area. Further complicating the matter, State Representative Mary Ellen Hawkins, whose district included Collier County, presented a petition from local landowners who wished to sell their property to the federal government and requested that they not be removed from the federal acquisition program. By early 1976, the encroachment of developments proved to be a threat to the stability of the Preserve. Sewell observed that several large tracts in the Ochopee area either had been laid out for subdivision or were being built and directed the appraisers under his authority to begin work on the large, unimproved lots.<sup>12</sup> Because of the heavy workload, the Southeast Regional Office contracted with an appraisal firm in Miami to conduct the work, which began in early April 1976. Among the lots to be purchased were 400 acres owned by a quarry, a liquid petroleum gas plant, a concrete plant, and a small grocery store. Sewell assessed several of the commercial lots as hardship cases, since “the commercial firms have no chance for expansion because of the stifling effect on growth caused by the Big Cypress land purchase.”<sup>13</sup>

In March 1976, Sewell announced the completion of negotiations for one of the most substantial and important acquisitions: nearly 77,000 acres from the Collier Companies for a selling price of \$20.7 million. The several parcels extended north from Everglades City along the east side of State Route 29. The acquisition included the land’s mineral rights, but the Collier Companies retained its rights to the oil and gas; in order to access the oil or gas, the Collier Companies would have to apply to the Department of the Interior for a permit. With the completion of this one acquisition, Sewell added, NPS had either acquired or settled on a price for twenty-five percent of the 577,000 acres, using twenty-four percent (\$36.8 million) of the available funds. Few other large tracts remained—a 10,000-acre leisure farm in private hands and nearly 6,000 acres owned by the University of Miami, among others—and the onerous task of acquiring the thousands of small parcels would then commence.<sup>14</sup> In May 1976, Sewell

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<sup>10</sup> “\$7 Million Earmarked for Cypress Land Buys,” *Naples Daily News*, January 8, 1976, pages 1A, 3A.

<sup>11</sup> Tate was quoted in “State Okays Big Cypress Purchase,” *Sarasota Herald-Tribune*, October 8, 1975, page 54.

<sup>12</sup> Memorandum, Land Acquisition Officer, BICY to Chief, Division of Lands, SERO, January 2, 1976; BICY 14661, S5, F11. See also Memorandum, Chief, Division of Land Acquisition, Southeast Region to Land Acquisition Officer, BICY, October 30, 1975, BICY 14661, S5, F13; Memorandum, Superintendent, Everglades to Land Acquisition Office, Naples, November 21, 1975, BICY 14661, S5, F12; “Park Service Buyers Eyeing Ochopee Land,” *Naples Daily News*, March 16, 1976, page 2B.

<sup>13</sup> “Appraisal Process Begins in Ochopee,” *Naples Daily News*, April 23, 1976, page 1B.

<sup>14</sup> “985 Transactions Must be Made,” *Naples Daily News*, March 31, 1976, page 2B.

concluded negotiations with the University of Miami for its parcel located to the north and south of Loop Road leading to Everglades National Park. As with the Collier Companies, the University of Miami retained the oil and gas rights under the 5,996-acre parcel.<sup>15</sup>

Because oil had been discovered underneath Big Cypress Swamp earlier in the twentieth century and had been successfully extracted, provisions for oil and gas rights in the land acquisition process were built into the Preserve's legislation. Rights to a property's oil and gas, according to the legislation, could be acquired only with the consent of the owner unless the Secretary of the Interior "determines that such property is subject to, or threatened with, uses which are, or would be, detrimental to the purposes of the preserve." As Southeast Region Division of Land Acquisition Chief Willis Kriz explained to the State of Florida's Chief of the Bureau of Land Acquisition and Development, the Secretary of the Interior never made a determination that oil and gas rights were essential to the purposes of the Preserve. As a result, he continued, "reservation of such rights by the owners are incorporated in the purchase agreement in each instance in which the owners advise that they do not wish to dispose of their oil and gas rights." While many sellers conveyed their oil and gas rights to NPS when selling their land, "a substantial number elect to retain such rights." The legislation provides, however, that subsurface mineral rights can be acquired without the owner's consent. Despite this legislative provision, in some cases when the acquisition was made using the \$40,000,000 provided by the State of Florida, state officials occasionally allowed sellers to retain subsurface mineral rights.<sup>16</sup>

With the completion of these major acquisitions and others, Sewell's attention turned to the many thousands of owners of small parcels. Initial estimates in 1975 and early 1976 indicated approximately 36,000 individual tracts within the purchase area; by the end of the decade, as land acquisitions were starting to wind down, the number of landowners had risen to approximately 43,000 even before the process was complete. A substantial majority of those parcels were acquired through willing sellers, though nearly one-third had to enter the condemnation process, either because of disagreements over the sale price or because the title was unclear.<sup>17</sup> Although NPS staff at the Regional Office and the Preserve, in collaboration with State of Florida authorities, worked assiduously to streamline the process, completing that many purchases within the six years that Congress originally recommended meant that Sewell's office needed to clear nearly 150 titles per week, a daunting task.

The individual acquisitions were divided into three categories: unimproved property, improved properties that were exempt from compulsory purchase, and improved properties that were not exempt. The approach for each was slightly different. For unimproved properties, once it was identified on maps, NPS contracted with a title company to provide information. The NPS land office then either conducted an appraisal or contracted for an appraisal, seeking the fair-market value based on comparable sales in an open market with knowledgeable sellers and no obligations to either buy or sell. An NPS negotiator then attempted to contact the owner with an offer to sell; if the owner agreed to sell at NPS's offered price, a title company handled the sale,

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<sup>15</sup> "UM Offers Monroe Land to National Park Service," *Naples Daily News*, May 18, 1976, page 2B.

<sup>16</sup> Willis P. Kriz to Douglas Strickland, May 4, 1976; BICY 14661, S5, F9. See also James F. Sewell to Senator Lawton Chiles, March 14, 1978; Lawton Chiles Papers, University of Florida.

<sup>17</sup> James F. Sewell to Lawton Chiles, November 8, 1979; Lawton Chiles Papers, University of Florida.



and NPS paid all closing costs. If the owner could not be reached, if the owner did not agree to the offered price, or if the title was not clear, NPS then recommended condemnation of the tract to the Department of Justice. Cases were heard by the U.S. District Court in Miami. Landowners had the opportunity to attend the hearing, with or without a lawyer, to present evidence regarding a fair price; the court then determined the price. The approach for a property that was not exempt—that is, a tract with improvements built after November 23, 1971—the process was the same except that NPS had to secure permission from the landowner for an appraisal. If permission was not granted, NPS recommended the property for condemnation to the Department of Justice. If an appraisal was completed, the offer of sale was accompanied by a statement of relocation benefits available to the owner. The owner had ninety days following the purchase to vacate the property.

Properties with improvements built or started by November 23, 1971, could be purchased only from willing sellers. In these cases, NPS contacted the property owners, alerting them to the acquisition program. In response, the owner could request an appraisal, which was conducted by NPS or its contractor. The owner then had three options: sell the property to NPS in fee for the appraised price, sell the property to NPS while reserving use and occupancy, or not accept the offer. If the owner opted not to sell to NPS, he or she was free to live in or convey the property to another buyer. There were several exceptions to this process, however. If the owner accepted the offer from NPS with a reservation for use, NPS reduced the offered sale price by one percent per year of reserved use up to twenty-five years. For those properties, as well as those properties whose owners declined to sell, NPS still acquired in fee any undeveloped lands under contiguous ownership beyond three acres surrounding the improvement. In addition, in accordance with the Preserve's enabling legislation, if the owners used the property in a way that was harmful to the protective purposes of the Preserve, NPS could acquire the property through condemnation.<sup>18</sup>

The Preserve's land acquisition staff, led by James Sewell in the office in Naples, Florida, ran into several challenges during the late 1970s in addition to the sheer volume of parcels that had to be identified, appraised, negotiated, and closed. One of the earliest issues that Sewell's staff faced was related to the boom in real estate in south Florida through the 1960s and early 1970s. As discussed earlier in this chapter, aggressive sales techniques by large development firms often led individuals to buy their land sight unseen at premium prices. Although many of these sales were legitimate even if the prices were inflated, others involved land that was predominantly wet, frequently flooded, or had limited access. These inaccessible tracts still sold for the same prices as lands that were dry and had good access. Unfortunately for those owners, NPS appraisers based their price estimates on good faith sellers and knowledgeable owners, which resulted in appraisals for those inaccessible lots that were considerably lower than the price the buyers had paid.

In November 1977, for example, a property owner wrote to Senator Lawton Chiles requesting his assistance with a property which he and his wife had purchased in 1973. They paid \$9,000 for the twenty acres and had spent an additional \$4,000 in taxes and closing costs

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<sup>18</sup> All of these provisions are discussed in multiple pieces of correspondence in the SFCMC and the Lawton Chiles Papers from 1976 through the early 1980s. However, this summary is drawn from *Land Acquisition Plan, Big Cypress National Preserve: Original Final Revision* (approved by Regional Director, Southeast Region, April 22, 1980), in BICY 14661, S5.

since then. The NPS appraisal, however, showed a fair market value of only \$5,600, which the owner was offered. Senator Chiles forwarded the letter to Sewell, who replied later in November. As Sewell explained to Chiles, “Our appraisals take into consideration all elements influencing value, including accessibility and susceptibility to flooding, as well as potential use.” The NPS offer of \$5,600, Sewell contended, was based on those factors as well as an examination of comparable recent sales of similar properties “between informed buyers and sellers.” The property, Sewell continued, was located two miles from the nearest road, was regularly flooded during the rainy season, and was accessible only by swamp buggy across private lands. These conditions made any potential development of the land prohibitively expensive, a situation made worse by recent local actions restricting any developments that could adversely affect surface water flow and the State of Florida’s designation of Big Cypress as “An Area of Critical State Concern.” As Sewell observed, “While real estate is generally a good investment and provides a hedge against inflation, such investments are speculative.” Since the owners did not accept the offer from NPS, Sewell concluded, the only option was to enter the condemnation process, which would allow the owners to present evidence to the court that would support a higher appraisal.<sup>19</sup>

Most of the property transactions for the Preserve were completed without resorting to eminent domain and the condemnation proceeding, but a substantial minority of purchases could not be made otherwise. The condemnation process, moreover, led to two other issues. First, many property owners found the language which NPS used when the acquisition led to the condemnation process to be unnecessarily threatening. In June 1976, James G. Pace, president of the Landowner’s Conservation and Protection Association, wrote to Senator Chiles arguing that NPS was “using abusive language toward the owners of land who will not sign an agreement to sell at a figure” that NPS offered. Pace noted that his office was receiving several calls per day, “especially from the Spanish speaking owners, many of whom are new citizens to this country, and they are literally scared to death that they are going to be brought up into court; that they are obligated to sell the land under severe penalty.” Pace included a sample telegram from NPS in his letter to Chiles, which advised an owner that “your file #226-20 will be referred to the Department of Justice for appropriate action prior to the date of our forwarding your file.” The telegram then provided a telephone number for the NPS land acquisition office in Naples.<sup>20</sup>

Other landowners took more forceful action in response to these alerts regarding federal judicial action and joined together to file a class-action lawsuit. In the suit, filed with the U.S. District Court in early June 1976, the Association of Big Cypress Owners, Inc. and several individual landowners asked, “that the Interior Department be ordered to stop alleged intimidation and harassment.” The plaintiffs accused NPS of “Gestapo-type intimidation” that was designed to drive down land prices “and to goad landowners into selling their property for \$250 to \$275 an acre.”<sup>21</sup> The issue was resolved later, in July 1976, when the Land Acquisition Office revised the wording in its telegraphs to make clear that the referral to the Justice Department was only for the purposes of the eminent domain process.<sup>22</sup>

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<sup>19</sup> James H. Carroll to Lawton M. Chiles, November 8, 1977; Chiles to James F. Sewell, November 18, 1977; Sewell to Chiles, November 22, 1977; BICY 14661.

<sup>20</sup> James G. Pace to Lawton Chiles, June 23, 1976; BICY 14661.

<sup>21</sup> “Big Cypress Owners Sue Government,” *Naples Daily News*, June 10, 1976, page 3B.

<sup>22</sup> Lawton Chiles to James G. Pace, July 26, 1976; BICY 14661.

The second issue related to the condemnation process was far more complicated and added to the frustration of landowners who either wished to sell or were forced to sell. All condemnation actions were filed with the U.S. District Court, Southern District of Florida, located in Miami. By early 1977, the U.S. District Court was already overburdened with criminal cases due to the rising tide of narcotics and organized crime in the district, and civil litigation arising from the state's rapid growth in population throughout the 1960s and 1970s. Case filings rose from 2,204 in 1970 to 4,751 in 1976, while the number of District Court judges remained the same. Civil litigation cases, in particular, were facing years-long backlogs, partly as a result of the Speedy Trial Act of 1974, which required federal and district courts to conclude criminal cases within one hundred days. With too few judges, civil cases were left to languish. The advent of the Big Cypress National Preserve land purchases created a tsunami of new civil cases, with estimates in late 1977 of 600 to 800 new cases per month. By late 1979, the Land Acquisition Office had contacted 43,000 landowners regarding the sale of their land. Thirty percent of these resulted in condemnation proceedings. This meant that nearly 13,000 cases went to the U.S. District Court in Miami. These were the cases that were particularly complex, involving not just disputes over the appraised value, but also problems with unrecorded deeds, boundary disputes, covenants, derelictions, easements, and more.<sup>23</sup>

Two strategies were developed to help ease the existing and projected backlog of civil litigation cases at the Southern District Court of Florida. In October 1978, Congress passed P.L. 95-486, which provided for the appointment of additional district and circuit court judges for sixty-five districts throughout the nation. A large majority of the circuits received one additional judge, while a smaller number received between two and four additional judges. Only three districts received five new judges: the southern district of Texas, the northern district of Georgia, and the southern district of Florida. In January 1979, Senator Chiles responded to a constituent who had complained about the land acquisition process. After discussing the question of the property's appraised value, Chiles pointed out that the landowner had the ability to challenge the NPS appraisal in court. "However," Chiles observed, "there is considerable backlog and I have been attempting to work to expedite this matter. Florida will be receiving additional Federal Judgeships due to legislation that was passed during the last session of Congress. I was happy to work on this bill and I hope that this will be a direct benefit to Florida and individual such as yourself, whose cases will be heard in the Southern District."<sup>24</sup>

Unfortunately, the Southern District court had not yet received its new judges by the summer of 1980. In order to help expedite the Big Cypress land transactions brought to the court, the U.S. Attorney's office in south Florida worked with NPS to establish a special commission. This commission, Chiles explained to yet another constituent, is "comprised of three men who are very experienced in the field of judicial proceedings. The establishment of this commission in lieu of the appointment of additional judges is legally acceptable, and was considered to be a more feasible method of handling contested trials."<sup>25</sup> In April 1980, the Preserve, the Preserve's

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<sup>23</sup> "The Southern District in Crisis," *Nova Perspective: Nova Law Center Newspaper*, December 1977; offprint in BICY 14661. For the number of condemnations, see James F. Sewell to Lawton Chiles, November 8, 1979; Lawton Chiles Papers.

<sup>24</sup> Lawton Chiles to Leroy Owens, January 22, 1979; Lawton Chiles Papers.

<sup>25</sup> Lawton Chiles to Eduardo Palmer, July 28, 1980; Lawton Chiles Papers.

Land Office, and the Regional Director approved the Preserve's first Land Acquisition Plan (LAP). The LAP summarized the procedures that had been developed over the previous five years of work, including provisions for tracts that were exempt from acquisition, unimproved property, and improved properties that were not exempt from acquisition. In its discussion of unimproved land, the LAP included provisions for the exercise of eminent domain to acquire the land when the owner did not agree to the NPS appraisal for just compensation. By this time, the U.S. Attorney's Office had established the three-person commission, before which the landowner could present evidence, either with or without legal representation. In cases where the landowner still did not agree with the commission's findings, the case would be taken to the U.S. Court of Appeals in New Orleans, Louisiana.<sup>26</sup>

By October 1982, nearly ninety-six percent of the 45,006 tracts that were not publicly owned had been purchased, with 2,023 privately-owned tracts yet to be acquired, totaling 36,811 acres. Nearly all these tracts (1,869) were in various stages of the condemnation process, most of which had yet to be heard before the special commission. Only eighty-six of the remaining privately-owned tracts were not in the condemnation process, for forty of which, no appraisal had yet been conducted. In addition to the privately-owned tracts, sixteen tracts were owned by public entities, totaling nearly 36,000 acres.<sup>27</sup> Although this summary indicated that the land acquisition process was substantially complete, many of the cases that remained were thorny ones. Several of the tracts that remained in private hands, for example, belonged to Forrest Harmon, a local developer intent on building new subdivisions within Big Cypress Swamp, specifically the Kentuckyana and Everglades Shores subdivisions in Collier County. Harmon had already built roads in these subdivisions, where he had also created several drainage canals that were diverting a significant amount of water from Big Cypress Swamp. Despite an agreement made in 1973 with NPS, Collier County continued to issue building permits, leading the Preserve Superintendent, with the support of the Southeast Regional Office, to ask that Collier County place a moratorium on all building permits for undeveloped lands within the Preserve. The County Attorney, however, did not believe that this was legally feasible, and the County Commission denied the request. By this time, Harmon had placed a prefabricated house on a cinder-block foundation that he had already built in the Kentuckyana subdivision. By October 1983, however, the Preserve had acquired all of the tracts in the Kentuckyana subdivision, and only one tract in the Everglades Shores subdivision was still owned by Harmon. All of the tracts were in the process of acquisition by NPS at the end of 1983, when the Preserve began coordinating with Collier County to maintain the roads and to continue rehabilitating the existing canals to support hydrologic improvements.<sup>28</sup>

### *Trespass Camps*

Other properties proved equally difficult to acquire and manage. The more remote tracts in the backcountry of Big Cypress National Preserve, in particular, were a challenge. Many of

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<sup>26</sup> *Land Acquisition Plan*, 6.

<sup>27</sup> "Big Cypress National Preserve: Cost Estimate to Complete Land Acquisition Program," report prepared by Big Cypress Land Office, October 4, 1982; BICY 14661, series 5.

<sup>28</sup> Memorandum, Superintendent, BICY to The Files, August 5, 1983; Fred J. Fagergren to Cyndi Faulkner, October 28, 1983; Fagergren to Collier County Engineer, December 23, 1982; BICY 14661, S5.

these tracts had traditionally been used for hunting. Camps or cabins had been built on them, ranging in size from single-room shacks to multi-story houses. Most of these buildings were on tracts not owned by the camp builders, though many of them had occupied the property for years. The parcels on which these “trespass camps” were located were, therefore, not “improved properties” under the Preserve’s enabling legislation. Through the 1970s and early 1980s, the Preserve sought to balance the need to protect the backcountry and the need to enforce its ownership of the land while maintaining good relations with those who had traditionally used Big Cypress Swamp. By 1979, the Preserve estimated that approximately 500 camps were scattered throughout the backcountry, nearly 400 of which were on property which the camp occupants did not own. As noted in the 1980 Land Acquisition Plan, the Preserve made provisions for special use permits for the owners or occupants of the camps “in order to allow for an orderly phase-out of the camps and to ease the understandable dismay of the camp owners.”<sup>29</sup> A briefing paper on these trespass camps prepared in 1984 likewise noted that “the long customary use of such property by the individuals, and the sizeable investment that many had made, required consideration of an alternative means to orderly termination.”<sup>30</sup> On August 1, 1979, the Preserve issued its first regulations for trespass camps. According to these new regulations, even if the camps were on land which the occupants did not own and was, therefore, owned by the Preserve, the occupants could continue to use the camps for up to five years from either the date of federal acquisition of that tract or from the effective date of new regulations, whichever was shorter. To secure special use permits for these trespass camps, the camp owners had to demonstrate their right of occupancy, submit a sketch or photograph of the camp along with its location, agree to vacate or remove the camp structure(s) at the expiration of the permit, and acknowledge that they had no interest in the real property. No special use permits would be issued, however, for any trespass camp structures that were built after August 1, 1979; these would be removed upon federal acquisition of the land on which they were located.

The new regulations guided the actions of the Preserve, which issued more than 150 special use permits for trespass camps through the early 1980s. Many of the camp owners, however, did not request a special use permit, and, by 1984, the Preserve had removed another 150 camps. The issuance of new special use permits was put on hold in 1982, when the NPS Washington Office began reviewing the new regulations. Because of this review, the one hundred special use permits that expired during this time were allowed to continue in place. In early 1984, the Washington Office announced its decision to enforce the 1979 regulations; in February 1984, in response to this determination, two groups that claimed to represent the trespass camp owners filed in District Court for a temporary restraining order against the Preserve, arguing that the camps were, indeed, owned as property and that NPS had no right to seize them without compensation. The District Court agreed not to issue the restraining order when the Preserve agreed not to take any action against the camp owners while both sides waited for an injunction hearing in the spring of 1985.

The owners of trespass camps, encouraged in part by support from the Florida Game and Fresh Water Fish Commission, filed successive lawsuits and motions throughout the late 1980s to halt the enforcement of the August 1, 1979. regulations and allow the trespass camps to remain in place. These drew upon several arguments. First, the trespass camp owners argued that

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<sup>29</sup> *Land Acquisition Plan*, 15.

<sup>30</sup> Briefing Paper—“Trespass Camp Retention for Concession,” June 22, 1984; BICY 14661, S5, F79.

the land on which the camps stood was not necessary for the administration, preservation, and conservation of Big Cypress National Preserve, and that, therefore, the NPS actions were arbitrary and capricious. Another complaint was that the removal of trespass camps would cause hardship to the camp owners; others argued that the camp owners had gained title to the land through adverse possession. Finally, the trespass camp owners argued that the August 1, 1979, regulations violated their rights to equal protection since the Alaska National Interest Lands Conservation Act of 1980 allowed cabin owners to acquire a lifetime use. By June 1989, the District Court for the Southern District of Florida had issued several decisions which, together, ruled definitively on these complaints by rejecting all of them. The fundamental point was that the trespass camp owners were trespassing and that the requirements pertaining to adverse possession had not been satisfied. The National Park Service had provided substantial arguments to justify the removal of the camps, which the court found convincing, thus negating the argument that the regulations were arbitrary and capricious. Finally, in its final summary and decision in June 1989, the court found that the Alaska National Interest Lands Conservation Act made allowances for rural residents who were engaged in a subsistence way of life. “This contrasts significantly,” the court concluded, “with the weekend recreation use by the Big Cypress trespass camp owners.” The court then ordered that trespass camp owners had a maximum of 120 days from the date of the order to remove the cabin and contents, after which point, they would become the property of NPS.<sup>31</sup> In 1990, Preserve staff began to remove trespass camps, an extended and occasionally contentious process that continued into the early 2000s.

Unfortunately, in his efforts to restore the integrity of the backcountry by removing the trespass camps, the Preserve’s first Superintendent, Fred Fagergren, may have become overzealous. Former Preserve Management Assistant Christine Clark argued that, after the trespass camp owners lost their case, “the Park Service made a huge, huge, error. So, they gave these people, like, forty-eight hours’ notice and then burned their camps down...It’s taken us fifteen, twenty years to bring back the goodwill that we lost with those people, because they’re still around.” In light of the experience with the first round of trespass camp removal, she stated, the Preserve became far more lenient in the process, giving the trespass camp owners up to a year to move and often paying for relocation expenses. “We tell them when we’re coming,” she explained, “You know, we have an inspection. We all go out together. So, we have more compassion.”<sup>32</sup>

One offshoot of the camps in Big Cypress National Preserve’s backcountry, whether exempt properties or trespass camps, raised additional interesting concerns. The issue of the massive Miami-Dade County Jetport being located in Big Cypress Swamp had been settled before Congress established the Preserve. Many of the backcountry camp owners, however, had built small airstrips that allowed year-round access. Similar to the trespass camps, the regulations

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<sup>31</sup> Everglades Recreational Protection Society, Inc. vs. United States Department of the Interior, et al., 84-0467-CIV-DAVIS (United States District Court, Southern District of Florida, February 13, 1989). See also United States of America v. 1.29 acres of land, more or less, in the County of Collier, State of Florida, and Robert T. Chapman, et al., and unknown owners, 87-12069-CIV-KING (United States District Court, Southern District of Florida, February 13, July 22, 1988; Everglades Recreational Protection Society, Inc. vs. United States Department of the Interior, et al., 84-0467-CIV-DAVIS, Defendant’s Opposition to Plaintiff’s Motion to Stay Entry of Final Order (United States District Court, Southern District of Florida, January 30, 1989).

<sup>32</sup> Christine Clark, oral history interview, September 17, 2020.

of August 1, 1979, allowed owners of exempt properties to retain an airstrip on their property. When the airstrip was on land which NPS had already acquired, the airstrip could still be used and maintained under a special use permit issued to the associated camp owner. The special use permit for the airstrip required a fee for use of the airstrip. An interesting challenge arose in the late 1970s, when the provisions for existing airstrips intersected with the need for the Preserve to remove existing improvements on properties which had been acquired.

In the early fall of 1977, the Preserve acquired the Aero-Oasis airport located near Monroe Station on the Tamiami Trail, despite the owner's earlier claim that he would not sell.<sup>33</sup> After the sale closed on September 30, all the buildings were vacated of materials and equipment with the exception of a DC-3 airplane owned by Lou Herring. Preserve Superintendent Irv Mortenson met with Herring in January 1978, and Herring agreed to remove the airplane by April 1, 1978.<sup>34</sup> Herring, however, did not remove the airplane as agreed, largely due to the fact that it was inoperable. In the fall of 1978, Preserve Realty Specialist William J. Porter Jr. secured a quote for \$2,050 to repair the airplane sufficient to allow a one-time ferry flight to another airstrip and recommended that the Preserve offer to pay that fee on behalf of Herring.<sup>35</sup> Herring continued to refuse to remove the plane despite this offer and also failed to satisfy rent in arrears owed to NPS. In the summer of 1980, Herring received another quote to ferry the airplane, this time for \$10,000. All tracts of land associated with the Aero-Oasis airport were in federal hands by late August 1980, and Preserve staff towed the airplane to the Oasis Ranger Station; Herring was informed that NPS had the option to declare the airplane to be voluntarily abandoned and sell it without compensation to Herring.<sup>36</sup>

Although facing a deadline of November 29, 1980, to move the airplane or else consider it voluntarily abandoned, Herring delayed, prompting a request for advice from Preserve Superintendent Fred Fagergren to the Regional Solicitor in the spring of 1981. Unclear if the NPS had any legal requirement to warn Herring again, Fagergren asked, "What legal obligations remain for us to conclude this mess and put it behind us? ... For this to remain unresolved since 1978 is unacceptable."<sup>37</sup> Fagergren rebuffed a delaying letter from Herring's attorney in early June 1981, and secured an appraisal for the airplane later that month. No further action was taken, however, and, in February 1982, the Preserve again threatened Herring with a warning that the airplane would be declared abandoned if Herring did not move it by the next month. The issue languished for yet another year; apparently, the Regional Solicitor was unconvinced that the Preserve had the authority to declare the airplane abandoned property. In March 1983, the U.S. Attorney and legal counsel for the General Services Administration (GSA) disagreed with this inactivity, and urged that Herring be cited for a violation of 36 Code of Federal Regulations

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<sup>33</sup> "Naples Airport Endangered by Federal Purchase," *News-Press* (Fort Myers, Florida), June 18, 1975, page 18. In 1972, the airport hosted the annual meeting of the Landowners Conservation and Protection Association offering free airplane rides for those who wished to see their properties from the air; "Conservationists to Meet Saturday," *Naples Daily News*, October 25, 1972, page 10.

<sup>34</sup> Irv Mortenson to Lou Herring, July 6, 1978; BICY 26817, S3, SSA.

<sup>35</sup> Memorandum, William J. Porter, Jr. to Chief, Relocation Division, [Big Cypress Land Office], September 12, 1978; BICY 26817, S3, SSA.

<sup>36</sup> Frederick J. Strack to Lou Herring, August 29, 1980; BICY 26817, S3, SSA.

<sup>37</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Solicitor, Southeast Region, April 15, 1981; SFCMC, BICY-313, box 5. See also Daniel J. Farrell, Jr. to David L. Wildman, November 14, 1980; BICY 313, box 5.

(CFR) 2.1 pertaining to the protection of natural and cultural resources. Such a citation, however, could be delivered only in person. Herring was then reputed to be living in Indiatlantic, on a barrier island near Melbourne, Florida. Repeated attempts to locate him, however, proved fruitless, and the administrative record of attempts to remove the DC-3 ended in October 1983, when Herring was reputed to have relocated to the Bahamas.<sup>38</sup> An airplane documentation project, Aerial Visuals, notes that, as of 2011, the civil registration for Herring's DC-3 was cancelled, and the plane was in derelict condition (Figure 5). No other information regarding the plane's status was located during the research for this Administrative History.<sup>39</sup>



Figure 5. DC-3 airplane once belonging to Lou Herring.

### *Administrative Developments*

The acquisition of the tens of thousands of individual parcels included within the boundaries of Big Cypress National Preserve was the most important task for the first several years after the Preserve's establishment. Without ownership of the land, NPS would be unable to protect the water flow and natural resources of Big Cypress Swamp in accordance with Congress' intent. During this long process of land acquisition, however, from 1975 into the early and mid-1980s, the Preserve also began to emerge as a unit of the National Park System as staff was hired to begin managing the land that had been acquired and to initiate the planning process. The first step was to hire a new manager for the Preserve. Shortly after the Preserve was

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<sup>38</sup> Stanley Marcus to James Mills, March 14, 1983; Record of Telephone Conversation, Linda Amadon to Fred Fagergren, March 19, 1983; Memorandum, Chief Ranger to Superintendent, June 7, 1983; Park Tech Jay Lippert to File, October 5, 1983; BICY 26817, S3, SSA.

<sup>39</sup> Aerial visuals website: <https://www.aerialvisuals.ca/AirframeDossier.php?Serial=55311> (viewed September 2, 2022).



established, as discussed earlier in this chapter, Southeast Regional Director David D. Thompson, Jr. delegated authority for the Preserve to Everglades National Park Superintendent Jack Stark. In August 1976, Irvin L. Mortenson was appointed Manager of Big Cypress National Preserve, the Preserve's first staff member. Mortenson was then serving as Park Ranger at Everglades National Park and would continue to report to Stark in his new role. His tasks, according to a newspaper report, included "on-site development and management programs, coordinating National Park Service programs with State, County and local governmental offices, and others having an interest in the programs and operations of the Preserve. ...He will also be directly involved in the formulation of necessary policies and regulations."<sup>40</sup> Mortenson quickly became involved in supporting James Sewell and the land acquisition process and handling routine administrative matters.

By 1977 or early 1978, Mortenson hired his first staff member when Howard Dimont entered on duty as the Preserve's Chief Ranger. Dimont had previously served as Park Ranger at National Capital Parks, District of Columbia, and remained at Big Cypress National Preserve through the mid-1980s.<sup>41</sup> Much of Dimont's work at Big Cypress National Preserve focused on fire protection, and, by 1981, Dimont was taking part in national fire management planning for NPS.<sup>42</sup> In 1979, the Preserve also had an administrative officer, two rangers, two maintenance staff, and four seasonal employees. Clerk-Typist Sandy Sehler was on staff by 1981, and Resource Management Specialist Carroll Schelle entered on duty before 1982. Through the early 1980s, the Preserve used rented office space in downtown Naples, approximately thirty-five miles west of the Preserve but, by 1982, had relocated the Superintendent's office to an existing building in Ochopee. The Preserve also had a field office housing the ranger and maintenance activities at the former Oasis airstrip on U.S. Route 41, approximately fifty-five miles east of Naples. The Preserve's ranger staff were focused primarily on fire control, exotic plant control, and patrol of the backcountry, using swamp buggies and airboats stored at the Oasis ranger station along with helicopters and small aircraft that used the airstrip and hangers at the former Oasis Airport.<sup>43</sup>

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<sup>40</sup> "Mortenson Leads Cypress," *Naples Daily News*, August 19, 1976, page 6B. See also "Park Ranger Gets Post," *Naples Daily News*, August 11, 1976, page 5B; Mortenson was also included in a profile of the work of Everglades Park Rangers in "Rangers Still Fight Poachers," *Naples Daily News*, March 27, 1975, page 1B.

<sup>41</sup> No record of Dimont being hired was located during the present research. The first reference to him being at Big Cypress National Preserve was in a letter from Mortenson to Lou Herring regarding Herring's abandoned DC-3 aircraft, on July 6, 1978; Mortenson pointed out that Chief Ranger Dimont had made several calls to Herring regarding the status of the airplane; BICY 26817, S3, SSA. The reference to Dimont's earlier service at National Capital Parks can be found in a group photo of the Introduction to Park Operations class in 1970: <https://npgallery.nps.gov/AssetDetail/6c3f3856-b023-49d6-a355-5fa700548405> (viewed September 2, 2022).

<sup>42</sup> See Memorandum, Chief Fire Management Branch to Chief, Natural Resources Management Division, March 4, 1982, pertaining to a review of the 1981 fire season, available at <http://npshistory.com/publications/fire/fire-season-review/1981.pdf> (viewed September 2, 2022).

<sup>43</sup> Reference to the rented office space and the Oasis field office, and staffing levels, is made in *Environmental Assessment for Big Cypress General Development Plan and Shark Valley/Tamiami Development Concept Plan* (1979), page 21; BICY 14661, S2, SSA, F1.

## *Initial Planning*

Although Mortenson was gradually building up his staff, the initial Preserve planning activities were being led primarily by his supervisor, Everglades National Park Superintendent Stark. Stark and the Everglades staff prepared the Preserve's first draft Statement for Management (SFM) in late 1975, before Mortenson was hired for Big Cypress National Preserve, which was submitted to the regional office for review in early January 1976. Drawing from the Preserve's legislation, the SFM identified the two-fold purpose of the Preserve: to protect the natural, scenic, hydrologic, floral, faunal, and recreational values of the Big Cypress Swamp watershed; and to protect Big Cypress Swamp as a vital fresh water source for the Everglades and the estuarine regions in the Gulf of Mexico. The SFM outlined the constraints that had been placed on NPS' efforts to protect these resources, including limits on the acquisition of improved properties and oil and gas rights; the allowance, with regulations, of off-road motorized vehicles; oil and gas exploration and extraction; grazing; the alteration of natural water courses; hunting and fishing; new construction; and the continued use by the Seminole and Miccosukee Indian nations. In addition, NPS was called on to consult with the Florida Game and Fresh Water Fish Commission regarding the development, promulgation, and enforcement of regulations on hunting and fishing. This initial draft of the SFM described the Preserve's initial management objectives, such as providing coordinated regional resource planning for the protection and use of the area, particularly its water supply; providing sufficient staff, facilities, equipment, and funds for resource management and visitor protection; minimizing the impacts of facilities, activities, and visitor use on the Preserve's natural resources, especially the water flow; controlling exotic animal and plant species while supporting the Preserve's natural flora and fauna; instituting a natural history research program; and allowing hunting and fishing in conformity with state law.<sup>44</sup>

The Southeast Regional Office provided comments on the draft SFM, and, in late May 1976, Stark produced a revised document. In this later version, Stark expanded on the constraints that would impact NPS' management of the Preserve to include the State of Florida's designation of much of the Big Cypress Swamp as an Area of Critical State Concern. Stark also included additional information on the land acquisition process and on the allowable activities that might impact the region's natural resources including motorized vehicle access, grazing, water drainage, new construction, and traditional uses by the Seminole and Miccosukee Indians.<sup>45</sup> After additional reviews and revisions through 1976, the Preserve's initial SFM was finalized in early 1977.<sup>46</sup>

After identifying the key management goals for the Preserve in late 1975, Superintendent Stark made an initial attempt to identify the Preserve's planning needs. In February 1976, he submitted an Outline for Planning Requirements for review by the Southeast Regional Office. The fundamental requirement that would have to precede all others was a baseline inventory

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<sup>44</sup> Draft Statement of Management, accompanied by Memorandum, Superintendent, Everglades to Regional Director, Southeast Region, January 8, 1976; BICY 14661, S2 SSA, F17.

<sup>45</sup> Statement for Management, accompanied by Memorandum, Superintendent, Everglades to Associate Regional Director, Park Operations, SER; BICY 14661, 2, SSA, F17.

<sup>46</sup> Statement for Management, Big Cypress National Preserve, signed by the Southeast Regional Director David W. Thompson, Jr., February 15, 1977; BICY 14661, S2, SSA, F17.

study of the Preserve's natural and cultural resources. In the accompanying Development/Study Package Proposal for the baseline inventory study, Stark noted that Big Cypress National Preserve had only recently been authorized, and "Resource information for the most part is sketchy and ill-coordinated." He outlined the dire consequences of not funding the baseline study, arguing that a failure to conduct the study "will result in faulty, if not negligent, planning, development, and management of this new Park area with possible long range or irreversible adverse effects upon the resources, not only of the Big Cypress National Preserve, but also upon the adjacent Everglades National Park."<sup>47</sup>

In addition to the resource baseline inventory study, Stark recommended two other planning requirements for the new Preserve: the Congressionally-mandated Wilderness Plan Study and a General Management Plan (GMP). Both would draw upon the baseline inventory study and would follow quickly upon its completion. These three key planning tasks, Stark noted, would be the responsibility of the Denver Service Center (DSC). Other, less important, planning tasks included developing proposals for Special Regulations to guide the recreational activities at the Preserve, and plans for water resources management, natural science research, natural resources management, cultural resources management, visitor use, and archeological resources; these tasks would be the responsibility of the Preserve and the Southeast Regional Office.<sup>48</sup>

The resource baseline inventory study was the most fundamental and immediate need. In the summer of 1976, Everglades National Park Research Director Gary Hendrix contacted Michael J. Duever, Research Biologist and Director of the Audubon Society's Ecosystem Research Unit, about the project. Duever submitted a "pre-proposal" to Hendrix in early September. It was one that Duever had already been working on before Hendrix contacted him. Duever's principal theme was to understand the impacts that a variety of human activities would have on the Big Cypress Swamp ecosystem. Duever noted that several studies had identified the characteristics and distribution of many different plant and animal communities in Big Cypress Swamp, but they needed to be integrated to understand the region's ecosystem more completely. Similarly, the hydrology of the region, studies for different aspects of which had been conducted, remained largely unknown. The gathering and analysis of this information pertaining to flora and fauna and to the region's hydrology would provide greater understanding of the impacts of the activities that were allowed by legislation in the Preserve. As Duever summarized his intent, "The sequential inputs of information and the intermediate and final outputs, representing our understanding of the system and its component subsystems, lead to recommendations for research priorities and a preliminary management plan."<sup>49</sup>

The Regional Office solicited four proposals for the baseline inventory study in late 1976 or early 1977, and Everglades Research Biologist William Robertson provided an initial review on behalf of the Preserve. In May 1977, Preserve Manager Mortenson agreed with Robertson

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<sup>47</sup> Development/Study Package Proposal, Resource Information Base Inventory Study, February 13, 1976, attached to Outline of Planning Requirements, accompanied by Memorandum, Superintendent, Everglades to Associate Regional Director, Administration, SER, February 18, 1977; BICY 14661, S2, SSA, F1.

<sup>48</sup> Ibid.

<sup>49</sup> Michael J. Duever, "Environmental Planning Studies: Big Cypress National Preserve," accompanied by cover letter, Duever to Dr. Gary Hendrix, September 1, 1976; BICY 14661, S6, SSC, F2.

that the proposal submitted by Duever and the Audubon Society in collaboration with the University of Florida's Center for Wetlands had the most useful and realistic approach. That team's "concentration suggested on identifying the principal research needs rather than attempting to do the research for the RBI [Resource Baseline Inventory] seems to be a sound idea."<sup>50</sup> The contract was awarded in October 1977, and the work was well under way by the spring of 1978. While the baseline inventory study was in process, the Preserve also contracted for the specific research studies that would evaluate impacts to natural resources, starting with an off-road vehicle (ORV) impact study that was under contract by June 1978. Studies pertaining to fire management, hydrology, and exotic plants soon followed. At the same time, work on the Preserve's cultural resources began with base mapping and the nomination of five archeological sites to the National Register of Historic Places (NRHP). Finally in the summer of 1979, the final resource baseline inventory study was approved, paving the way for future planning efforts.<sup>51</sup>

### ***General Development Plan: Preliminary Steps and Analyses***

As Mortenson and Stark worked toward contracting for the resource baseline inventory in early 1977, they also began coordinating with the DSC on what was assumed to be the next two planning tasks: the Wilderness Area Study and the GMP. In February 1977, DSC Environmental Specialist Alex Carter outlined the basic needs and preliminary schedule for these two tasks, which would be conducted concurrently. Carter proposed that both tasks, which would not begin until early October 1977, be combined into the same document, with a single Environmental Impact Statement (EIS).<sup>52</sup> The next month, Carter prepared a draft Task Directive for the GMP and the Wilderness Area Study, which explained the six-month delay in starting the planning process. Although some inventory data pertaining to the Preserve was known, "the total information base is presently inadequate to support a planning effort which fully satisfies the legislative requirements." In particular, Carter pointed to questions of hydrology, the impact of off-road vehicles such as "glade buggies," and the locations of critical animal and plant habitats, all of which "must be answered before an adequate planning [sic] and the necessary environmental documentation can be prepared." At that time, Carter assumed that the resource baseline inventory would be completed by early 1978, and the completion of the GMP and delivery of the Wilderness Area Study to Congress by November 1979. The principal topics to be considered in the single document were land classification, visitor use and development, natural and cultural developments management, and the Preserve's suitability as a Wilderness Area.

With the resource baseline inventory contract not awarded until October 1977, the start date for the GMP and Wilderness Area Study was pushed back. In a meeting among Everglades

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<sup>50</sup> Memorandum, Park Manager, Big Cypress National Preserve to Research Biologist, Everglades, May 4, 1977' BICY 14661, S6, SSC, F12.

<sup>51</sup> Memorandum, Acting Park Manager, Big Cypress National Preserve to Chief, Natural Science and Research Division, Southeast Region, June 9, 1978; BICY 14661, S6, SSC, F2. The results and recommendations of the 1979 baseline inventory study and the research studies for the topics mentioned in this paragraph will be discussed in detail in subsequent chapters.

<sup>52</sup> Memorandum, Alex R. Carter to Superintendent, Everglades National Park, February 15, 1977; Task Directive (draft) for Assessment of Alternatives, General Management Plan, Wilderness Study/Recommendation, Big Cypress National Preserve, Florida, March 11, 1977; BICY 14661, S2, SSA, F1.

and Big Cypress staff and DSC planning personnel in late October 1977, it was agreed to begin the Wilderness Area Study at the beginning of 1978, when staff would also begin “an informal low-key approach to general management planning.” Work on the GMP would begin during the summer of 1978 as the results of the resource baseline inventory became available and as the land acquisition process proceeded and “the presence of the Park Developments and the acquisition of the Big Cypress National Preserve becomes a less sensitive issue.” The planning team, by then, assumed that the Wilderness Area Study would result in a negative recommendation, given the presence of oil and gas exploration, and that the Preserve would remain a mentored park under the overall administration of Everglades National Park.<sup>53</sup>

The DSC planning team for Big Cypress National Preserve, working with Park Manager Mortenson, began meeting in early 1979, and held follow-up field visits in February 1979. These meetings through the winter and spring of 1979 led to the development of an Environmental Assessment (EA) that would inform both the overall Big Cypress National Preserve planning efforts and the ongoing Development Concept Plan for Shark Valley and Tamiami Trail in coordination with Everglades National Park. The resource baseline inventory was just being finished in 1979 as the draft EA was completed and helped to inform the EA. In its meetings, the planning team focused its efforts on overall Preserve development rather than specifically on developments, given that the resource baseline inventory was only just being completed. Though a GMP would be needed eventually, the planning team, instead, prepared a task directive in early 1979 for a Visitor Use and Development Plan. The planning team acknowledged that the Preserve had substantial natural and cultural resource concerns, including endangered and threatened species, impacts from ORV travel, unknown surface water flow patterns, and archeological sites. As they defined the situation in the EA, however, the team noted that the Preserve did not yet have detailed resource management plans. Instead, the EA that resulted from their 1979 meetings would focus only on development issues, as “the need for development adequate to provide for resource protection and visitor use has been clearly demonstrated.” In addition, for this draft EA, the planning team developed several alternatives but did not identify a preferred alternative, recognizing that the Regional Office would likely combine aspects of the various alternatives.<sup>54</sup>

The EA presented information on the current status of the Preserve in 1979, including the land acquisition process that was then at the height of its activities; oil and gas, which the EA noted was the only expanding industrial use in the Preserve; the rapid increase over the past two decades of hunting activity together with the associated ORV use; and the very preliminary interpretation program, which featured only occasional Ranger-led programs conducted by Everglades National Park staff. The EA defined the actions that were common to all alternatives, including the no-action alternative. First, and most fundamentally, Big Cypress National Preserve would remain under the administration of Everglades National Park, with an expectation of full cooperation between NPS personnel of both units. In addition, all proposed

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<sup>53</sup> Memorandum, Team Captain, Big Cypress National Preserve Planning Team to Superintendent, Everglades National Park, October 31, 1977; BICY 14661, S2, SSA, F1.

<sup>54</sup> *Environmental Assessment for Big Cypress General Development Plan* [1979], 3-4. See also Memorandum, Steve Hodapp, DSC to Area Manager, Big Cypress National Preserve, January 12, 1979; Task Directive, Big Cypress National Preserve, Florida: Visitor Use and Development Plan, accompanied by Memorandum, Park Manager, Big Cypress National Preserve to Hodapp, January 15, 1979; BICY 14661, S2, SSA, F1.

facilities would be accessible to special populations including those with a variety of disabilities, children, and the elderly. Interstate 75, which was then still in the planning and design stage, would be grade-separated from County Route 839, which extends north from U.S. Highway 41 several miles east of Ochopee, and provisions would be made for the Florida Trail System to pass through Big Cypress National Preserve and be routed to take maximum advantage of the Preserve's developments.

The EA outlined the three alternatives, along with the no-action alternative. The no-action alternative, identified as Alternative 1, provided only minimal services including fire protection, limited ranger patrols for overseeing hunting and ORV use regulations, and basic administrative functions, and the vast majority of interpretation would be handled by Everglades National Park staff, primarily at the Shark Valley facility in the western portion of Everglades National Park. The three principal alternatives differed in the level of development and, in particular, the degree of staff housing that would be provided. Alternative 2 provided no housing for NPS personnel but proposed construction of a 5,400-square foot building in Ochopee for maintenance, ranger, fire, administrative, and interpretation functions while also providing for campgrounds, ORV parking areas, and canoe access. Alternative 3 anticipated provision of permanent employee housing at the Oasis ranger station, which would be expanded to incorporate additional maintenance, fire, and interpretation functions. The Preserve's administrative offices under Alternative 3 would remain in Naples. Alternative 4 envisioned more comprehensive housing for NPS in multiple locations in addition to the proposed expansion of the Oasis ranger station. This alternative also planned expanded interpretation and access facilities at Trail Center and a new visitor contact station at Shark Valley. For all the alternatives, the number of staff classifications remained more or less similar—thirteen classifications for the no-action alternative, fifteen for Alternatives 2 and 4, and fourteen for Alternative 3—though the number of staff members and the allotted work-years (similar to full-time equivalent [FTE]) varied with different numbers of Park Rangers and Technicians, Maintenance Workers and Laborers, and seasonals. In a series of appendices, the EA also provided upfront cost projections for developments at both Big Cypress National Preserve and Everglades National Park as well as annual operations and maintenance costs, general staffing plans, and cost-benefit analyses.

### ***General Development Plan: Drafts and Comments***

The planning team, led by DSC staff with input from Big Cypress National Preserve and Everglades National Park personnel, completed a draft Visitor Use and General Development Plan in the summer of 1979. Initial drafts of the plan were circulated within the Southeast Region and to the public in 1980, and public meetings were held in the summer of 1980 in Fort Lauderdale, Homestead, and Naples, Florida. In the summer of 1980, Jack Moller, one of the most outspoken advocates for traditional recreational uses of the Big Cypress Swamp, provided substantial comments on the initial draft. Moller encouraged a more robust access plan for the Preserve than the General Development Plan proposed, suggesting, in particular, recreational access sites from the proposed Interstate 75, especially at Turner Road, to allow access to the Bear Island Management Area. Similarly, Moller accurately pointed out that the General Development Plan placed too great an emphasis on activities in the southern portion of Big

Cypress National Preserve while largely ignoring the Preserve's northern areas. Park Manager Mortenson notably appreciated Moller's identification of twenty-five access points with proposed uses and numbers of parking places.<sup>55</sup>

Following these meetings, however, the process languished for more than a year. In 1981, Mortenson's successor, Big Cypress National Preserve Superintendent Fred J. Fagergren, prepared a critical assessment of the General Development Plan, then on hold, to the Southeast Regional Director. Fagergren entered on duty at Big Cypress National Preserve in March 1981, having previously served as Superintendent at Mound City Group National Monument, Ohio, and was the son of the former Midwest Regional Director, Fred C. Fagergren. Unlike his predecessor, Irvin Mortenson, for whom Big Cypress National Preserve was his first time leading a park, Fagergren was a veteran leader. Fagergren was particularly critical of the lack of input which the DSC planners were allowing to Big Cypress National Preserve staff members. As Fagergren argued,

BICY [Big Cypress] staff has told me of their repeated attempts to provide input and direction to this plan; attempts/comments in two areas which were ignored by the various (almost numerous) team captains which have had a hand in this plan. The DSC personnel have held fast to certain 'mind sets' which they were unwilling to revise in the light of BICY or EVER [Everglades National Park] input.<sup>56</sup>

In particular, Fagergren pointed to an unwavering assumption that the existing Oasis Ranger Station would be demolished and replaced and the assumed integration of "management and operational interaction between EVER and BICY." Although Big Cypress National Preserve remained under the administration of Everglades National Park, Fagergren noted that the Preserve had been acting more independently of late as Everglades Superintendent Morehead had been delegating more responsibility to Big Cypress. In a specific comment on a portion of the General Development Plan, Fagergren described his understanding of the developing dynamics between the two parks:

There is a vast difference between integrated management of both areas under EVER versus the NPS management system which exists in groups or clusters. I believe we are moving towards a group/cluster situation rather than an integrated management. I believe such a move to be in a correct direction. While there are many similarities between the areas, there are vast differences. Those differences, when coupled with the distances involved, makes integrated management less than effective. I believe the direction taken by Superintendent Morehead to provide as much independent management as possible is the most viable and logical solution. This assumes of course that it is the NPS intention to have BICY as a fully operational unit of the National Park System fulfilling the mandates given it by Congress."<sup>57</sup>

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<sup>55</sup> Jack Moller to I. Mortenson, August 12, 1980, with a response of thanks from Mortenson to Moller, August 27, 1980; BICY 14661, S2, SSA, F1.

<sup>56</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, September 14, 1981; BICY 14661, S2, SSA, F1.

<sup>57</sup> Ibid.

The second assumption which DSC planners made, Fagergren continued, pertained to the replacement of existing buildings, particularly the Oasis Ranger Station. This complex, which became a part of the Preserve through the land acquisition process, had been serving as a small airport. The Preserve needed to use aircraft to patrol for fires, and the existing hangar was in generally good condition. The Preserve had already spent more than \$100,000 to rehabilitate the complex for NPS use in addition to the “sizable cost” to acquire it. The General Development Plan proposed the removal of the existing hangar building, to be replaced with a new, multi-purpose building. Instead, while recognizing that the existing building at Oasis would not accommodate all functions that the Preserve would need there, Fagergren argued that rehabilitation of the hangar should proceed as planned and that future engineering studies could determine the need for new buildings. In contrast to the situation at Oasis, Fagergren opined that, while the Superintendent’s office had been relocated to Ochopee, the General Development Plan’s assumption that existing buildings in Ochopee would suffice for administrative offices and housing for twenty employees was untenable. Although relocating administrative functions to Oasis was not feasible, remaining at Ochopee would require either new facilities or the acquisition of the existing Golden Lion Motor Inn. Finally, Fagergren supported the contention made by Jack Moller in his comments on a draft of the plan a year earlier regarding the northern portion of the Preserve. The General Development Plan, he recommended, “should state an NPS intention to either place a permanent ranger station in that end of the area or a temporary ranger station/quarters which could be occupied during critical portions of the season; i.e., hunting.”<sup>58</sup>

Fagergren, in the wake of his memorandum in September 1981, took part in subsequent meetings with Southeast Region and DSC personnel as well as Everglades Superintendent John Morehead. These meetings were, apparently, productive from Fagergren’s perspective, as his comments on a revised draft in December 1981 were far more gentle, focusing primarily on typographical errors and relatively minor rewrites of particular sections. The revised document reflected his concern regarding the greater administrative distance between Big Cypress National Preserve and Everglades National Park, given “The increase in operations and diversity of problems [that] now call for management to have considerable independence.” In addition, the revised plan provided increased emphasis on rehabilitating the existing facilities at the Oasis Ranger Station to serve ranger, maintenance, and visitor contact functions as well as to serve as the base of airport operations for the Preserve.<sup>59</sup> With these revisions completed, the General Development Plan was released for public comment from March 1 through March 22, 1982. Three groups provided comments during this period: the Isaak Walton League, the Florida Wildlife Federation, and the Coalition for Concerned Citizens, which Fagergren summarized in a memorandum. The Isaak Walton League focused its comments on oil and gas operations, expressing concern that studies did not adequately address the cumulative effects of drilling, while recommending that interpretive staff be available at the Gannett Strand boardwalk. The Florida Wildlife Federation was concerned that the language of the plan was too broad and general to allow them to know what NPS was planning to do, and the Coalition for Concerned Citizens, led by Jack Moller, found numerous points which they claimed were inaccurate, unclear, or incorrect. Fagergren argued that none of these sets of comments was sufficient to stall the plan’s finalization, particularly in light of the extensive public meetings that had already

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<sup>58</sup> Ibid.

<sup>59</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, December 10, 1981; BICY 14661, S2, SSA, F1.



taken place throughout south Florida, and recommended that he, Morehead, and regional staff meet to “sit down, discuss the document, section by section, and finalize this lengthy process.”<sup>60</sup>

### ***Final General Development Plan***

Finally, in October 1982, the General Development Plan for Big Cypress National Preserve was released in its final form. Despite taking more than three years to complete, it is a slender document, consisting of only nineteen pages of text in addition to appendices providing cost estimates along with the Preserve’s enabling legislation. As proposed in the initial EA in 1979, the General Development Plan focuses its attention on facilities that will be needed to address resource protection, visitor use, and administrative functions identified since the Preserve was established in 1974. While recognizing that resource protection issues were vital, including impacts from ORV use, the role of fire on the Preserve’s ecosystems, exotic and invasive species control, and surface water flow patterns, the General Development Plan contended that the studies conducted to date were not sufficient to allow development of management action plans to address resource protection. The document summarized the key management issues developed in the 1976 Statement for Management, drawing upon the definition of National Preserves as legislated by Congress as a balance of resource protections and traditional uses such as hunting, fishing, motorized access to backcountry areas, oil and gas exploration and extraction, and customary uses by Miccosukee and Seminole Indians. The General Development Plan summarized the existing uses of the Preserve by identifying four broad categories: residential/commercial, industrial, agricultural, and recreational. Despite the vast number of properties that had to be acquired within the Preserve’s boundaries, the General Development Plan noted that a small minority were improved for either residential or commercial uses: approximately fifty commercial properties and approximately 200-250 residences. Ochopee represented the greatest concentration of improved residential properties, with approximately thirty to thirty-five buildings. Commercial properties were concentrated along U.S. Route 41, primarily catering to tourist traffic. The Jetport, the proposed and incipient construction of which had precipitated the creation of Big Cypress National Preserve, existed only as a commercial flight training facility, and, under an earlier agreement, the Department of the Interior was working with Dade County, the State of Florida, and the U.S. Department of Transportation to identify a suitable commercial airport site for south Florida.<sup>61</sup>

Logging was the most important part of the Big Cypress Swamp’s economy during the first several decades of the twentieth century. By the 1970s, however, oil and gas exploration and extraction were the principal remaining industrial uses of the area. The Preserve’s enabling legislation explicitly allowed oil and gas exploration and extraction, though subject to regulations. Among the Preserve’s agricultural uses, cattle grazing was the most prevalent, with approximately 1,400 cattle grazing on 32,000 acres within the Preserve, primarily in the Bear Island area. The Preserve required cattle owners to secure permits to operate within the park’s

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<sup>60</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, April 13, 1982; BICY 14661, S2, SSA, F1.

<sup>61</sup> *General Development Plan: Big Cypress National Preserve, Florida* (October 1982), 7; BICY 14605, Collection 00002-003-001-001, Box 2.

boundaries, and as the General Development Plan assumed, grazing was phased out as those original permits expired.

The most prominent use of Big Cypress Swamp as the Preserve was being established was recreational, principally in the form of hunting. Hunting also entailed extensive ORV use which, as discussed earlier in this chapter, had been growing rapidly for two decades. The Preserve had only recently begun studying ORV use, though Michael Duever, who also led the preparation of the Preserve's resource baseline inventory, had begun using aerial photographs to map the major ORV trails in the Preserve. In addition to hiking, other recreational uses of the Preserve included camping, fishing, boating, interpretive nature visits, picnicking, and simply driving through Big Cypress National Preserve on U.S. Route 41 in the south or on Florida State Route 84 (Alligator Alley) in the north.

The General Development Plan proposed developments to accommodate existing recreation and expand slightly the available recreational opportunities while increasing the emphasis on visitor orientation. Any new developments were to use existing facilities as much as possible to reduce impacts on natural and cultural resources. Major developments were to be consolidated in Ochopee, Oasis, Trail Center, and Shark Valley. Staffing levels would be increased, and Oasis would continue to serve as the Preserve's base of operations as well as housing for several Preserve employees. Ochopee would serve as the Preserve's administration center. Visitor orientation would be handled primarily at the Oasis ranger station, with wayside exhibits located in Ochopee and on the proposed (now completed) Interstate 75 for visitors from Florida's west coast. The Oasis ranger station would include general information about the Preserve and more active interpretation in the form of an orientation video, a boardwalk at Gannet Slough west of Oasis, and occasional ranger-led programs. To accommodate hunters, the Preserve would create additional ORV access points with vehicle and trailer parking, and new campgrounds would be created.<sup>62</sup>

### ***Concluding the Initial Planning Process***

By the fall of 1982, when the General Development Plan was finalized, the Preserve had been established for eight years. The combined efforts of the Southeast Regional Office, the superintendent and staff at Everglades National Park, the Preserve's land office, and the new Preserve administrative and ranger staff had accomplished a great deal. Nearly all 577,000 acres had been acquired for the Preserve, vital management goals, objectives, and general strategies had been defined, and a resource baseline inventory had been created. The Preserve had a staff that was growing and becoming more experienced with the particular needs of Big Cypress Swamp and acting with greater independence from Everglades National Park's oversight, and initial regulations for hunting and oil and gas extraction had been issued.<sup>63</sup> National Preserves remained a new approach to land management within NPS, and vast amounts of planning and development aimed at finding the balance between traditional uses and the protection of

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<sup>62</sup> Ibid., 17-19.

<sup>63</sup> The Preserve released new regulations on hunting and ORV use in 1979, and NPS issued new regulations in December 1978 pertaining to oil and gas throughout the nation. Both of these new sets of regulations generated wide-ranging responses and will be discussed in greater detail in subsequent chapters.

resources, a balance that Congress left undefined, had yet to take place before Big Cypress National Preserve could be a fully operational unit of the National Park System. Moreover, the Preserve would soon face a steady array of lawsuits regarding how it regulated a variety of activities that the Preserve's enabling legislation allowed, from those who found the regulations overly restrictive of individual liberties and from those who argued that NPS was not doing enough to protect the Preserve's remarkable array of natural resources. The principal forum for sorting out these complicated issues was the development of a General Management Plan for Big Cypress National Preserve, a long, contentious, and drawn-out process which began with the creation of an EA for the General Management Plan in late 1982 and continued throughout the decade. Chapter 4 begins the discussion of this monumental undertaking.

## **Chapter 4: General Management Plan: Background to the Issues**

Fred Fagergren, the Preserve's first Superintendent who entered on duty in March 1981, recalled that the General Management Plan (GMP) for Big Cypress National Preserve was one of the first such documents in the National Park System that was truly resource-based. This was a long and deeply contested process, which was underlain in part by the resource baseline inventory discussed in the previous chapter. The process of preparing a GMP for Big Cypress National Preserve was the extension of attempts by many within the Southeast Region to understand how best to manage the Preserve. As discussed in Chapters 2 and 3, Big Cypress represented an innovative approach to land management and resource protection within NPS, and, once the process of land acquisition was under way by the mid-1970s, questions of management, which Congress left undefined in its specifics, could no longer be ignored. The Statement for Management, which Everglades National Park Superintendent Stark completed in 1977 as discussed in Chapter 2, was an important first step but left many details unanswered. Fagergren recalled that the prevailing sentiment within the Southeast Regional Office at the time he entered on duty was that the Preserve should just be a place for water to flow through to the Everglades. There was to be only a small staff once the necessary land had been acquired, and there should not be any substantial development; the Preserve would, instead, function as a sub-unit of Everglades National Park. Both Fagergren and Everglades National Park Superintendent Jack Morehead, who hired and supervised Fagergren, disagreed with this approach and saw the need for Big Cypress National Preserve to act on its own in order to fulfill its Congressional mandate.

Chapter 3 includes a discussion of the extensive preliminary measures leading to the GMP beginning in the late 1970s: identifying the need, and contracting, for a resource baseline inventory; preparing the Congressionally-mandated Wilderness Area Study; and preparing an Environmental Assessment for a Development Concept Plan for Shark Valley and Tamiami in coordination with Everglades National Park. These led to the preparation of a Visitor Use and General Development Plan for the Preserve which was initiated in the summer of 1979. Fagergren entered on duty after a first draft of the General Development Plan had been completed, and used his review of the draft document to argue forcefully for a strong and independent unit that could more adequately handle the complexity of balancing traditional uses and resource protection as well as the vast scale of the area to be covered. Fagergren, with strong support from Everglades Superintendent Morehead, who followed Stark, prevailed, and, when the final General Development Plan was released in the fall of 1982, it set the course for the Preserve's GMP.

The nature and impacts of the ecological resources of Big Cypress, nearly all of which are connected in various ways and degrees, were little understood through the late 1970s and early 1980s, when initial planning for the GMP began. The resource baseline inventory served as an important source of information about the Preserve's natural resources. This information then had to be applied to the range of topics and concerns at a policy level to be incorporated into the GMP. Although the GMP was the first attempt to provide a coordinated approach to these topics, each topic had its own background and constituents. To understand more fully the scope of the GMP and the approach which NPS took in preparing it, it is important to understand how several of the key topics that impacted resources in the Preserve had been managed through the 1970s

and into the mid-1980s when development of the GMP began. The changing status of each of these aspects before and during development of the GMP will be discussed separately in this chapter, and the process of seeing the GMP to its completion in 1991 will be the subject of the next chapter. Before examining these issues, however, a fundamental area of conflict must be explored.

### *Florida Game and Freshwater Fish Commission*

One of the key relationships that shaped many of the decisions in the GMP and which served as a motif in discussions about nearly all of the subsequent natural resource management issues was that between NPS and the Florida Game and Freshwater Fish Commission (FGFC). The FGFC was created by a Florida constitutional amendment in 1942 and began operations on January 1, 1943. According to the original constitutional amendment, the role of the FGFC was “the management, restoration, conservation and regulation of birds, game, fur bearing animals, and fresh water [sic] fish of the State of Florida.” The constitutional amendment that created the FGFC was, itself, amended several times over the subsequent decades and, in 1974, was amended to charge the FGFC with exercising “the regulatory and executive powers of the state with respect to wild animal life and fresh water [sic] aquatic life.” Over the course of its first several decades, the remit of the FGFC revolved around managing wildlife primarily in the interests of recreation, particularly hunting, fishing, and trapping. In early 1952, for example, the FGFC executed a Cooperative and License Agreement with the Central and South Florida Flood Control District, in which the Flood Control District (FCD) assigned responsibility for protecting the wildlife and fish, and for managing recreational access, in the FCD’s Conservation Areas Two and Three.<sup>1</sup> The legislation that authorized the Preserve required NPS to permit hunting, fishing, and trapping in accordance with the laws of the United States and the State of Florida and to consult with “the appropriate State agency having jurisdiction over hunting, fishing, and trapping activities” regarding regulations and restrictions on these activities. In 1976, Everglades National Park Superintendent Stark negotiated a Memorandum of Understanding with the FGFC regarding the management of hunting and fishing on the Preserve.

A degree of conflict, however unintentional, was built into the Preserve’s enabling legislation. The FGFC and NPS had different management approaches and priorities with regard to wildlife and natural resources in Big Cypress National Preserve. These differences were significant and set the stage for consternation on both sides from the outset of the Preserve’s operation despite the existence of the 1976 Memorandum of Understanding. The requirements of the Preserve’s legislation and the respective roles of each agency meant that NPS and FGFC must work collaboratively toward shared goals despite their differences. In 1983, the two entities executed a new Memorandum of Agreement that sought to further define the relationship. The final GMP as completed in 1991 described how the agreement was designed to work:

Both agencies have concurrent jurisdiction for enforcing game and fish laws within the preserve [sic]. The commission consults with the Park Service before issuing regulations that affect hunting and fishing within Big Cypress. Likewise,

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<sup>1</sup> Cooperative and License Agreement Between the Central and South Florida Flood Control District and the Game and Fresh Water Fish Commission, executed January 25, 1952; BICY 25.

the Park Service consults with the commission before establishing any temporary or permanent closures or public use limits.<sup>2</sup>

That relatively innocuous definition of roles, however, contains ambiguities; the difference between “regulations that affect hunting and fishing” and “public use limits” is a very fine one, with endless opportunities for the overlap that creates conflict not just between the agencies but also with members of various wildlife groups that hope for greater clarity to support their interests. The lack of clarity and occasional differences between the two agencies prompted the Florida Department of Natural Resources to request from NPS and FGFC a statement regarding the statutory authority of each.

In December 1983, Superintendent Fred Fagergren responded on behalf of NPS, and Colonel Robert Brantly, Executive Director of FGFC, responded on behalf of his agency. Both cited the Preserve’s enabling legislation and came to predictably different conclusions. Fagergren opined that Big Cypress National Preserve is to be administered as a unit of the National Park System “in such a manner which will assure the natural and ecological integrity in perpetuity in accordance with the Act of August 25, 1916,” the Organic Act by which Congress established the National Park Service. Under that authority, Fagergren continued, NPS “is directed to develop rules and regulations necessary and appropriate to limit or control the use of Federal lands and waters” with respect to oil and gas exploration and extraction, motorized vehicle use, hunting, fishing, and trapping, constructing or altering water drainage structures, agriculture, and new construction. The National Park Service “will permit hunting, fishing, and trapping in accordance with Federal and State law,” except that NPS had the ability to designate times and zones when and where these actions may not take place “for reasons of public safety, administration, floral and faunal protection and management, or public use and enjoyment.”<sup>3</sup>

For his part, Brantly provided a ringing endorsement of State authority. First, he argued, the Preserve’s enabling legislation “vests the State of Florida with jurisdiction over hunting, fishing, and trapping,” since the legislation required NPS to permit these activities “in accordance with the applicable laws of the United States and the State of Florida.” Any federal regulations for these activities, except in cases of emergencies, must be put into effect “only after consultation with the appropriate state agency having jurisdiction” over them.<sup>4</sup> In early 1985, a senior aide to Senator Chiles, Lynda Goodgame, summarized the different approaches between the two agencies in a memorandum to Senator Chiles:

The Park Service is apparently prompted into action (i.e. regulations, restrictions, etc.) to avoid a POSSIBLE problem, but without having documentation of the ACTUAL problem. The Game Commission, on the other hand, operates more or less on the theory that activities should be permitted until such time as the problem can be, and is, DOCUMENTED.<sup>5</sup>

Conflicts based on the different approaches to natural resource management between NPS and FGFC and their respective understandings of jurisdiction, as much as the extensive collaborations between them on studies, colored the work of nearly every aspect of the GMP.

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<sup>2</sup> *General Management Plan, Final Environmental Impact Statement, Big Cypress National Preserve, Florida* (1991), volume I, 198.

<sup>3</sup> Fred J. Fagergren to C.W. Hendry, Jr., December 14, 1983; BICY 14661 S5 SSG F1.

<sup>4</sup> Robert M. Brantly to C.W. Hendry, Jr., December 15, 1983; BICY 14661 S5, SSG, F1.

<sup>5</sup> Memorandum, Lynda Goodgame to Senator Chiles, March 20, 1985; LCP. Emphasis in the original.

## *Endangered Species and the Florida Panther*

The Florida panther (*Puma/Felis concolor coryi*) is one of two native cat species in Florida (bobcats are the other).<sup>6</sup> A highly elusive animal which lives primarily isolated from other members of the species, the Florida panther was identified on the first list of species under the initial Endangered Species Protection Act of 1966. This act was replaced when Congress passed the Endangered Species Act of 1973, signed by President Richard M. Nixon, who had urged Congress to strengthen the existing legislation. When Big Cypress National Preserve was established a year later, in 1974, there was no consensus as to whether any Florida panthers remained in the Preserve, because no studies had yet been conducted. The U.S. Fish and Wildlife Service (USFWS) had authority to enforce the provisions of the Endangered Species Act, and, in Florida, the USFWS quickly began work on a Panther Recovery Plan, producing initial technical drafts in 1978 and 1979. The first Panther Recovery Plan was then approved in 1981 and provided guidelines and schedules for actions by multiple state and federal agencies with jurisdiction over the panther and its habitat. The plan also called for research into the panther's habitat requirements, a public campaign in Florida to promote awareness of the panther and threats to its survival, and the reintroduction of panthers into their former range. As a result of these studies, the USFWS began work in 1986 to revise the Panther Recovery Plan, which was approved in 1987.<sup>7</sup>

The USFWS has responsibility for federal compliance with the Endangered Species Act, but the FGFC was responsible for management of wildlife in the state and was identified as a partner to NPS in the Preserve's legislation. In 1976, the FGFC initiated the state's protective measures when it established the Florida Panther Clearinghouse, a program designed to investigate sightings of the animal on a statewide base which, for the first time, verified the presence of panthers in Big Cypress Swamp. In early 1981, the FGFC started a new program when it captured two male panthers in the Fakahatchee Strand and attached a radio transmitter to each. The data from these animals, processed by new computers, allowed scientists and natural resource managers from several agencies to identify movement patterns, habitats, feeding areas, reproduction characteristics, and more. By the summer of 1983, the FGFC had attached radio transmitters to a total of seven panthers, two in the Raccoon Point area of Big Cypress National Preserve and five in the Fakahatchee Strand. An early result of this vital study was the decision by the Florida Department of Transportation (FLDOT) to consider alternate designs for two known panther crossings on State Route (S.R.) 29 and Alligator Alley.<sup>8</sup>

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<sup>6</sup> The taxonomic status of the Florida panther was variously described as *Puma concolor coryi*, shortened to *P.c.coryi*, and as *Felis concolor coryi*, shortened to *F.c.coryi*. This variation reflected the uncertainty of the Florida panther's precise relation to the cougar subspecies, which was not settled until 2005 when the Florida panther was identified as *P.c.coryi*. For the purposes of this administrative history, the two taxonomic designations are synonymous, as cited by the U.S. Fish and Wildlife Service Environmental Conservation Online System, which refers to the Florida panther as "*Puma (=Felis) concolor coryi*." The usage in the document being cited will determine its use here.

<sup>7</sup> A copy of the original 1981 Panther Recovery Plan was not located during the present research. However, a draft version of the 1987 revision, dated June 5, 1986, is located in BICY-25. The itemized list of issues is recorded in "Florida Panther Recovery: A Status Report to The Governor and Cabinet, July 7, 1983," BICY 14661 S2, SSA, F2.

<sup>8</sup> "Florida Panther Recovery: A Status Report to The Governor and Cabinet."

The FGFC observed that it shared management responsibility for wildlife in Big Cypress National Preserve with NPS through the 1983 Memorandum of Understanding and met with NPS representatives in June 1983 “to chair the joint development of a management plan for the Preserve.” In keeping with FGFC tradition, the report argued that hunting is compatible with protections for the Florida panther, that it “has coexisted for years with Florida panthers, white-tailed deer, and other species of wildlife, and the Commission has not observed evidence at this time that those activities have impacted panthers or other wildlife in the area.” Although the report admitted that some panthers had been killed by firearms, “these incidents have been outnumbered in recent years by those that have been killed by automobile collisions.” In addition, the FGFC identified threats from three other sources that were then new. First, as will be discussed later in this chapter in regard to oil and gas development, Exxon had opened new access roads to their well sites in the Preserve; these roads also opened previously inaccessible areas to hunters. Second, these hunters were traveling on new and larger all-terrain vehicles; and third, the number of people using the Preserve for recreational purposes had been increasing rapidly. “Those three combined factors,” the FGFC concluded, “are resulting in more user pressure being placed on the total Preserve than has previously occurred.”<sup>9</sup>

While this study was under way, concerns over the status of the Florida panther and its relation to oil and gas development were brought to Florida Governor Bob Graham. In October 1982, Governor Graham called for a one-year moratorium on oil and gas activities in the Preserve, with the intent that it would allow time to develop new guidelines that would help to protect the Preserve’s panther population. To support this process, the State of Florida created the Florida Panther Technical Advisory Council within the FGFC in early 1983. The Council consisted of two representatives from state or federal agencies with responsibility for the management of endangered species, namely NPS and FGFC; two members with experience in the research and management of large felines or large mammals from universities; and three members with similar experience from the public at large.<sup>10</sup> The Council released a preliminary statement of findings in June 1984 that focused primarily on the reduction in the population of the white-tailed deer, one of the principal prey species for the Florida panther, in Big Cypress National Preserve. The report argued that this decline was mostly caused by current hunting practices in the Preserve. Although the Council did not find a direct causal link between the hunting of white-tailed deer and the decline of the panther population, it found that “the evidence is compelling.” The Council then argued that “hunting and the survival of *F.c.coryi* [Florida panther] are not incompatible, but that hunting activities must be regulated in a way that will maintain a prey base adequate to support a healthy population of *F.c.coryi*.” In particular, the Council recommended that FGFC and NPS meet soon to discuss policies for Big Cypress National Preserve that would include limiting the number of hunters and ORV users, eliminating the use of hunting dogs, reducing the length of the hunting season, and increasing the use of hunting check stations.<sup>11</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Florida Statutes, Title XXVIII, Chapter 372, Section 673; see <https://www.flsenate.gov/Laws/Statutes/1997/372.673> (viewed March 22, 2023).

<sup>11</sup> “Recommendations of the Florida Panther Technical Advisory Council to the Florida Game and Freshwater Fish Commission,” June 12, 1984; BICY 14661 S6, SSB, F18.



The FGFC in the early 1980s agreed with NPS that public use must be regulated and urged joint action with NPS. Potential regulations that the FGFC proposed included a full season quota permit system, recreational use permits for all users, annual vehicle registration, an ORV management plan with possible prohibition on certain ATVs, and further access controls at specific entrance points to the Preserve. To make sound decisions in collaboration with NPS, the FGFC intended to expand its ongoing panther research program to include the population status and trends of the panther's principal prey, white-tailed deer, the panther's reproductive status with the idea that some panthers could be captured for use in breeding in captivity and reintroduction to the wild, and habitat studies for feeding and reproduction.<sup>12</sup>

In 1984, Everglades National Park and Big Cypress National Preserve jointly allocated funding to contract for a study of the panther's population in south Florida. The study, conducted by the Alpine, Texas-based Rancher's Supply, Inc., provided additional information on the distribution pattern of verified panther sightings (Figure 6). The study also summarized the current state of knowledge regarding the feeding and reproductive needs of the Florida panther, observing that the typical litter size in Florida is two and that the kittens require between fourteen and twenty months to be able to live independently. This slow process of reproduction and rearing, the report concluded, "makes the number of panthers being killed in Florida of extreme significance." The report found that sixteen panthers had been killed between 1978 and 1985, ten of them hit by cars and six killed by guns. Citing the limited number of deer that provide the principal sustenance for panthers, especially for females who are pregnant or rearing kittens, combined with the deaths by automobiles and guns,

It is evident that in the central part of their range in Florida, panthers are not reproducing up to their biological potential...there is documented evidence of reproduction in certain areas, but obviously there is a need for a higher success ratio if the population is to survive...The current number of known adult females does have the capacity to produce more young than are known to be killed each year. But these females must have a fairly abundant prey base of deer size ungulates, or they cannot rear kittens to maturity.<sup>13</sup>

In part as a response to the preliminary results of this study, the FGFC, in late 1984, adopted an approach focused on making hunting less efficient by banning the use of dogs and ORVs during the hunting season, in contrast to the NPS proposal to limit hunting overall.<sup>14</sup> In the fall of 1985, with the GMP process under way, the Technical Advisory Council submitted another report to the FGFC, again urging its host agency to be more active in its protective efforts. The ongoing accumulation of data, the Council stated, indicated a declining population of the Florida panther, particularly in the central part of its range in Fakahatchee Strand State Preserve and Big Cypress National Preserve. In areas immediately north of the Preserve, the Council noted, there was evidence of a more stable population, but this area was in private hands, much of it owned by Collier family enterprises, and was being rapidly converted to agricultural uses. Publicly owned land was, therefore, crucial to the survival of the panther. The Council observed that Big Cypress National Preserve and Everglades National Park, where

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<sup>12</sup> Ibid.

<sup>13</sup> "Population Status of the Florida Panther in Everglades National Park and Big Cypress National Preserve," Contract #RFP 5280-84-04. Undated, c. 1985; BICY 14661 S6, SSB, F16.

<sup>14</sup> Goodgame to Chiles, March 20, 1985.

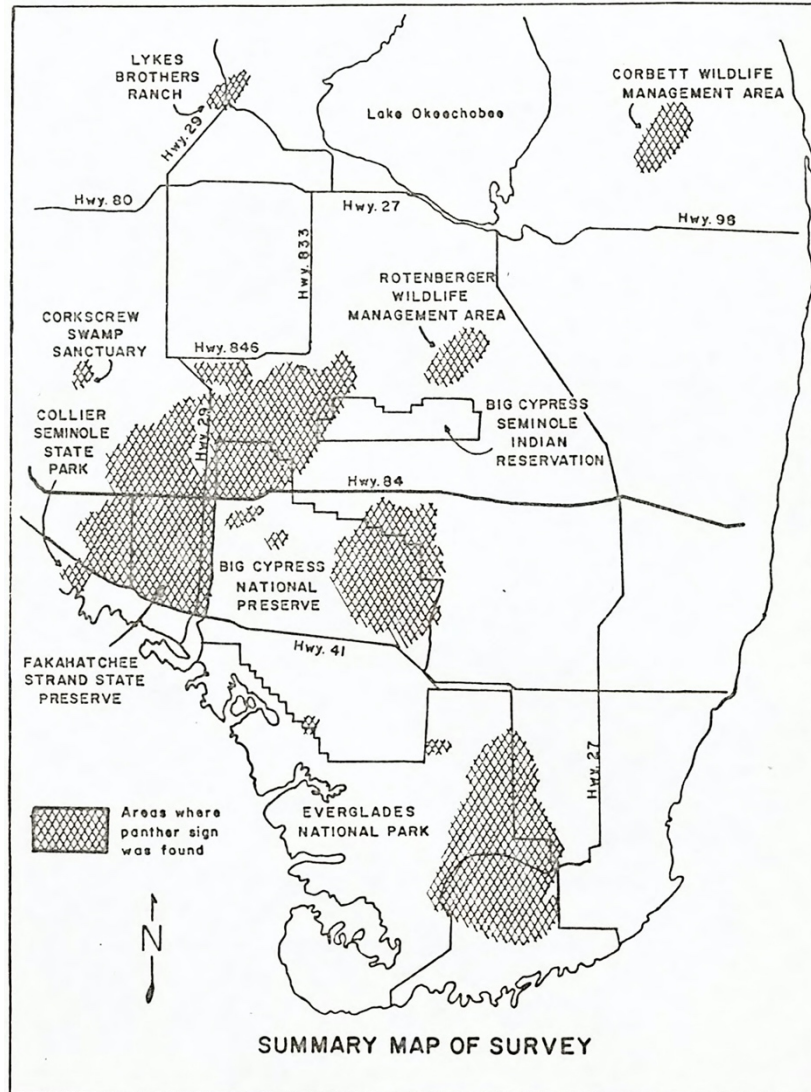


Figure 6. 1985 map showing locations of Florida panther sightings.

another colony of panthers was known to live, together with the Fakahatchee Strand, were not established as wildlife preserves, and all had a goal of returning the land to a natural ecosystem without artificial manipulation. The FGFC, however, “operates here under a doctrine of consumptive use; primarily providing for the harvesting of game species that, in this instance, are the primary prey of *F.c.coryi*.” Any serious initiatives made by the FGFC to support the area’s panther population, the Council opined, “have shown to be limited by the unwillingness of the hunting public to permit them.” It would take an extraordinary and unprecedented level of interagency cooperation to save the Florida panther from extinction, the Council warned, including the development and management of policies and their enforcement by the FGFC and the manipulation of the environment by NPS and the Florida Park Service in the Fakahatchee Strand to increase the supply of deer and other prey. “This elusive predator,” the Council concluded, “is directed by biological imperatives across a natural landscape, segmented by administrative entities with conflicting aims that are beyond its ken. If its existence is to

continue, we must adjust our purpose to accommodate its requirements. It will take no notice of ours.”<sup>15</sup>

The Technical Advisory Council made several specific recommendations for the GMP, then under initial development, in addition to recommending actions and studies which the FGFC and the Florida Department of Natural Resources should undertake. First, NPS should adjust its hands-off management approach with regard to prey species, allowing their increase, and should protect the panther’s ranges from human intrusion and competition. Second, the GMP should advocate a study to determine whether abandoned oil drilling pads could be planted with vegetation to support white-tailed deer, thus increasing the panther’s principal prey. The Council also recommended that NPS continue its deer population studies and work with the FGFC regarding the most useful sample size to acquire the necessary information to support the panther’s survival.<sup>16</sup> These recommendations, together with the ongoing results of studies by FGFC and NPS regarding panthers and white-tailed deer, informed the development of the GMP throughout the late 1980s. More significant advances in protecting the Florida panther and supporting its survival rate began in the mid- and late 1990s and will be discussed in Chapter 7.

### *Hunting*

The most active topic about which NPS and FGFC disagreed was hunting. The National Park Service typically took a more restrictive approach than FGFC, which sought to facilitate hunting to the extent that the Preserve’s recommendations would safely allow. A potential flashpoint came in the late 1970s, when NPS proposed new regulations for the Preserve which established the ability of NPS to close portions of the Preserve for specific periods of time. These proposed changes, fears of which, on the part of those who had traditionally used Big Cypress for outdoor recreation and hunting, far outstripped the extent of the regulations themselves, brought about the intervention of Senator Lawton Chiles, who urged NPS to consult more closely with the FGFC before establishing new regulations. As discussed more thoroughly later in this chapter, however, the 1979 regulations were focused primarily on ORV use. Although ORVs are the principal means by which hunters gain access to the Preserve, the regulations did not propose any new restrictions on hunting beyond those already promulgated by FGFC, and NPS and FGFC continued to work together on enforcement.<sup>17</sup>

Beginning in the early 1980s, however, as NPS moved toward planning for the GMP and with growing concern for the fate of the Florida panther as discussed earlier, questions of new regulations and restrictions on hunting came to the fore. As a result, contentions over the approach to game management and jurisdiction came to dominate the relationship. In early 1983, in anticipation of the FGFC annual meeting, Preserve staff prepared an abstract of suggested hunting regulations. Designed to provide points of discussion rather than be a formal proposal,

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<sup>15</sup> Kenneth C. Alvarez to Robert Brantly, October 4, 1985; BICY 14661 S2, SSA, F2.

<sup>16</sup> “Recommendations,” attached to Ibid.

<sup>17</sup> Memorandum, Ed Smith to Lawton Chiles, March 12, 1929; LCP. Smith observed to Chiles that NPS “issued no special regulations regarding hunting or fishing within the Big Cypress. Regulations on this subject were promulgated by the Florida Game and Fresh Water Fish Commission and they are simply adopted, for enforcement purposes, by the Park Service. Any change in the hunting regulations would have to come at the State level.”

the abstract was crafted in the hope of providing a larger and more stable game population and generating more research data. The primary component of the abstract presented recommendations for hunting seasons for different game such as white-tailed deer, wild turkeys, feral hogs, small game, and frogs, with each game type further defined by type of hunting and proposed seasons and quota limits.<sup>18</sup> No response to these suggestions was located during the current research, but, in April 1983, a draft letter from Superintendent Fagergren, apparently to the FGFC's Commissioners, indicates that FGFC staff did not incorporate the elements of the abstract into the regulations for that year. Fagergren was, therefore, appealing directly to the Commissioners to have two recommendations in particular included in the new FGFC regulations for Big Cypress National Preserve. First, given the lack of information on the relationship between deer populations and panther survival and with an FGFC study being planned, Fagergren requested that allowable hunting activities be returned to the level documented during the 1981-1982 season. Fagergren observed that the number of permits for the quota hunts had increased from 2,543 in the 1981-1982 season to 4,705 in the 1982-1983 season, and that the present quota system did not, in fact, limit the number of deer that could be taken. Second, Fagergren requested that all limits be removed from the taking of feral hogs, which are an invasive species that adversely impacts other native species and have damaged many archeological resources, as discussed later in this chapter.<sup>19</sup>

In their attempts to restrict hunting of white-tailed deer with the goal of supporting the small Florida panther population in Big Cypress National Preserve, NPS staff were hampered by the lack of a detailed and documented causal relationship between the two. The necessary studies to link the endangered status of the panther to hunting white-tailed deer had not yet been completed. This lack allowed the FGFC, with justification, to reply to NPS and others who sought to place restrictions on hunting deer in Big Cypress National Preserve that there was no evidence that hunting deer was any more a threat to the survival of the panther than being killed by automobile traffic or being shot, either accidentally or on purpose. As discussed earlier, the FGFC, in July 1983, issued a status report on the Florida panther that placed equal stress on road crossings and ORV access as it did on hunting regulations.<sup>20</sup> To begin addressing that knowledge gap, NPS initiated a series of studies in the 1980s, including the panther population study in late 1984. In 1985, NPS solicited a proposal from the University of Georgia for a Deer Management study. In an introduction to the proposal, Prof. Robert J. Warren recognized the National Park Service's requirement to protect the deer population for recreational hunting but stated that "its broader mandate requires a more critical concern be that of the deer's role as primary prey of the Florida panther." Warren went on to explain that "Although no conclusive data addressing the problem are available, many experts, including the Florida Panther Technical Advisory Council, feel a reduced prey base may adversely affect the panther, particularly in some areas of relatively easy hunter access."<sup>21</sup>

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<sup>18</sup> "An Abstract of Suggested Hunting Regulations for Big Cypress National Preserve and Wildlife Management Area," January 4, 1983; BICY 14661 S2, SSA, F2.

<sup>19</sup> Fred J. Fagergren to "Dear Sir," April 20, 1983; BICY 26817, S3, SSA.

<sup>20</sup> "Florida Panther Recovery: A Status Report."

<sup>21</sup> "Research Proposal: Deer Management Recommendations for the Big Cypress National Preserve," July 10, 1985; BICY 14661 S6, SSB, F8.

The study's methods, however, relied on consultations with a panel of experts including the FGFC. In his review of the first draft of the report, Big Cypress National Preserve Research Biologist James Snyder discounted the results, arguing that they were based primarily on responses from the FGFC and those associated with the Commission, which, in turn, were not based on verified observational studies of deer takings but on assumptions. Snyder argued forcefully for the need for a much larger and better-funded study of hunting practices and deer population in the Preserve:

We need a near-complete record of deer harvest in BICY. Without it we are legally vulnerable from endangered species considerations. Shorn of evasions, what the Panel has told us is that the agencies concerned have no useful idea of the deer harvest in the first decade of their cooperative management of BICY wildlife.

In his conclusion, Snyder argued that "we spent whatever it was we spent on the Panel to get second-hand opinions we'd already had for nothing directly from FGC [FGFC]."22

In its revised draft report in December 1985, the University of Georgia team concluded that the then-current hunting regulations for Big Cypress National Preserve, which allowed hunting only bucks during a limited hunting season, did not significantly reduce the deer population. Other mortality factors, including diseases and predation by other animals, were also identified as potentially having an effect. However, with the changes to hunting regulations over the past several years and the possibility of illegal hunting, the researchers were not able to verify the takings from legal hunting and identify trends. In its recommendations, the University of Georgia team recommended more controlled access of hunting permits and limiting the number of permits, more consistent hunter check-in and verification of takings through hunter interviews, requiring larger antler size for any bucks killed, and continuing the existing FGFC studies on deer mortality, together with expanding prescribed fires to improve habitat diversity and quality. The report also adopted the FGFC position that the types of habitats available within the Preserve could sustain only a limited deer population regardless of hunting and that feral hogs were becoming a more important source of food for panthers.<sup>23</sup> The process of studying the impact of hunting on deer populations and, thus, on the survivability of the Florida panther, was integrated into the Preserve's GMP program, and will be discussed in Chapter 5.

### *Off-Road Vehicles*

The use of ORVs was directly connected to the survival of panthers and to hunting since, by the 1950s and 1960s, hunters were using ORVs to gain access to portions of the Preserve that had previously been inaccessible. This was a nationwide phenomenon as Americans were introduced to rugged 4-wheel drive vehicles during World War II and adopted them for civilian

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<sup>22</sup> Memorandum, Dr. James Snyder to O.L. Bass, Jr. and Dr. William B. Robertson, Jr., October 2, 1984; BICY 14661 S6 SSB, F8.

<sup>23</sup> Robert L. Downing, Lowell K. Halls, R. Larry Marchinton, and Robert J. Warren, "Deer Management Review Panel: Draft Report," December 5, 1985; BICY 14661 S6, SSB, F8. The final report, dated March 3, 1986, had only minor revisions.

uses soon after. Problems arising from the use of the vehicles in national parks and other public lands led President Nixon in 1972 to issue Executive Order #11644, which required the administrators of public lands to develop regulations for their use and gave the heads of federal agencies administering public lands the authority to restrict or disallow their use in certain areas.<sup>24</sup> Off-road vehicle use was growing quickly in south Florida due to the rapid increase in population and the urge to take advantage of access to the remaining uninhabited spaces for recreational purposes. This increased use put additional pressure on the Preserve's white-tailed deer population through a corresponding increase in hunting. The noise that ORVs generated had the potential to frighten the Florida panther, and the tires also had the potential to cause damage to trails and vegetation, bird nests, and mammals. As early as 1972, the FGFC conducted a study of ORV use and its impact on vegetation in Everglades National Park that included land-based ORVs and airboats. The report focused on the time that it took plants to recuperate and tracks to disappear, but the study was plagued by a lack of precise information regarding creation dates of tracks that were observed and the numbers of ORVs operating in the area. In its recommendations, the report suggested continued study of rates of recovery, including recovery from intentional destruction of vegetation by ORVs and for more precise tracking of ORV use. Although a sudden upsurge in the numbers of ORVs in the Everglades "would of necessity make mandatory the need for law limiting the number of vehicles," the report also pointed out that any damages from ORV use were far outweighed by damage from the release of sewage into the Everglades, the construction of Interstate 75 on the Alligator Alley corridor, and the proposed Jetport. Hunters who were using ORVs, the report concluded, "are often the most outspoken critics of intrusions on the Everglades."<sup>25</sup>

Following the authorization of Big Cypress National Preserve in 1974, NPS implemented no regulations regarding ORV use through the late 1970s other than banning airboats from the Stairsteps portion of the Preserve's southern boundary which bordered Everglades National Park. This was done not to protect the Preserve, however, but because a new boundary survey found that the airboat passage was in Everglades National Park, not in the Preserve as previously assumed. In early 1979, however, Everglades National Park Superintendent John Good released the first draft rules regarding the use of motorized vehicles in Big Cypress National Preserve. These proposed rules gave the Superintendent of Big Cypress National Preserve the authority to close or restrict the use of motorized vehicles in certain areas either temporarily or permanently. Although several sportsmen groups quickly took umbrage at what they saw as the first steps toward a total closure of the Preserve, the FGFC, in its review of the draft regulations, adopted a more moderate tone, concurring with the closure of certain areas, particularly the area between the Loop Road (State Highway 94) and the Tamiami Trail, but requesting that NPS consult with FGFC prior to announcing any closures. The FGFC observed, however, the inconsistency of allowing the use of ORVs in certain areas for oil exploration and extraction but not for hunters: "Hunters and fisherman should be accorded the same privilege since it is recognized that public access into the preserve [sic] is generally by use of motorized vehicles."<sup>26</sup>

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<sup>24</sup> Executive Order No. 11644, February 8, 1972; text can be found at <https://www.archives.gov/federal-register/codification/executive-order/11644.html> (viewed April 3, 2023).

<sup>25</sup> Sanford D. Schennitz and James L. Schortemeyer, "The Influence of Vehicles on Florida Everglades Vegetation: A Preliminary Report," Florida Game and Fresh Water Fish Commission, July 1972, quote on page 49; BICY 25.

<sup>26</sup> Robert M. Brantly to John Good, March 26, 1979; LCP.

The Florida Congressional delegation, led by Senator Lawton Chiles, had consistently urged Superintendent Good to recognize the importance of allowing traditional public uses. Among those who supported the authorization of Big Cypress National Preserve, the state's Congressional delegation reminded the Superintendent, "are many local residents, sportsmen, and conservation groups who are now understandably concerned about the impact motor vehicle use restrictions will have on traditional activities which are, in many cases, accompanied by motor vehicles." While not denying NPS's authority to restrict the use of ORVs in certain areas, the Congressional delegation urged NPS to coordinate closely with local and state agencies, particularly the FGFC.<sup>27</sup> In response, Superintendent Good stated that NPS was taking a slow and moderate approach to the management of ORVs, having already removed some of the earlier, more stringent requirements on weight and tire size. Good also explained that the proposed closure of the area between the Loop Road and the Tamiami Trail "was done in response to requests by hunters and hikers who wanted some part of the Big Cypress for still hunting and other uses free of the impact of vehicles and dogs." This area was less than ten percent of the Preserve's area, which, he concluded, "seemed reasonable."<sup>28</sup> On August 1, 1979, NPS promulgated the Special Regulations regarding ORV use, which closed the area between Loop Road and the Tamiami Trail, allowed NPS to close other areas on a temporary or permanent basis, and called for consultation with FGFC.<sup>29</sup>

During the review process for the new regulations, NPS acknowledged the lack of information pertaining to the impacts of ORV use on the Preserve's natural resources. The preliminary study by FGFC in the early 1970s could make only generalized recommendations, and the studies which it proposed were never completed. In the late 1970s, NPS contracted with the National Audubon Society's Ecosystem Research Unit, which was also conducting the Resource Baseline Inventory as discussed in Chapter 3, to conduct an initial study of the impacts of ORV use on the Preserve. The final report for this study, led by Michael Duever, was released in 1981 and included examinations of several types of ORVs, their patterns of use, their impacts on different environments, and the time that abandoned ORV trails required to recover. Researchers studied conditions over the course of three years, from 1978 to 1980, and found that impacts were greatest when the soil was wettest and that soils recovered more quickly than did the surrounding vegetation. Airboats had, by far, the lowest level of impacts and the fastest recovery; for ground vehicles, the impacts and recovery times varied by weight and wheel or track type, with light buggies having the lowest degree of impacts and requiring the largest number of passes to create significant impacts. In general, however, the report concluded that: once significant damage has been done to a habitat by a particular vehicle type, it will continue to be a significant impact for at least one year. Thus, unless a long-term increase in significant impacts is acceptable on portions, or all of BICY, it

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<sup>27</sup> Letter to John M. Good from Lawton Chiles, Richard Stone, Dante Fascell, Don Fuqua, L.S. Bafalis, and Andy Ireland, April 2, 1979; LCP.

<sup>28</sup> John M. Good to Lawton Chiles, April 9, 1979; LCP.

<sup>29</sup> The Special Regulations were not located during the current research. Reference to the date they were promulgated is found in Briefing Statement, Off Road Vehicles, Big Cypress National Preserve, September 19, 1983; BICY 14661 S5. According to the Briefing Statement, "There are no current limitations on period of use, type of vehicles, weight, or tire size."

will be necessary to implement management practices that will minimize the creation of significant impacts wherever they are deemed inappropriate.<sup>30</sup>

In a Briefing Statement on ORV use prepared in the fall of 1983, the last comprehensive statement of ORV use issued before GMP planning began, Superintendent Fagergren acknowledged the value of the report but also argued that it “provided minimal information on environmental damage and was not quantifiable.”<sup>31</sup> The 1979 Special Regulations were followed in 1980 by a decision by both the state and NPS to issue permits for ORVs to be operated in the Preserve. Fagergren went on to observe that, despite the 1979 Special Regulations and the following decision to permit ORVs, there was no clear definition of what constituted an ORV. This caused confusion, he continued, when it came to issuing a permit for one since the state and NPS used different definitions and criteria. With an eye toward the GMP, Fagergren concluded that “There is currently no data on which to base a limitation on size, type, or period of use. Environmental impacts may be significant but again there is no data to substantiate the extent of the problem.”<sup>32</sup> Once planning for the GMP began in early 1985, the lack of information regarding ORVs, their use and their impacts, became clearer to the entire planning team. The development of a plan to identify impacts from ORV use and to develop proposed regulations for ORVs in the Preserve became a part of the GMP planning process as discussed in Chapter 5.

### ***Oil and Gas/Minerals Management***

Of all the traditional uses that the Preserve’s enabling legislation required NPS to accommodate, the exploration for and extraction of oil and gas was the most complicated and politically fraught. The issues involved were complicated with impacts that were often hard to quantify. The Collier family businesses, and Exxon, the principal operator on the Collier’s lands, were politically connected and had very active and supportive legal counsel. In addition, during the late 1970s and early 1980s, reducing the nation’s reliance on foreign sources of energy was a political and economic priority. As with strategies to protect the endangered Florida panther and regulations regarding hunting and the use of ORVs, the issues surrounding minerals management were tightly connected with other natural and cultural resources and the Preserve’s hydrology and water quality. The GMP Task Directive, the first draft of which was available for internal review in early 1985, called for a Minerals Management Plan as a stand-alone component of the GMP. Because of NPS’ mandate to protect the Preserve’s natural ecosystem, however, and with the long history of oil and gas exploration and extraction undertaken in Big Cypress, NPS staff at the Preserve and at the Southeast Regional Office were fully involved in management issues as early as the late 1970s and early 1980s. These efforts by NPS supported those of the State of Florida, the USFWS, and the U.S. Army Corps of Engineers, who were active even earlier than that. From the early 1980s, NPS staff coordinated efforts to manage the exploration for and extraction of oil and gas in Big Cypress and continued to do so while simultaneously

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<sup>30</sup> Michael J. Duever, John E. Carlson, and Lawrence A. Riopelle, “Off-road Vehicles and their Impacts in the Big Cypress National Preserve,” Ecosystem Research Unit, National Audubon Society, Naples, FL, March 1981; BICY 25, Box 3.

<sup>31</sup> Briefing Statement, Off Road Vehicles, Big Cypress National Preserve, September 19, 1983; BICY 14661 S5.

<sup>32</sup> Ibid.



coordinating with DSC and the NPS Energy, Minerals and Mining Division (EMMD) on the GMP.

As discussed in Chapter 1, exploration for oil and gas in south Florida began in the 1930s with success coming in 1943 when the Sunniland deposit was discovered. The region had 129 test wells by 1949, expanding to 232 by the late 1960s. The scrutiny of oil and gas exploration and extraction for environmental protection began in earnest in 1972, when the State of Florida defined the Big Cypress Area of Critical State Concern, one of the precursor actions that paved the way for establishment of the Big Cypress National Preserve in 1974 as discussed in Chapter 2. Recognizing the potentially harmful environmental impacts that oil and gas exploration and drilling could have, the State of Florida first instituted a moratorium on oil exploration in Big Cypress Swamp, but this was effectively ended in the summer of 1971 when, over the objection of Senator Lawton Chiles and in the absence of any other regulations, the State DNR issued a permit to drill oil subject to conditions for monitoring, road access, and clean-up. In response, the DNR developed regulations for oil exploration in the Big Cypress Swamp (which encompasses the current Preserve) and issued them in February 1972. The State DNR then created the Big Cypress Advisory Committee (BCAC) to administer these regulations. The BCAC initially consisted of five members: the chief of the Florida Bureau of Geology, a hydrologist, a botanist, a member of the Florida Petroleum Council and a member of the Florida Audubon Society.<sup>33</sup>

The energy crisis of the early and mid-1970s, when supplies of foreign oil diminished substantially and gasoline prices rose dramatically, prompted a strong wave of popular support for domestic energy production. By this time, however, the environmental movement was gaining strength throughout the nation, which gave a different tinge to the calls for more oil. The nation's political leaders responded in kind. In April 1977, President Jimmy Carter made a prominent public address in which he supported efforts for domestic energy but in balance with environmental protection, and Congress passed the Public Utilities Regulatory Priorities Act in 1978 which provided tax and regulatory incentives for the production of new energy sources, particularly from renewable sources such as hydropower. The balance of energy and environment was already in the air and influenced the management of oil exploration and drilling in Big Cypress Swamp, which had seen few requests for new oil exploration permits between 1971 and 1976.

The increased pressure for oil exploration and drilling in Big Cypress National Preserve was therefore part of a broader national response. With the call to end the nation's reliance on foreign oil in the mid-1970s, more oil companies began turning to the millions of acres of public lands, at least some of which had the potential for untapped reserves. Several federal agencies began responding with ways to protect the ecology of these lands while acknowledging the need for energy. By late 1977, oil companies were working in eight units of the National Park System:

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<sup>33</sup> A useful summary of the background on early oil exploration and drilling in south Florida is in the USFWS Draft Biological Opinion, attached to Memorandum, Assistant Regional Director, Federal Assistance, Fish and Wildlife Service, Region 4 to Regional Director, National Park Service, Southeast Regional Office, September 18, 1981; BICY 14661 S5 F32. See also Lawton Chiles to Reubin Askew, June 25, 1971, and proposed, unsigned Policy on Oil Drilling Exploration and Production in Big Cypress Watershed, Executive Board of Department of Natural Resources, July 6, 1971; LCP.

Alibates Flint Quarries and Texas Panhandle Pueblo Culture National Monument, Texas; Big Thicket National Preserve, Texas; Cuyahoga Valley National Recreation Area (now National Park), Ohio; Glen Canyon National Recreation Area, Utah; Natchez Trace Parkway, Alabama, Mississippi, and Tennessee; Olympic National Park, Washington; Padre Island National Seashore, Florida; and Big Cypress National Preserve. These were among a total of fifty-nine units of the National Park System that were “known to have lands encumbered by nonfederal outstanding oil and gas rights,” totaling 800,000 acres that excluded the Alaskan parks. In only four of these units—Big Cypress, Big Thicket, Padre Island, and Everglades—was oil and gas extraction specifically authorized by Congress. In the other units, Congress made no specific provisions for oil and gas extraction, but NPS did not acquire mineral rights (including oil and gas) during land acquisition because difficulties in acquiring them would have limited the ability to purchase the land necessary for the park.

In response to growing pressure throughout the nation in the early and mid-1970s, Congress passed the Mining in the National Parks Act of 1976 (P.L. 94-429). The law directed the Secretary of the Interior to regulate minerals activities within units of the National Park System. As a way of complying with this Congressional mandate, NPS developed a Minerals Management Plan (MMP) in early 1977, which included proposed regulations designed “to ensure that oil and gas activities are uniformly conducted so as to prevent or minimize damage to park environments,” and to “ensure that oil and gas operations and related activities do not disrupt or damage parkland resources to the extent that their ability to serve future visitors is reduced.” Before the regulations were promulgated, however, NPS Denver Service Center prepared an Environmental Assessment (EA) for the MMP in December 1977.<sup>34</sup> The EA considered three alternatives. In addition to the requisite No Action alternative, in which each unit would continue to regulate its own oil and gas activities through the use of special use permits, these alternatives included the approach which the MMP recommended: “promulgate servicewide comprehensive regulations” and “acquire outstanding nonfederal oil and gas encumbrances while operating under interim servicewide comprehensive regulations.” The EA examined impacts not just on NPS and the resources which it is charged with protecting but also on the oil companies and others who may face economic impacts. The EA then summarized the potential unavoidable impacts on both for all three alternatives, though it did not define a preferred alternative.

Although the MMP’s Environmental Analysis did not contain a preferred alternative, its recommendations were taken into account into the NPS’ minerals management regulations, promulgated in December 1978, which defined the procedures for managing requests for oil exploration and extraction projects. Under these 1978 regulations, those who propose oil and gas exploration or drilling operations must file a plan of operations with the superintendent of the affected unit.<sup>35</sup> The Regional Office then prepares an EA of the proposed plan of operations within sixty days, which leads to one of three decisions: accept the proposed plan of operations,

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<sup>34</sup> *Environmental Assessment: National Park Service Minerals Management Regulations for Nonfederal Oil and Gas Rights (36 C.F.R., Part 9, Subpart B* (National Park Service, Denver Service Center, December 1977), quotes on pages I-3 and I-4. See also Frank Buono and Barbara West, “Regulating Mineral Activity in National Park System Units,” National Resources Report Series No. 86-2, March 1986.

<sup>35</sup> The regulations (36 C.F.R. Section 9, Subpart B) do not apply to NPS units in Alaska; Buono and West, “Regulating Mineral Activity,” 7.

reject it, or require modifications. Once an approved plan of operations is in place, the operator is responsible for following correct procedures including access road construction, protection of ground water, waste disposal, temporary and permanent plugging of wells, safety protections for humans and wildlife, and transportation of oil and gas from the site. The National Park Service requires a performance bond or cash deposit equal to the estimated cost of restoring or reclaiming the land. Permits for oil and gas activities do not automatically renew, and the company must initiate clean-up procedures within six months of the completion of the approved operations.<sup>36</sup>

In 1977, at the same time that NPS was developing its new regulations for oil and gas explorations, the Jacksonville District of the USACE was given jurisdiction for activities related to the Clean Water Act of 1972 (CWA) in the Big Cypress National Preserve drainage area, in particular for Section 404, which pertains to the discharge of dredged or fill material into the waters of the United States. In June of that year, the USACE issued standard conditions that would be required for obtaining a General Permit for oil exploration and drilling in Big Cypress National Preserve under Section 404 of the CWA. Although the USACE made it clear that issuance of a General Permit for oil would be conditioned on obtaining a drilling permit from the DNR in accordance with the Big Cypress Advisory Committee's recommendations and a permit from NPS for drilling within the Preserve, many environmental advocates remained concerned that the availability of the USACE General Permit could allow for cumulative effects. From 1977 to 1981, the USFWS and NPS completed consultations for six exploratory drilling permits while the USFWS conducted six more with the USACE. By 1981, all had been determined individually to have no effect on endangered species, the primary area of concern. Staff from USFWS and NPS, however, remained concerned that the "cumulative impact of slowly 'chipping away' the integrity of a truly wilderness area, will lead to the ultimate extinction of several Endangered species in Big Cypress Swamp."<sup>37</sup>

In response, the USFWS prepared a Biological Opinion regarding oil exploration and drilling in Big Cypress National Preserve. The Biological Opinion was yet another endorsement of the interconnected nature of ecological resources and traditional uses, as it examined direct impacts and indirect impacts, particularly in relation to endangered species. Direct impacts could be substantial, including removing the trees that served as housing for the endangered red-cockaded woodpecker, but the indirect impacts had even greater potential for damaging consequences. The most pressing concern was the construction of access roads to the oil exploration and drilling sites. The Biological Opinion reported that "it appears that the most severe effect of oil and gas exploration in Big Cypress is the facilitation of additional ORV traffic in sensitive areas and the long-lasting nature of these effects on listed species." After summarizing the existing oil fields within Big Cypress National Preserve and those that appeared to have the most promise, the Biological Opinion observed that "the probable future for oil and gas exploration and the current known distribution of the Florida panther overlap to a great extent." By that time, in the early 1980s, the FGFC was in the initial stages of its study of the Florida panther, so the precise impacts of oil drilling on these elusive animals was not yet

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<sup>36</sup> Ibid., III-1-2.

<sup>37</sup> USFWS Draft Biological Opinion, attached to Memorandum, Assistant Regional Director, Federal Assistance, Fish and Wildlife Service, Region 4 to Regional Director, National Park Service, Southeast Regional Office, September 18, 1981, page 11; BICY 14661 S5 F32.

known. Until scientists had the results of this study, however, the USFWS strongly urged that any permits for new exploration or drilling ensure that new sites remain in the proximity of existing roads only and that any new roads not be allowed in areas with habitat then believed to support panther populations, including hardwood hammocks and hardwood swamps. According to the Biological Opinion, permits should also require surveys for threatened and endangered species and ensure that new sites not be located near known colonies of red-cockaded woodpeckers and Cape Sable Seaside Sparrows.<sup>38</sup>

By early 1982, more than three years after NPS's MMP regulations were promulgated, the Southeast Regional Director had approved seven plans of operations for eight wells in Big Cypress National Preserve. Three companies were then operating in the Preserve—Bass Enterprises Production Company, Hughes and Hughes Oil Company, and Exxon Company, USA, but the only well then in production was Exxon's Bear Island field at what was then the northernmost portion of the Preserve. In 1977, Exxon discovered a new field at Raccoon Point, and exploratory wells drilled between 1979 and 1982 delineated the field (Figure 7).<sup>39</sup> The new work also included the construction of a new all-weather road to the site. The road was eleven miles long and was the first road that allowed access to the remote Raccoon Point area. In response to the expansion of oil activities, however, and the attendant pressure for new road access, Florida Governor Bob Graham created the Big Cypress Area Management Task Force, a multi-agency body empaneled for one year, in early 1983. The DNR was the lead agency for the new task force which focused on the issue of access into the Preserve for several different uses in addition to oil and gas. At the same time, Governor Graham imposed a one-year moratorium on any new drilling within the Big Cypress Swamp, during which time the task force was charged with determining the best route for a pipeline from the new Raccoon Point field.<sup>40</sup> At the same time, Big Cypress National Preserve Superintendent Fagergren issued an order that temporarily closed the new access road and sought permanent closure; the FGFC was tasked with patrolling the road.<sup>41</sup>

As initial planning for the GMP began in late 1984 and early 1985, policies for reviewing proposed oil and gas activities in the Preserve were becoming well established. National Park Service regulations promulgated in late 1978 quickly merged with the existing review process instituted by the Big Cypress Advisory Committee earlier in the decade and were layered with reviews by the USACE and the Florida DNR. A summary in late 1984 outlined the permit application process, which began with a request from the oil company for permission to stake a proposed location. The National Park Service would then initiate a resource inventory of the staked area, identifying any sensitive resources including hydrology, threatened and endangered species, and cultural resources. The process typically took up to ninety days to complete, during which time the oil company would submit its plan of operation. The Advisory Committee met quarterly, which provided an opportunity for the Advisory Committee and NPS to consider the proposal; if the Advisory Committee and NPS determined that the resource inventory had

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<sup>38</sup> Ibid., 31-35.

<sup>39</sup> "Minerals Management-Big Cypress National Preserve, Briefing Statement," April 1982; BICY 16183 S2, SSA SSS2, F4.

<sup>40</sup> Summary of Big Cypress Area Task Force, April 6, 1983; BICY 14661 S5 SSG F1.

<sup>41</sup> Summary of potential adverse effect to Florida panther from Raccoon Point development, April 6, 1983; BICY 14661 S5 SSG F1.

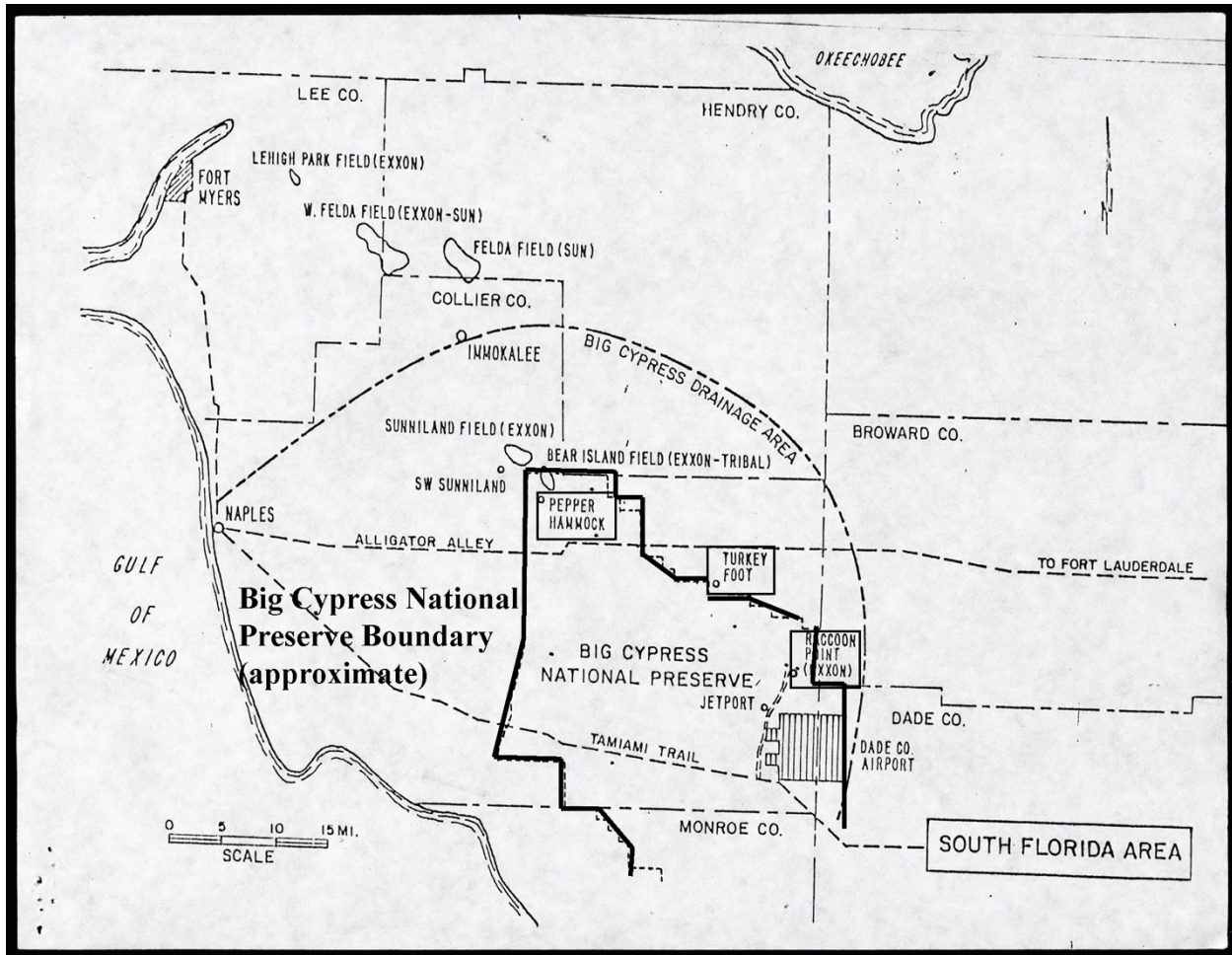


Figure 7. 1982 map showing oil fields in Big Cypress National Preserve.

identified no substantial issues, NPS would approve the plan of operation. Following approval of the plan of operation, NPS would prepare a biological assessment for review by USFWS and an environmental assessment that would be available for review by the public and by multiple federal and state agencies. Together, these assessments were intended to allow NPS to satisfy regulatory requirements imposed by several acts of Congress, including the Clean Water Act, Endangered Species Act, Coastal Zone Management Act, and National Historic Preservation Act, and multiple Executive Orders. As the Southeast Regional Director Robert Baker concluded in his summary, the process that had developed in Big Cypress National Preserve for approving oil and gas exploration and drilling activities, which is more involved than in other parts of the country, “is a complicated, time-consuming permitting process; however, we feel it is working. This is due to the concentrated efforts of both the local park staff and the oil companies.”<sup>42</sup>

Both the Preserve and the Regional Office were, therefore, familiar with the issues surrounding oil and gas exploration and drilling by the time that planning for the GMP was getting underway. Big Cypress National Preserve was one of the most active units of the National Park System with regard to oil and gas and had, therefore, drawn a great deal of attention from the NPS EMMD, which saw the Preserve’s GMP as an important part of

<sup>42</sup> Draft Response to Representative Paula Hawkins, November 30, 1984; BICY BICY-16183 sII ssa sss2 F5.

establishing NPS' policy nationwide. The Southeast Regional Office specifically invited EMMD, which was then still a new division in NPS, to participate. As the Associate Regional Director for Operations observed in December 1984,

Recent drilling successes in the Pepper Hammock and Raccoon Point Fields have heightened industry interest in expanding their operations. It is extremely important to both the Preserve and the industry that we develop, as soon as possible, a Minerals Management Plan that will provide objective guidance for the Service for locating surface developments and addressing the issue of cumulative effects these developments have on Preserve resources.<sup>43</sup>

In November 1984, as initial planning for the GMP was beginning, David Shaver, Chief of EMMD, and DSC Environmental Assessment Branch Chief Alex Carter traveled to the Preserve for several days of meetings. The purpose of the meetings was to begin the development of an oil and gas strategy for the Preserve, including roles and responsibilities of staff members from the Preserve, Everglades National Park, and EMMD to prepare the Minerals Management Plan and the EIS. Shaver made clear the importance of the GMP process, not just for the Preserve but for NPS nationwide: "This will be a major project with Servicewide implications to other units affected by oil and gas development." The trip included aerial views of the several existing and potential oil fields by helicopter followed by extensive meetings at Everglades National Park. Everglades Resource Management Specialist Cordell Roy was appointed the planning coordinator for the Big Cypress Minerals Management Plan, with research led by Everglades Research Center Director Jim Snyder and participation from Big Cypress Resource Management Specialist Bruce Freet, who provided additional information and coordinated the GIS mapping.<sup>44</sup>

### ***Hydrology and Water Quality***

In early discussions regarding protection of Big Cypress Swamp in the late 1960s and early 1970s, a steady refrain was that water was the principal resource of the region. In particular, the seasonal flow of water through Big Cypress Swamp was identified as being vital to the health and survival of the larger Everglades ecosystem as well as being an important ecosystem of its own. The Preserve was established only two years after passage of the Clean Water Act of 1972, and water quality was as vital a concern as the flow of water through Big Cypress Swamp for the first decade of the Preserve. An important component of the incentive to establish Big Cypress National Preserve was to protect the area from the encroachments of surrounding resources, many of which had the potential to create water runoff that would pollute the Preserve.

Through the early 1980s, Preserve staff were placing greater emphasis on water quality, especially as oil exploration and drilling activities gained momentum, than on hydrology, the movement of water through the swamp and the natural and artificial structures that impacted that

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<sup>43</sup> Memorandum, Associate Regional Director, Operations, Southeast Region to Associate Director, Natural Resources, WASO, December 17, 1984; BICY 14661 S2, SSA, F2.

<sup>44</sup> Memorandum, Chief, Energy, Mining and Minerals Division to Associate Director, Natural Resources, November 9, 1984; BICY 14605 Coll 00002-001-010 Box 1.

movement. In 1982, for example, Superintendent Fagregren sought legal guidance regarding the authority of NPS to require state and local governments to monitor and protect the water entering the Preserve under the Clean Water Act of 1972. His questions were driven by a proposed 7,600-acre development on the Preserve's northern boundary for a large cattle ranch which intended to discharge water into the Everglades Parkway Canal. The South Florida Water Management District (SFWMD), formerly the FCD, issued a permit for the proposed development in December 1982 that allowed the discharge subject to certain requirements. The Department of the Interior's Regional Solicitor for the Southeast Region, after a delay of more than one and one-half years, determined that the Clean Water Act did not give NPS authority to monitor water quality or to require water quality standards. The best that NPS could do was to coordinate with the SFWMD and the Environmental Protection Agency to identify the standards for water quality and to develop a resources program.<sup>45</sup>

Because of the regulations promulgated in 1978 regarding oil and gas activities on NPS lands, however, the Regional Office and the Preserve were able to apply stronger protections on water quality to the burgeoning oil exploration and production wells by the early 1980s. The plans of operation that oil companies were required to submit to secure permits to commence operations contained resources and containment requirements for the water used in production and for water, often briny, that could be discharged from the wells themselves. Preserve staff, often in coordination with consulting water quality specialists, took part as necessary in on-site meetings with oil company representatives at the well sites to discuss water quality protection measures.<sup>46</sup>

As planning for the GMP was getting under way, however, Regional Office and DSC staff also began planning for a hydrological assessment in an attempt to more fully understand the mechanics of the sheet flow in the Big Cypress Swamp and to identify the major issues that impacted it. Initial planning meetings for the Preserve's hydrological assessment took place in April 1985, and participants cast a wide net regarding potential sources of impacts, including surrounding agricultural uses, especially the rapid increase in nearby citrus farms; oil and gas exploration and extraction; man-made canals and structures, including proposed work related to the construction of Interstate 75; and off-road vehicles, the tracks from which had the potential to create shallow channels that could convey water "in other than natural patterns." Moreover, the area's endangered species were dependent on the hydrological system of wet and dry periods through the year. According to a Memorandum to the Chief of DSC Water Resources Division, it was "important in the planning effort to assure that the hydrologic evaluations and action plans be coordinated with the assessment of effects to endangered species."<sup>47</sup>

The DSC Water Resources Division contracted with hydrologist William Schneider to prepare the hydrological assessment in 1985. Schneider made use of recent orthophoto maps

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<sup>45</sup> Memorandum, Regional Solicitor, Southeast Region to Regional Director, National Park Service, Southeast Region, September 19, 1984; BICY 14661 S5 SSG F1.

<sup>46</sup> See, for example, "A Proposal for Well Installation, Sampling, and Laboratory Analysis to Monitor Ground Water Quality at Raccoon Point," Environmental Science and Engineering, Inc. proposal submitted to Exxon, September 18, 1984, and Memorandum, Resource Management Specialist, BICY to Files regarding Exxon's Water Quality Monitoring Program for Raccoon Point, September 20, 1984; BICY 14661 S5 F4.

<sup>47</sup> Memorandum, Mark Flora and Dan Kimball to Chief, Water Resources Division [DSC], April 16, 1985, regarding Hydrological Assessment Scoping; BICY 14605 Coll 00002-004-002-002 Box 3.

(aerial photographs geometrically corrected to show a uniform scale and are, thus, map accurate) and infrared color aerial photographs to provide the most accurate definition of the Big Cypress Swamp drainage basin that had yet been developed. The maps that Schneider prepared also defined the otherwise imperceptible boundary between the Everglades and Big Cypress National Preserve drainages and complemented a similar and contemporary study for the Everglades. Schneider's study determined that Big Cypress National Preserve is an "essentially self-contained hydrologic unit," as only three small areas, approximately eight percent of the 2,400 square miles, receive water flows from external areas.<sup>48</sup> The remaining ninety-eight percent of the Preserve receives water only from rainfall. The results of Schneider's analysis indicated the low probability of pollution and run-off contamination from adjoining resources. "The integrity of the water resources," Schneider contended, "can be maintained under the direct control of the National Park Resources."<sup>49</sup> Despite the self-contained nature of the Big Cypress Swamp drainage area, however, Schneider identified three potential threats to water quality and the swamp's natural sheet flow. First, the presence of oil and gas exploration and drilling brought with it a great deal of uncertainty, given the continued expansion into new areas and the possibility of accidents. The proposed construction of Interstate 75, the EIS for which was then under review, had the potential to further alter the natural seasonal flow of water throughout the swamp. This could largely be mitigated, Schneider averred, by the proper use and design of culverts and bridges. Schneider reported that the designs he had viewed appeared to be sufficient. Finally, Schneider discussed the expanding use of ORVs to access backcountry areas, whose trails had the potential to channel water in unnatural ways. Schneider, however, relied on the study completed by Michael Deuver in 1981, described earlier in this chapter, which argued that ORVs under current usage had a negligible impact on water resources.<sup>50</sup>

Schneider also described the many impediments to the natural water flow in Big Cypress National Preserve and the resources undertaken by NPS in recent years to restore the natural water flow and water quality. The most important of these was the Turner River in the western portion of the Preserve. Turner River Road was built in 1960, and fill for the road was borrowed from the adjacent land that formed the Turner River Canal north of Alligator Alley. The canal, Schneider observed,

provides a direct hydraulic connection between the fresh-water uplands of the Preserve and the saline estuaries within the Everglades National Park. It also affects its adjacent areas by altering the ground water table, disrupting natural surface flow patterns, and reducing river stages and flow rates in the upper portions of the Turner River.<sup>51</sup>

In response, Schneider reported, NPS had begun developing plans for a multi-phase project to use a combination of plugs in the canal and culverts under Turner Road to partially restore a natural flow regime. Other projects which Schneider highlighted included Conservation 3A, a joint program with the SFWMD in the eastern portion of the Preserve, improvements to the Loop Road culverts and bridges south of the Tamiami Trail near Oasis, and improvements to Levee 28

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<sup>48</sup> William J. Schneider, "Hydrologic Assessment of Big Cypress National Preserve: A Guide for Planning," draft report prepared for the National Park Service, August 15, 1985; BICY 14605 Coll 00002-004-002-002 Box 3. The final report, which was approved in June 1986, was not located during the present research.

<sup>49</sup> *Ibid.*, 21.

<sup>50</sup> *Ibid.*, 26-31.

<sup>51</sup> *Ibid.*, 22.



in the eastern portion that was built in the 1960s partly to protect the original Jetport from flooding.<sup>52</sup>

Schneider prepared the hydrologic assessment under contract to DSC, which released the final report in June 1986. As a follow-up to his report, Schneider was then contracted to prepare a hydrologic resources plan. The plan, which proposed a network of ten resources stations throughout the Preserve, was designed to provide long-term baseline data on water quantity and quality. The stations were carefully sited to provide information on specific topics or areas such as the oil works and citrus farms in the northwest, Interstate 75 across the northern part of the Preserve, and recently installed water control structures. This information-gathering network was intended to supply the baseline information that would be needed for long-term planning, including for the GMP that was then underway.

### ***Cultural Resources***

The Big Cypress Swamp is an intensely remote area. Reports going back centuries described a mix of landforms and frequently flooded areas that rendered the vast, undeveloped area nearly impenetrable. However, the indigenous residents of the region have traversed the Big Cypress Swamp for millennia. The challenge for historians and archeologists has been locating and identifying the few remains that these transitory peoples left. Although the region's natural resources, its water, vegetation, birds, and animals, took precedence in the Preserve's early planning efforts, cultural resources, particularly archeological, were an early focus of effort for Big Cypress National Preserve. By October 1976, barely two years after the Preserve was established, the Southeast Archeological Center (SEAC) received permission to begin a multi-year survey designed to investigate sites that had been previously identified to determine their eligibility for the National Register of Historic Places (NRHP) and to identify new sites. This first round of investigations was completed in 1977 and resulted in the identification of more than sixty archeological sites spread throughout the Preserve and the recommendation that five of the archeological sites were eligible for the NRHP.<sup>53</sup> A second phase of work began in 1978, identifying another sixty archeological sites, bringing the total to 124. As reported in 1979, this second phase of work brought the cultural resources inventory of the Preserve to fifty percent complete and "produced site quality and quantity information of sufficient detail to show that the cultural resources of the Preserve are a tremendous data bank for answering questions about human behavior and man/land relationships in South Florida."<sup>54</sup>

A third field season took place in 1979, resulting in the identification of an additional sixty sites and further refinement of the predictive models and research designs that had been developed for the Preserve. The focus had turned to "the higher dry hammocks along banks next

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<sup>52</sup> Ibid., 24-25.

<sup>53</sup> See correspondence among Southeast Regional Director David D. Thompson, Jr., Everglades National Park Superintendent John Morehead, and Advisory Council on Historic Preservation Acting Director Myra F. Harrison, September and October 1976; BICY-14661 s5 r f8. The results were presented with draft NRHP nomination forms in Memorandum, Chief, Southeast Archeological Center to Park Manager, Big Cypress National Preserve, June 7, 1978; BICY 16183 S2, SSA, SSS1, F2.

<sup>54</sup> John E. Ehrenhard, Robert S. Carr, and Robert C. Taylor, "The Big Cypress National Preserve: Archeological Survey Season 2," Southeast Archeological Center, 1979, iv; BICY 16183 sS1,I SSA, SSSa, F7.

to deep sloughs or marshes. Such locations, formed during a period when the water level within the swamp was much higher, provided dry living areas plus the added factor of proximity to canoe access points.” The 1980 report of the third field season recommended that future research “should more clearly define the relationship among what presently appear to be villages, base camps, and transient camps or procurement areas.” The report also observed that sites eligible for the NRHP had been located during each of the three field seasons, and that seven sites had been either listed or nominated to the Register. Vandalism of the Preserve’s archeological resources was continuing, however, while the destruction of sites by armadillos “is increasing at an alarming rate.” The survey predicted that “The protection of cultural resources will continue to be a problem for Park Service management of the area.”<sup>55</sup> By early 1982, SEAC had identified 394 archeological sites. Six sites had been listed in the NRHP and twelve more were determined eligible, with nominations in process. In May 1982, citing the increasing damage to sites being wrought by armadillos, SEAC proposed to conduct a full data-recovery excavation, initially of four sites that were accessible as well as threatened by vandalism and armadillos as part of the overall management of cultural resources at the Preserve.<sup>56</sup>

### *Interstate 75*

Although it occupies only a small portion of Big Cypress National Preserve as a 220-foot-wide corridor that extends approximately twenty-eight miles within the Preserve, the planning and development of Interstate 75 from Tampa to Miami was complex and fraught with complications. This final link in what is now a 1,786-mile-long federal highway connecting northern Michigan with southern Florida, which was still in the planning phases in the early 1980s, had impacts on nearly all the Preserve’s resources, including hydrology, endangered species, hunting, ORV use, and cultural resources. It was, therefore, an important, if still-undefined, component of the GMP.

Interstate 75 is one of the major highways in the United States, second only to Interstate 95 as the longest north-south interstate. It was first extended into Florida in the early 1960s and was completed to Lake City in late 1963. Work reached Wildwood, between Ocala and Orlando, in mid-1964, and portions of the highway around Tampa were under construction by 1966. Tampa was originally planned as the southern terminus, as south Florida in the 1950s and early 1960s remained relatively sparsely populated. As the population in the region exploded, however, planners began envisioning the highway’s extension across south Florida to Miami, and the Federal Highway Act of 1968 approved the extension. In 1969, the Florida Department of Transportation (FLDOT) began studies to determine the best route for the new highway, starting with the comparatively straightforward section from Tampa south to Naples. From Naples east to Miami, however, the new highway would traverse some of the most important wetland areas in the nation, with planning efforts taking place concurrently with the sudden explosion of interest in the fragile ecology of south Florida that resulted from the proposed Miami-Dade Jetport. Not only did new federal legislation require that highway planning formally

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<sup>55</sup> John E. Ehrenhard and Robert C. Taylor, “The Big Cypress National Preserve: Archeological Survey Season 3,” Southeast Archeological Research Center, 1980, ii-iii; BICY 16183 S1, SS1, SSSA, F7.

<sup>56</sup> Ellen B. Ehrenhard, comp., “Archeological Data Section: Preliminary Cultural Resource Management Plan, Big Cypress National Preserve,” Southeast Archeological Center, May 1982; BICY 16183 S2, SSA, SSS1 F2.

incorporate a consideration of environmental impacts, but the route between Naples and Miami could become a public relations minefield because nation's attention could easily be drawn to a poorly-conceived plan.

In 1971, the FLDOT prepared a draft Environmental Impact Statement (EIS) outlining potential impacts of the five possible corridors that had been identified. The Department of the Interior responded with initial comments in March 1972, opening its assessment of the EIS with a brief discussion of the implied bias toward road construction. Although one of the alternatives considered was a "no highway" option, the EIS "contains only a passing reference to the environmental aspects but strongly defends the need for the highway on the basis of traffic alone. We question whether prevention of additional environmental damage has been given proper consideration under this alternative." This being clarified for the record, the focus of the DOI's comments was the evaluation of corridor alternatives and strongly urged acceptance of the Alligator Alley corridor. President Nixon had already proposed legislation to create what would become the Big Cypress National Preserve, and either the Alligator Alley corridor or the proposed corridor further to the north would minimize impacts to it. With regard to the highway's construction, the DOI

would recommend that serious consideration be given to the construction of some portions of the highway on concrete pilings, much like the route across Lake Ponchartrain [sic], Louisiana...Short elevated sections of the route, for example, would facilitate maintaining the hydrostatic and other hydrological regimens of the area traversed; would provide passage of wildlife and recreationists across the right-of-way; would provide travelers a view of mammal and bird life; and...would resolve the need by the Seminole and Miccosukee Indian tribes for cattle crossings.<sup>57</sup>

A study of the environmental impacts, though, had been underway since the summer of 1970 when the FLDOT convened an independent panel of scientists, planners, and engineers. Under the chairmanship of Professor Carl E.B. McKenry, Director of the Center for Urban Studies at the University of Miami, the panel met frequently, solicited public comments, and prepared a final report in September 1971 that underlaid the FLDOT's analysis. In August 1972, the FLDOT released its Final Environmental/Section 4(f) Statement with an analysis of the environmental impacts of the five proposed corridors and identified Alligator Alley as the preferred alternative. The FLDOT argued for the Alligator Alley corridor not only because, as an existing corridor, no new areas would be affected, but also because the construction of an interstate would make possible improvements necessary to limiting the existing impact that Alligator Alley was then having on the natural water flow of Big Cypress National Preserve. As the 4(f) document summarized the situation, "Meeting head-on the inadequacies of the existing facility, rather than leaving these and breaking new ground presently undisturbed, was determined to be the choice of greatest cost effectiveness and environmental benefit."<sup>58</sup>

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<sup>57</sup> Deputy Assistant, Secretary of the Interior to W.N. LaFoos [FLDOT], March 15, 1972; BICY 14661 S5 F64.

<sup>58</sup> Florida Department of Transportation, Division of Planning and Programming, *Final Environmental/Section 4(f) Statement: Administrative Action for Interstate Route 75, Vicinity of Ft. Myers in Lee County to Andytown in Broward County* (Accepted by Federal Highway Administration, August 25, 1972), page 12; BICY 25.

The FLDOT was aware of the potential for secondary impacts of building Interstate 75 along the Alligator Alley corridor, particularly those related to access to wetland areas. Although Alligator Alley at the time included three small rest areas, the design for Interstate 75 included only one rest area, located where the highway crossed the Miami Canal in the Everglades, and ten interchanges, only two of which (State Route 29 and State Route 840A at the Turner River Canal) were in Big Cypress Swamp. The highway was also being designed in a way that would limit the amount of wetland areas that would be impacted, reduce public access to wetlands, and improve the flow of water.

Several environmental groups, particularly the National Wildlife Federation, the Florida Wildlife Federation, and the Florida Audubon Society, challenged the FLDOT's preference for the Alligator Alley corridor as one of convenience rather than based on environmental considerations and preferred one of two northern routes closer to the south end of Lake Okeechobee and, thus, far to the north of sensitive wetlands.<sup>59</sup> Despite these challenges, the FLDOT was successful in selecting the Alligator Alley corridor for the extension, and the Federal Highway Administration approved the corridor on November 19, 1973. With this approval in place, the location of Interstate 75 was incorporated into the enabling legislation for the Preserve, and funds for acquisition of the required additional right of way lands was provided in the \$40 million which the State of Florida allotted for land acquisition in Big Cypress National Preserve in 1975. By the late 1970s, as the FLDOT was continuing its design work for the new highway, NPS staff at the Preserve and the Regional and Washington Offices became increasingly involved, particularly in response to challenges from the hunting and recreational access communities with an interest in Big Cypress. In June 1980, for example, Acting Southeast Regional Director Neal Guse Jr. replied to Jack Moller, President of the Everglades Coordinating Council and a vocal advocate for traditional hunting access in Big Cypress. Guse reassured Moller that NPS supported "limited recreational vehicle access of the I-75 corridor and hiker access across the highway right-of-way. The exact locations of the off-road-vehicle (ORV) and hiker access are specific design criteria that are not yet settled."<sup>60</sup>

The debate surrounding recreational access to Big Cypress from the new Interstate 75, however, was only just beginning and became more intense in the mid-1980s as planning for the GMP got underway. The complications involved in identifying potential locations of recreational access points and the types of access these points would allow grew quickly as the FGFC and NPS conducted more studies and identified additional potential impacts on the Florida panther and other endangered species that would result from increased hunting and ORV access. Early NPS proposals included only one access point in the Preserve, at Mile Marker (MM) 31, with five additional points between the Preserve's eastern border on the eastern terminus of I-75 at Andytown. In response, in June 1984, FGFC Executive Director Robert Brantly provided resources for recreational access to the FLDOT in light of its recent Florida panther studies. Brantly argued on behalf of using the existing access point between MM 32 and MM 33 for both ORV and walk-in access. He reasoned that this was preferable to the site at MM 31 "because it

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<sup>59</sup> The National Wildlife Federation, The Florida Wildlife Federation, and The Florida Audubon Society, "A Fresh Look at Highways in Southwest Florida, Presented to Governor Reubin O'D. Askew," November 8, 1972; BICY 14661 S5 F63. See also Response to the 10 Items in the Florida Audubon Society April 14, 1973, resolution about I75, n.d. (c. 1973), BICY 14661 S5 F61.

<sup>60</sup> Neal G. Guse, Jr. to L. Jack Moller, June 21, 1980; BICY 14661 S5 F61.

will place the access point further eastward of East Hinson Strand, a sensitive resource area known to be used by Florida panthers.” Several additional walk-in access points, Brantly contended, should be provided to the east of the Preserve at MM 38 and MM 39. Brantly concluded his recommendations by arguing against a tight limitation on recreational access points: “If future recreational access is confined to two currently proposed sites (mile marker 31 and the Miami canal), a vast amount of recreational opportunity will be lost, that which continues will be greatly concentrated and potentially result in undesirable impacts to the limited areas of access.”<sup>61</sup>

By 1984, an additional complication had arisen: the possibility of expanding the boundary of Big Cypress National Preserve through the acquisition of nearly 150,000 acres to the north and east of the original boundary. This proposed boundary expansion, discussed in greater detail in Chapter 6, was initiated partly by the selection of the Alligator Alley corridor for Interstate 75, because federal ownership of the lands through which much of the highway would pass would make easier the job of protecting access to areas that were sensitive for water resources and endangered species. In addition, federal highway funds earmarked for Interstate 75 could be applied to the acquisition of new lands for the Preserve. Recreational access points and rest areas originally proposed as being located east of the Preserve were, therefore, suddenly within its potential new boundary. In late 1984, in light of this possibility, Superintendent Fred Fagergren proposed several options for rest areas and recreational access points to the FLDOT. The National Park Service, he explained, could support a rest area at MM 38, then to the east of the Preserve’s boundary, with walk-in access on the north side only, and walk-in and ORV access on the south side. The use of this location, Fagergren contended, was far enough east of known panther crossing locations between MM 31 and MM 33 to not impact them, and “ORV access to the south would meet recreational needs without being so close to panther populations.”<sup>62</sup>

By 1985, the NPS’ approach to Interstate 75 and potential recreational access points became increasingly intertwined with the proposal to expand the Preserve’s boundary to the north and east. Senator Lawton Chiles had a draft bill written as early as January 1985 which would “accomplish the expansion of Big Cypress National Preserve in conjunction with the I-75 construction program.” The bill initially envisioned the acquisition of 128,000 acres, more than 88,000 acres of which were directly affected by the extension of Interstate 75. Most of the acquisition costs for these acres, approximately \$43 million of an estimated total of \$61 million, would be provided by the Federal Highway Administration. Of the 88,000 acres within the Interstate 75 impact area, a substantial portion was owned by the Collier family and could be acquired by a land swap between the Collier family and the Department of the Interior. The remaining lands within the Interstate 75 impact area would be acquired by the State of Florida, the expense for which the federal government would reimburse the State eighty percent. This same division of costs would apply to the 34,000 acres in private hands that would not be affected by Interstate 75.

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<sup>61</sup> Robert M. Brantly to Jake Craft, June 11, 1984; BICY 14605 Coll 00002-004-001-011 Box 3. See also undated map and list of six potential recreational access points, undated but c. 1984; BICY 14605 Coll 00002-001-005 Box 1.

<sup>62</sup> Fred J. Fagergren to Jake Kraft, December 21, 1984; BICY 14605 Coll 00002-001-005 Box 1.

By the summer of 1985, discussions over the issue of Interstate 75 and its impacts on Big Cypress, as with other resource and operational issues, were increasingly brought into the overall GMP process. In August 1985, the Big Cypress National Preserve GMP planning team met with representatives from several local, state, and federal agencies to discuss a variety of issues. By this time, as GMP planning was getting under way, the position of the FLDOT and the Federal Highway Administration was to have two rest stops, with pedestrian and fishing boat access only, at MM 38 and the Miami Canal, both of which were then east of the Preserve boundary. No rest stop or recreation access point was being proposed within the Preserve, nor would there be an interchange at State Route 29 in the northeastern corner of the Preserve, but the Federal Highway Administration and the FLDOT would fund the construction of thirty-four panther bridges. The FLDOT would also support locked gates across roads for oil and gas vehicles, which would allow the continued use of existing roads rather than creating the need to build new access roads.<sup>63</sup> Later that year, however, as planning for both the GMP and the expansion of the Preserve's boundary moved forward, the FLDOT began making plans for an interchange at State Route 29. Florida Governor Bob Graham and Senator Lawton Chiles announced their support for this new transportation facility, which was formally incorporated into the FLDOT's plans in 1987, after a reevaluation of the original 1973 Final EIS, and in 1988 when a Categorical Exclusion was issued which found that the interchange would have no adverse environmental impacts.<sup>64</sup>

What remained for the GMP process with regard to Interstate 75 was to determine the number and location of rest areas and recreation access points, protection methods for the Florida panther, and provisions for water flow. As seen in the discussions throughout this chapter, these questions were deeply intertwined with other issues and resource areas: the degree to which recreation access points would permit ORV access, the impacts of those ORVs on hunting and on water quality and flows, mortality rates for the Florida panther, where oil and gas exploration and extraction equipment would gain access, and more. Like the ecology of the region itself, planning for the long-term management of the Preserve had to be conducted on a broad scale, taking into account the impacts of each topic on a host of other resources. The complicated and multi-year course of preparing the General Management Plan for Big Cypress National Preserve is the subject of the next chapter.

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<sup>63</sup> Memorandum/Trip Report, Assistant Manager, Southeast/Southwest Team, DSC to Regional Director, Southeast Region, September 27, 1985; BICY 14605 Coll 00002-002-001 Box 1.

<sup>64</sup> Bob Graham to Lawton Chiles, January 29, 1986, Lawton Chiles Papers; Florida Department of Transportation Project Reevaluation Form, approved by Federal Highway Administration August 28, 1987, BICY 25; "Interchange at I-75/S.R. 29, Collier County, Florida, Draft Categorical Exclusion," submitted by Greiner Inc. to Florida Department of Transportation, March 1988, BICY 25.

## Chapter 5: General Management Plan: Process and Completion

The task of preparing a General Management Plan for Big Cypress National Preserve was gargantuan, as substantial a planning project as NPS had conducted to that point. As discussed in Chapter 4, many of the individual topics to be considered were themselves complicated. These individual issues were made even more challenging, not just because of the connections between them—for example, new oil and gas work could create the roads that make areas more accessible to hunters using ORVs whose harvesting of white-tailed deer could impair the necessary food sources for the highly endangered Florida panther, to pick just one potential chain of events—but also given the lack of definition provided in the legislative history regarding the balance between the protection of natural resources and access to the land for recreational and consumptive uses. The intense scrutiny, born of grave distrust of NPS by local adherents of the use of Big Cypress for hunting, fishing, trapping, and ORV use, further complicated the process. However, the work which NPS personnel from the Washington and Southeast Regional offices and the growing professional staff at Big Cypress National Preserve had done on the individual issues over the several years before planning efforts formally began allowed the GMP team, led by staff from the Denver Service Center, to move the process forward with surprising speed. Begun officially in late 1984 with the development of a draft Task Directive, the GMP was completed by 1991.

As large and as complicated as the GMP was, however, much of the discussion and negotiations centered around three issues: hunting, ORV use, and oil and gas exploration and extraction. The GMP and the associated Environmental Impact Statement (EIS) involved many other issues, several of which were discussed in Chapter 4, including provisions for interpretation and visitor services, protections for and the management of cultural resources, improvements to the Preserve's water flow and water quality, the control of invasive species, and methods of fire management and the use of prescribed burning. The development of management programs for these issues, however, required relatively fewer negotiations and were less directly related to the question of balancing traditional uses with the protection of the Preserve's resources. As well, NPS personnel at the Preserve, the Southeast Regional Office, and DSC decided early in the GMP process that management decisions pertaining to lands in the proposed expansion of the Preserve, which Congress authorized in 1988, would not be incorporated into the GMP. These so-called Addition Lands, the larger portion lying at the northeastern edge of the original boundary of the Preserve and a smaller one located along the western border, were intimately connected to the extension of Interstate 75 across south Florida from Tampa to Miami. The extension of Interstate 75 invoked negotiations regarding rest areas and recreational access points that, in turn, involved the management of ORV use in the Preserve as well as new opportunities for managing the Preserve's water flow. These issues related to Interstate 75 and the addition lands were not incorporated in the final GMP and will be discussed in Chapter 6.

### *Task Directive and Initial Steps*

The first step toward preparing the GMP was a Task Directive outlining the key issues and approaches and identifying a preliminary schedule. Work on the Task Directive began in late 1984. For Big Cypress National Preserve, the Task Directive included four projects: the GMP, a

Development Concept Plan for Ochopee and Oasis, a Minerals Management Plan, and an Environmental Impact Statement. The Denver Service Center led the preparation of the Task Directive, as it did the GMP, the Development Concept Plan, and the Environmental Impact Statement. The Minerals Management Plan, as well as resource base information and the determination of sensitive areas, fell to the Energy, Mining and Minerals Division, which also had responsibility for all sections related to minerals, primarily oil and gas exploration and extraction, in the Environmental Impact Statement. The Task Directive was completed by DSC in January 1985, though Superintendent Fagergren and Southeast Regional Director Robert Baker did not approve the document until June of that year.

In addition to initiating the Preserve's major planning process, the Task Directive provided a concise and useful summary of the status of the Preserve in the early 1980s as the land acquisition process was coming to a conclusion. After a lengthy discussion of the purposes of the Preserve as identified in the legislation, the Task Directive forged directly into a brief statement of the central issue that challenged Preserve managers from the beginning:

The legislation provides for the preservation of natural values while allowing a broad range of resource activities and uses not usually associated with national park areas. This planning paradox—providing resource protection while allowing multiple uses—is the central overriding issue to be addressed in this planning effort.<sup>1</sup>

By this time, the land acquisition process, begun in 1975, was nearly complete with only 550 outstanding inholdings remaining. Of that number, 235 were improved properties exempt from compulsory acquisition. Although most of the inholdings were small parcels, the Dade-Collier Jetport near the eastern edge of the Preserve occupied approximately 24,000 acres, and the Florida State School Board owned more than 12,000 acres in scattered parcels. Approximately 125 trespass camps were known to exist in the Preserve, and NPS was awaiting settlement of the legal challenges before the camps could be removed, as discussed in Chapter 3. The key issue in this regard was that these camps often were destination points for off-road vehicle use, one of the most important components of the traditional uses of the Preserve that would be subject to new regulations.<sup>2</sup> The Task Directive also observed that the Preserve had no interpretive programs and that “The visitor experience and interpretive objectives at Big Cypress need to be defined along with any support needs.”

The Task Directive also discussed two important developments that could affect the GMP. The extension of Interstate 75 from Tampa, south to Naples and then on State Route 84 (also known as Alligator Alley), was then in the final planning stages. The Task Directive noted that the State of Florida was planning for exit points that would likely provide ORV access in the northern portion of the preserve. “Of special concern,” the document declared, “is the potential conflict that may occur in this area between Florida's endangered panther and ORV users.” As originally planned, the GMP would address the issue of recreation access points from Interstate 75 “to ensure compatibility and protection of preserve resources” and to enhance wildlife crossings and water flow once the highway was built. In addition, the Task Directive briefly

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<sup>1</sup> “Task Directive, Package 109: General Management Plan, Development Concept Plan, Minerals Management Plan, Environmental Impact Statement, Big Cypress National Preserve, Florida,” approved by Southeast Regional Director Robert Baker, June 19, 1985, page 5; BICY 14605 Coll 00002-001-011 Box 1.

<sup>2</sup> *Ibid.*, 15-16.



discussed the proposed expansion of Big Cypress National Preserve with the addition of approximately 165,000 acres at the northeastern corner of the Preserve.<sup>3</sup> In addition to the brief summary of the current conditions and issues at Big Cypress, the Task Directive suggested plans for public involvement, including participation in scoping meetings and opportunities to review the draft GMP. A press release that announced the initiation of the GMP process in early March 1985 provided additional details, including the time and locations of public scoping meetings that month in Naples, Everglades City, Homestead, and Hollywood.<sup>4</sup>

The public scoping meetings for the Task Directive began immediately after Fagergren issued the press release. Public response to these very first meetings demonstrated the strength of feelings and the depth of antagonism toward NPS regarding Big Cypress Swamp. Even before the meetings began, many in the public were already complaining that the meetings were not widely advertised and were held on short notice; the sense, therefore, was that NPS was trying to avoid facing the public. The majority of those who attended were advocates for hunting and ORV use who were convinced that what they claimed were their rights were being taken from them. A trip report by Frederick Babb, DSC's Assistant Manager for the Southeast and Southwest Regions, for example, observed that "By far, the sentiments expressed at the meetings were anger, exasperation, and distrust directed toward the National Park Service, and other agencies with regulatory authority in the Big Cypress." A memorandum to Collier Enterprises, which owned the mineral (oil and gas) rights to a vast swath of lands in Big Cypress Swamp, observed with greater specificity that "the most vociferous member of the audience was Joel Lord, representing the Everglades Protective Association. He came on hot and heavy, an avowed enemy of Fred Fagergren, the Park Service, and everything which the government is trying to do within the Preserve." The author of the memorandum, which was written immediately after the first of the four public scoping meetings, went on to summarize his or her general impressions of the meeting as "that the several dozen people present are very poorly informed as to the long range goals of the Park Service," and that most of the attendees assumed the worst, with "somewhat of a consensus that the National Park Service intends to turn the Preserve into an area out-of-bounds to people."<sup>5</sup>

In April 1985, DSC provided an extensive summary of the results of the public scoping meetings held the month before, although the summary was revised in May by the Regional Office. Approximately 380 people attended these meetings, 250 of which attended the meeting in Homestead at the eastern edge of Everglades National Park. Aside from concerns about the lack of public notice given to the public meetings, the participants' principal concerns among the issues to be addressed in the GMP revolved around hunting and ORV use, in particular, and overall public access to Big Cypress National Preserve in general. The FGFC, with the goal of not restricting the numbers of hunters but making each hunting foray less efficient and more unproductive, had recently released a proposal to eliminate the use of dogs and all-terrain vehicles (ATV) for hunting within Big Cypress National Preserve, "which prompted a large

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<sup>3</sup> Ibid., 14. Earlier that year, Senator Lawton Chiles proposed only 128,000 acres for the new expansion lands. The legislation as passed in 1988 authorized the acquisition of approximately 146,000 acres. No evidence for the reason for the fluctuating acreage in the additional lands was found in the current research.

<sup>4</sup> Press Release issued by Fred Fagergren, March 6, 1985; BICY 14661 S2, SSA, F2.

<sup>5</sup> Memorandum, G.E. Barry to Barron Collier Company and Collier Enterprises, March 19, 1985; BICY 14661 S2, SSA, F2.

turnout of hunters and ORV users.” Most participants, the summary continued, “did not distinguish between the different roles and responsibilities of the National Park Service and the Florida Game and Freshwater Fish Commission with respect to Big Cypress National Preserve.” Many adherents of continued hunting and ORV use expressed concerns that Big Cypress National Preserve would become another national park rather than continue as a national preserve, and that regulations on recreational activities such as hunting and ORV use were overly burdensome. Many continued that line of thought to contend that NPS should place more emphasis on regulating oil exploration and drilling and less on recreational activities. The general consensus of the meetings was that greater participation by the public, including the establishment of user groups who could have input into the development of proposed regulations, would help to establish a better working relationship between NPS and advocates for the Preserve’s traditional uses.<sup>6</sup>

The EMMD also paid a great deal of attention to the GMP as planning began and reacted strongly to the Task Directive, which was released in draft form in January 1985. The EMMD objected specifically to what they saw as the lack of details on a remarkably complicated process and what they understood as a thoroughly unrealistic schedule which called for the final GMP to be completed within two years, by March 1987. In February 1985, DSC Water Resources Branch Chief Thomas Lucke also reviewed the Task Directive and concurred with EMMD’s opinion of the impossibility of the proposed schedule, particularly regarding the Preserve’s hydrological issues. Lucke argued that the impact of such activities as oil and gas exploration, the South Florida Water Management District’s management of adjoining areas, and the State of Florida’s management plans for Fakahatchee Strand in addition to ongoing, cumulative effects on the Preserve’s hydrology from numerous smaller sources still needed to be addressed. Lucke contended that NPS had no staff, either in the Washington or Southeast Regional Offices or in DSC, who “has the knowledge of Big Cypress hydrology to make technically defensible hydrological evaluations of the sort that will be necessary in developing credible, implementable management plans.” Instead, he recommended securing the services of a consultant and added that the time needed to conduct the necessary hydrological analyses alone would continue well into 1986.<sup>7</sup>

Lucke’s supervisor, EMMD Chief Dave Shaver, incorporated Lucke’s comments in another strongly worded memorandum to Southeast Regional Director Robert Baker in early March 1985. Shaver emphasized the need to make the protection of resources the most important goal, citing the NPS Organic Act of 1916, stating that other uses should be allowed “only to the extent that these uses are not detrimental to the purposes of the preserve.” After discussing the complexity of the topics involved in understanding effects to the hydrology of Big Cypress National Preserve, Shaver argued that the GMP first needed to define management zones for the Preserve and objectives for acceptable uses in each. The Mineral Management Plan would serve as an action plan that outlined requirements and procedures to be applied to each proposal for oil

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<sup>6</sup> Big Cypress National Preserve Planning Team, Public Meeting Feedback, attached to Memorandum, Acting Regional Director, Southeast Region to Assistant Manager, Southeast/Southwest Team, DSC, May 10, 1985; the original summary was attached to a memorandum from the DSC Assistant Manager, April 12, 1985; BICY 14661 S2, SSA, F2.

<sup>7</sup> Memorandum, Thomas W. Lucke to Dave Shaver, February 4, 1985; BICY 14661 S2, SSA, F2. The hydrologic assessment, prepared by William Schneider under contract, was completed in August 1985, as discussed in Chapter 4.

and gas exploration and extraction specific to each zone, saying “The mineral management plan should supplement the GMP by outlining specifically how the exercise of mineral rights should occur with the regulatory process provided by the NPS mineral management regulations (36 CFR Part 9).” Shaver also asserted that the GMP and MMP should be accompanied by a full Environmental Impact Statement to provide a thorough analysis of the combined effect of all major uses—oil and gas, hunting, and ORV use in particular—“on the sensitive resources of the park,” and urged awareness of the controversial nature of any proposed restrictions on these allowed uses.<sup>8</sup>

With the public scoping meetings completed and revisions to the Task Directive being made by regional and national officials through the spring and early summer of 1985, DSC and the Southeast Regional Office staff quickly got to work on the GMP itself, contacting specialists for input into the status of wildlife of South Florida. In addition, GIS specialists at the Preserve and in the Regional Office began a vast mapping program. In June, the Southeast Regional Office contracted for a hydrological assessment of the Preserve, as discussed in Chapter 4. At the same time, the GMP team requested support from the DSC Branch of Concessions on developing a concessions plan for ORV use and public tours. Staff from DSC, the Southeast Regional Office, and the Preserve focused their efforts on several key aspects, each having their own particular requirements and often challenging constituencies. These included provisions for hunting and ORV access, endangered species (particularly the Florida panther), invasive species, water quality and hydrological processes, the exploration for and extraction of oil and gas (typically classified as minerals throughout the GMP), Native American uses, and visitor use including recreation and interpretation.

A point of confusion arose early in the process, first identified in early drafts of the Task Directive. The enabling legislation, together with Congressional reports, were unclear regarding the balance between resource protection and traditional uses, at times calling for a return of Big Cypress National Preserve to wilderness status while also providing specifically for uses at odds with a true wilderness. This lack of clarity in the legislative history caused staff members and agencies to differ on the degree of resource protection the GMP should incorporate. As Southeast Regional Director Robert Baker observed in May 1985, “It is clear that within our own camp there are a number of differing opinions on the legislative mandate of managing Big Cypress. We are concerned that these differences of opinion will affect the quality of what is most likely the Southeast Region’s most important planning effort to date.”<sup>9</sup> In response, the Regional Office and DSC jointly convened a meeting in August 1985 that included staff from Big Cypress National Preserve and Everglades National Park together with solicitors from the Department of the Interior, with the intent of coming to a unified understanding of the legislative intent for the Preserve.

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<sup>8</sup> Memorandum, Chief, Energy, Mining and Minerals Program to Regional Director, Southeast Region, March 4, 1985; BICY 14605 Coll 00002-001-003 Box 1.

<sup>9</sup> Memorandum, Regional Director, Southeast Region to Associate Director, Natural Resources, WASO, May 6, 1985; BICY 14661 S2, SSA, F2. See also Memorandum, Bart Young to Wally Hibbard, August 5, 1985: “The legislative history is an aid in interpreting the enabling legislation. However, the legislative history appears to provide conflicting direction on the intent of Congress on some issues;” BICY 14605 Coll 00002-002-001 Box 1.

At its planning meeting in August, which included participants from multiple federal and state agencies as well as NPS, the GMP team outlined the immediate next steps, including beginning work on a periodic newsletter to keep the public informed and plans to convene meetings and field visits with the region's hunting interests. The Denver Service Center also announced that it would begin preparing alternatives for management zone concepts. Regarding the questions of legislative intent, the DOI solicitor who participated in the meeting urged that the GMP rely on the language of the legislation itself, which is binding, rather than interpreting the legislative history, which contained several inconsistencies. With that guidance, Southeast Regional Office staff member Wally Hibbard, who would later succeed Fagergren as Superintendent, was directed to prepare a white paper on the direction the legislation provides regarding the planning effort.<sup>10</sup> A follow-up status report in late October provided no information on the question of legislative intent but discussed the extensive preliminary mapping work that had occurred. This included a modern base map using existing United States Geological Service (USGS) maps compatible with new infra-red photographs. Separate maps for each of the several resources allowed "the overlay comparison of the various resource combinations." This status report, which was prepared in the form of a press release, continued to state that a draft GMP would be available by early 1986.<sup>11</sup>

As part of the initial planning work in the late summer and fall of 1985, NPS staff from the Southeast Region, DSC, EMMD, the Preserve, and Everglades National Park all contributed to a draft opening statement for the GMP. This statement was designed to summarize the planning process for Big Cypress National Preserve with a special focus on what Congress meant when it created the Preserve, one of the nation's first two National Preserves, as a new approach to land management. This opening statement remained in draft form throughout 1985, with difficulties continuing to arise from a lack of clarity regarding Congress' intended management approach for the Preserve. As Department of the Interior Assistant Solicitor David Watts explained in a December 1985 memorandum regarding the opening statement, his proposed revisions were

necessitated because of the difficulty in ascertaining a specific or exact congressional [sic] purpose that Congress had when it enacted the legislation establishing Big Cypress National Preserve. While the legislative history indicates water as the principle natural resource, it is difficult to identify all of the other resources of concern to Congress at the time the legislation was passed.<sup>12</sup>

These complexities involved in trying to understand Congress' intent regarding management strategies and an expansion of the understanding of the various resource areas forced a delay in the GMP's preparation. The Denver Service Center prepared a revised Task Directive in late March 1986, explaining the new issues that would be included, such as the proposed legislation to expand the Preserve by what was then estimated at 165,000 acres and new developments in the Interstate 75 planning efforts regarding recreation access points. To incorporate these new

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<sup>10</sup> Undated, unsigned summary of August 23, 1985, meeting; BICY 14605 Coll 00002-001-003 Box 1.

<sup>11</sup> "Status Report: Big Cypress National Preserve General Management Plan," attached to Memorandum, Assistant Manager, Eastern Team, DSC to Regional Manager, Southeast Region, October 29, 1985; BICY 14661 S2, SSA, F2.

<sup>12</sup> Memorandum, Assistant Solicitor, Parks and Recreation to Regional Director, Southeast Region, December 19, 1985; BICY 14605 Coll 00002-001-008 Box 1.

issues into the GMP, DSC revised the schedule to allow for completing the final GMP by March 1988.<sup>13</sup>

### *Oil and Gas*

In these early stages of the GMP, when the status of many of the resources and the balance of uses of Big Cypress National Preserve were only slowly coming into focus, NPS staff in the Southeast Regional Office and EMMD urged a cautious stance regarding oil and gas activities. In early 1986, EMMD began work on a research project to define and map the ownership of mineral rights beneath the lands within the Preserve boundaries. During the land acquisition process, as discussed in Chapter 3, NPS made the decision not to acquire mineral rights when purchasing land from private owners because of the prohibitive costs of doing so. The report that EMMD produced noted that mineral rights for a substantial majority of the Preserve were in non-federal hands, but there were pockets of land, including those which the State of Florida had acquired before donating them to the federal government, where the federal government had at least a partial interest in the mineral rights. By combining the detailed mineral rights ownership maps with the growing map data for natural resources, EMMD argued, NPS could “assess potential or existing conflicts between natural resource preservation and oil and gas (mineral) development.” This would, in turn, identify those areas where the federal government might seek to acquire mineral rights.<sup>14</sup> Following this analysis of ownership data, in March 1986, EMMD argued that recommendations in the Minerals Management Plan should be based on management zones rather than on cost implications. Specifically recommended was that portions of the Preserve lying south of U.S. Route 41 should be off-limits for oil exploration and extraction, due to the “important vegetative resources, the Cape Sable Sparrow [sic] range, and the fragile hydrology of both the Preserve and Everglades National Park.” No commercial quantities of oil had yet been discovered in that area and EMMD reasoned that closing it to oil activities before any discoveries were made “may result in cost savings to the government of \$700/acre should acquisition become a reality.”<sup>15</sup>

Later in the spring of 1986, EMMD, in consultation with the Preserve, took the further step of recommending that NPS enact an emergency rule to temporarily suspend the oil and gas regulation program for Big Cypress National Preserve. This would mean that the Regional Office would no longer accept, review, or approve plans of operation for new oil exploration or extraction sites until December 31, 1987. The reasoning was that, in the absence of the overall guidance that the GMP with its attendant Minerals Management Plan, approving individual Plans of Operation would not allow an assessment of cumulative effects, and decisions made to approve new sites without understanding these cumulative effects could render future protection measures moot. “Without guidance of a GMP and MMP,” the draft recommendation argued, “future minerals operations could conflict with the purpose of the Preserve and could result in

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<sup>13</sup> “Big Cypress National Preserve: General Management Plan/Minerals Management Plan/Environmental Impact Statement, Task Directive Addendum,” March 27, 1986; BICY 14605 Coll 00002-001-011 Box 1.

<sup>14</sup> Memorandum, Realty Specialist, Mineral Resources Branch to Chief, Mineral Resources Branch, June 24, 1986; BICY 14605 Coll 00002-001-009 Box 1.

<sup>15</sup> Memorandum, Chief, Energy, Mining and Minerals Division to Regional Director, Southeast Region, March 6, 1986; BICY 14605 Coll 00002-001-011 Box 1.

non-compliance with the National Environmental Policy Act (NEPA) as it relates to assessing cumulative impacts.”<sup>16</sup> Southeast Regional Director Robert Baker supported this recommendation and, in early June 1986, forwarded it to the NPS Washington Office, explaining that “We have progressed to a stage in this effort that we no longer believe can tolerate ‘business as usual.’ We are therefore requesting the subject rule be published in the Federal Register.”<sup>17</sup>

In July 1986, Associate Regional Director for Planning and Development David Wright responded on behalf of NPS Director William Penn Mott. Wright argued strongly against suspending the review and approval of plans of operations for oil activities in Big Cypress National Preserve on several grounds. In addition to the likelihood that a rule to suspend normal oil and gas activities would be on shaky legal ground due to the Preserve’s enabling legislation, Wright contended that the GMP would provide only an overall management strategy, and, thus, the development of an assessment of cumulative impacts should be carried out as part of the GMP planning. This process, he believed, should be undertaken while conducting “business as usual” with regard to the review of plans of operations, not instead of carrying out the review of plans. Finally, Wright observed that NPS Director Mott was then in negotiations with the Osage Nation at their government headquarters in Pawhuska, Oklahoma, regarding oil and gas rights which the Nation owned beneath Tallgrass Prairie National Preserve, Kansas. The legislation for this park was then pending, and the Nation had expressed distrust of NPS and its willingness to acknowledge Osage claim to ownership of mineral rights. “The Director has made personal commitments to the Osage Indian Tribe [sic],” Wright informed Regional Director Baker, “that their oil and gas rights will be maintained if a preserve is established. To suspend consideration of plans of operation at BICY could unfortunately confirm the negative opinions expressed in Oklahoma.”<sup>18</sup>

The issue remained unresolved throughout the early summer of 1986, but, by late August, discussions among the Preserve, the Southeast Regional Office, and the Washington Office resulted in a compromise position in which the owner and operator for each proposed oil exploration or extraction project would choose whether to accept a delay until the completion of the GMP and MMP, with the attendant overall EIS, or to proceed with the review of a plan of operations that would most likely require the lengthy process of an EIS for that project. In September, Preserve Superintendent Fagergren and Environmental Specialist Steve Hunt met with representatives from the Collier family companies which owned the majority of the Preserve’s mineral rights, to explain and discuss the NPS position. As Fagergren reported to Regional Director Baker, “Their reaction to the NPS decision was predictable: they were disappointed. Their general lack of understanding of environmental laws and procedures caused them to question how we had operated without Environmental Impact Statements before and

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<sup>16</sup> Draft proposed emergency rule with handwritten notations, attached to Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, May 6, 1986; BICY 14605 Coll 00002-001-011 Box 1.

<sup>17</sup> Memorandum, Regional Director, Southeast Region to Director, National Park Service, June 6, 1986; BICY 14605 Coll 00002-001-009 Box 1.

<sup>18</sup> Memorandum, Associate Director for Planning and Development to Regional Director, Southeast Region, July 11, 1986; BICY 14605 Coll 00002-001-009 Box 1.

now why they were needed.” Although the meeting was cordial as always, the Collier representatives indicated that action in the courts remained a strong possibility for them.<sup>19</sup>

In January 1987, Shell Western submitted a plan of operations under this new procedure. The proposal was for an extensive seismic exploration survey across 330 miles in south Florida, including eighty-five miles within the Preserve. For the sections within the Preserve, Shell’s proposal consisted of excavating approximately 10,000 holes, ranging in depth from six to twenty-seven feet, into which explosives would be placed. Of these eighty-five miles, fourteen were in the Loop Unit, which was designated for primitive hiking and camping experiences, and twenty-four miles were south of U.S. 41, which had been designated as a sensitive area on which no surface operations would be allowed. All plans also included the construction of new ORV trails. In the face of subsequent reviews, Shell submitted two revised proposals, each consisting of fewer impacts to environmentally sensitive areas. In August 1987, NPS published an EA for the plan of operations in the Federal Register, with a public comment period that ended in late October. During that period, Shell again submitted a third revised plan, which was revised yet again in late November. Both the Florida Department of Environmental Regulations and the Environmental Protection Agency recommended that the plan of operations be subjected to an EIS. In addition to the scientific questions to be answered, the proposed plan of operations had significant implications for the Preserve’s public relations and political situation. According to a position paper prepared for the Washington Office in December 1987, the Collier companies owned the majority of the mineral rights in the affected areas and would strongly object to any NPS decision that was other than approval. Disapproval could jeopardize the proposed land exchange that was key to the proposed expansion of the Preserve planned to accompany the construction of Interstate 75. On the other hand, recreation adherents and environmentalists were in rare agreement, as “They have a common concern for the level of oil and gas activity within the Preserve. They look to the GMP to resolve this issue by assuring consideration of the cumulative impacts of oil and gas activities.”<sup>20</sup>

In February 1988, EMMD found the NPS review of Shell’s successive plans of operations to be deficient and recommended that NPS either reject the plan of operations or require a complete EIS for the project, primarily on the grounds that the cumulative impacts could not be determined through the existing EA. In a summary to the strongly worded analysis, EMMD stated that

We remain concerned that the environmental consequences of this operation have not been adequately analyzed and may result in significant impacts to the Big Cypress resources. We are also concerned that although Shell may have informally agreed to several mitigation measures to satisfy the concerns expressed by the park and region, these agreements are not found in the record and, as such are not legally binding or enforceable.<sup>21</sup>

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<sup>19</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, undated but reporting on a meeting held on September 19, 1986, with the attached new policy statement; BICY 16183 S2, SSA, SSS2, F4.

<sup>20</sup> Discussion Paper, Big Cypress National Preserve, December 4, 1987; BICY 26817, S3, SSA.

<sup>21</sup> Memorandum, Chief, Mining and Minerals Branch to Regional Director, Southeast Region, February 12, 1988; BICY 26817, S3, SSA. See also a review of the EA by the Sierra Club Legal Defense Fund that came to a similar conclusion, in the form of a letter to Superintendent Fagergren that was attached in a letter from Senator Lawton

Despite these criticisms, NPS issued a Finding of No Significant Impact (FONSI) for Shell's plan of operation in early April 1988, approving the project with stipulations but not calling for an EIS. The FONSI posited that negotiations between NPS and Shell since late 1985 resulted in significant modifications that reduced the environmental impact. Moreover, both the Florida Department of Environmental Regulation and Florida Department of Natural Resources issued permits for the plan of operations, and the FGFC found that the project would have only minimal impacts on fish and wildlife. Given the strength of the arguments pertaining to potential cumulative impacts, however, Shell agreed to fund a one-year monitoring study of seismic operations in cooperation with NPS.<sup>22</sup>

Within one month, however, after Shell Western had already begun laying its charges for the seismic survey, Southeast Regional Director Baker reversed his decision, writing to Shell on May 6, 1988, with an order to cease and desist all work within the Preserve. According to an article in the *New York Times*, the move was prompted by a lawsuit filed by unnamed conservation groups, who argued that NPS failed to follow federal environmental review procedures, and by the threat of similar lawsuits from other environmental groups. The article also cited unnamed NPS officials who claimed that the original NPS decision to require a full EIS was overruled by Assistant Secretary for Fish and Wildlife William Horn, who ordered that the FONSI be issued. Shell's attorneys filed an appeal of the decision in early June, and the issue remained in contention throughout the summer of 1988. In September 1988, however, Congress passed the annual appropriation act for the Department of the Interior (P.L. 100-446); the act's Administrative Provisions contained a clause stating that "None of the funds in this Act may be used to issue a permit for seismic exploration of Big Cypress National Preserve, Florida, until an environmental impact statement has been completed," provided that the EIS was completed within two years.<sup>23</sup> In a letter to Shell's attorneys in December 1988, NPS Director William Penn Mott denied Shell's request that he reverse the decision by Southeast Regional Director Baker. Referring to the Department of the Interior appropriations bill, Mott advised that "The issue in dispute is basically moot. The discretion of the National Park Service has been proscribed, and we cannot grant the remedy you seek." Moreover, Mott pointed to the lawsuit filed against NPS, *Wilderness Society v. Hodel*, which the Justice Department had advised could not be won; Shell was a party to the case, and, when the federal court agreed with the Justice Department regarding dismissal of the case, Shell failed to raise an objection. Finally, Mott argued that Regional Director Baker's decision to revoke the permit was the correct one, since "the record shows several informational deficiencies and considerable uncertainty regarding the effect of the plan of operation as proposed."<sup>24</sup>

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Chiles to Southeast Regional Director Robert Baker, February 25, 1988; 013 - 015 A 3815 SUSPENDED CONGRESSIONAL RESPONSES INQUIRIES 1988-21.

<sup>22</sup> Finding of No Significant Impact for Plan of Operations for Seismic Exploration by Shell Western Energy and Petroleum, Inc., Big Cypress National Preserve Florida, signed by Southeast Regional Director Robert Baker, April 8, 1988; BICY 26817, S3, SSA.

<sup>23</sup> Public Law 100-446, 100<sup>th</sup> Congress, "Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1989, and for other purposes," September 27, 1988. No information pertaining to the addition of this provision in the Department of the Interior appropriation bill was found during the current research.

<sup>24</sup> William Penn Mott to Richard S. Brightman, December 16, 1988; BICY 26817, S3, SSA.



## *Hunting: Negotiations with FGFC*

The Congressional requirement to complete an EIS before allowing any new permits for seismic oil exploration, effectively as part of the MMP, created a further delay for the GMP, of which the MMP was a component. By that time, in late 1988, the GMP was still in process; NPS had released a draft GMP for public review and was then working on a revised draft, but none of the key issues had been settled as studies for the GMP's key components were still underway. In May 1986, the FWS, FGFC, Florida Department of Natural Resources, and NPS entered into a Memorandum of Agreement that established a new Florida Panther Recovery Interagency Committee in the hopes of creating a coordinated approach to research and protection activities. Later that month, Southeast Regional Director Robert Baker released an update newsletter announcing that the GMP team would begin to develop a range of management alternatives for recreational use and resource protection. Baker acknowledged that the original schedule proposed a draft GMP by that summer, "but because of the complexities involved in this particular plan, the draft will probably not be available for public review until summer 1987."<sup>25</sup>

In addition to the lingering question of cumulative impacts resulting from oil and gas exploration and extraction, two major related issues loomed over the GMP team in the mid-1980s, with few signs of resolution: the regulation of hunting and of ORV use in the Preserve. With regard to determining the appropriate level and methods of regulations, the relations between NPS and FGFC continued to be uneasy throughout the late 1980s. As discussed in Chapter 4, the University of Georgia conducted a study in 1985 of hunting practices in Big Cypress and their impacts on deer populations and sources of food for the Florida panther. The report concluded that, with the changes to hunting regulations over the past several years and the likelihood of illegal hunting, it was not possible to verify the takings from legal hunting and identify trends. As a result, the report recommended that FGFC provide more control over access of hunting permits, limit the number of permits, and provide more consistent hunter check-in and verification of takings. For its part, the report recommended that NPS expand its use of prescribed fires to improve habitat diversity and quality.<sup>26</sup> In keeping with these recommendations, FGFC proposed, and NPS approved, a one-year study of deer mortality in the Bear Island Unit of the Preserve to start in the fall of 1986. The goal of the study was to determine mortality rates from several sources including hunting and natural predation from multiple species, deer population levels, habitat requirements, and the impact of hunting regulations and land use changes on deer populations. The FGFC estimated that, if the study team was successful in capturing a sufficient quantity of deer, the study would continue for five years, through 1991.<sup>27</sup> The following year, NPS requested funding for its own study of the impacts of hunting on white-tailed deer populations, and, in 1988, Big Cypress National Preserve Research Scientist James Snyder prepared a proposal for the project, by then identified as a study of population dynamics of white-tailed deer. Snyder referenced other on-going studies by Everglades National Park, FGFC, and the Safari Club International, all of which involved the use

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<sup>25</sup> "Message from the Regional Director," with handwritten date of May 29, 1986; BICY 14605 Coll 00002-001-009 Box 1. The Memorandum of Agreement that created the Florida Panther Recovery Interagency Committee was executed by the heads of all four agencies on May 28, 1986; BICY 14605 Coll 00002-001-006 Box 1.

<sup>26</sup> Robert L. Downing, Lowell K. Halls, R. Larry Marchinton, and Robert J. Warren, "Deer Management Review Panel: Draft Report," December 5, 1985; BICY 14661 S6 SSB, F8.

<sup>27</sup> "Study Narrative: Big Cypress Deer/Panther Relationships; Deer Mortality Study," attached to memorandum, Dave Maehr to Fred Fagergren, September 5, 1986; BICY 14661 S6, SSB, F8.

of radiotelemetry and were focused on mortality studies. Snyder stated that his project on population dynamics would run concurrently with these studies and draw from them but would focus on age statistics, particularly the relationship between female deer age, survival, and reproduction rates. In the spring of 1989, Superintendent Fagergren announced his intention to move forward with the Snyder study.<sup>28</sup>

The GMP team continued its work throughout this period of study, and, as part of the process of developing management approaches, NPS staff met with representatives from the FGFC and regional hunting groups regarding possible new regulations on hunting. In January 1988, Southeast Regional Director Robert Baker and Superintendent Fagergren met with FGFC staff to propose new hunting regulations that were more restrictive than had been previously proposed. Following a public review, the FGFC, in March 1988, denied the NPS request for the additional regulations, as it did to the NPS' revised regulations in May 1988. With relations at an impasse, FGFC and NPS staff met again in August 1988 to attempt to resolve the differences, choosing to focus on the development of a game quota using data provided by the Florida Panther Interagency Committee. The two agencies again failed to reach agreement despite NPS using data furnished by the FGFC. According to a summary of proposed hunting regulations during the GMP development, FGFC staff used game data different from what had been developed by other staff: "The Service was told by Commission staff that density data, furnished by them and utilized in development of the proposed quotas, was not reliable."<sup>29</sup>

Disagreements between the agencies continued throughout 1989 and into 1990, with no resolution regarding new hunting regulations acceptable to both. In March 1990, DSC Eastern Team Manager Donald Falvey urged the Southeast Regional Director to hold firm and not to concede on two points: a full-season quota system and non-transferrable hunting permits, on which the FGFC remained adamant. Evidence from studies by NPS and the FGFC indicated the high potential for disturbance to the Florida panther from legal and illegal hunting. The FGFC, however, "portrayed the results of the analysis as inconclusive in directly linking hunting pressure to panther movements." As Falvey argued, however,

any indication that panthers may be leaving the preserve [sic] for less intensively hunted areas is grounds for strict monitoring and regulation of hunting activity.

We feel that allowing an open season and transferable permits anywhere in the preserve is inappropriate given the severity of the panther's situation.

The FGFC, Falvey continued, is motivated primarily by having recreational hunting as "their first management priority," and "has not consistently manned check stations, has not consistently collected reliable data on harvest levels or hunting activity, and has not supplied sufficient enforcement personnel to support the level of hunting they allow."<sup>30</sup> Finally, in the summer of 1990, however, NPS and the FGFC reached an agreement that allowed the GMP to move forward as described later in this chapter.<sup>31</sup>

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<sup>28</sup> "Research Proposal: Population Dynamics of White-tailed Deer in the Big Cypress National Preserve," attached to Memorandum, Superintendent, Big Cypress National Preserve to Superintendent, Everglades National Preserve [sic], May 25, 1989; BICY 14661 S6, SSC, F4.

<sup>29</sup> Chronology, unsigned, no header, and undated, but the final item is dated March 16, 1990; BICY 26817, S3, SSA.

<sup>30</sup> Memorandum, Manager, Eastern Team, Denver Service Center to Regional Director, Southeast Region, March 21, 1990; BICY 14661 S2, SSA, F6.

<sup>31</sup> See reference to an agreement reached on July 13, 1990 in Robert M. Baker to Ron Somerville, August 2, 1990; 013 - 015 A 3815 SUSPENDED CONGRESSIONAL RESPONSES INQUIRIES 1988-14.

## *Off-Road Vehicle Use*

The question of ORV use in the Preserve was, likewise, fraught with dissension, due not only to vigorous support from proponents of ORV use but also to their connection to hunting. As discussed in Chapter 4, the rapid increase in ORV use at the Preserve was a cause for concern. The use of ORVs, however, had also become an important issue throughout the National Park System. In early 1986, the Southeast Regional Office convened an Off-Road Vehicle Task Force consisting of representatives from Cape Hatteras National Seashore and Cape Lookout National Seashore, North Carolina; Cumberland Island National Seashore, Georgia; Big Cypress National Preserve; and the Washington Office and Southeast Regional Office. The Task Force held its initial meeting in June 1986, and its first report provided an overview of state and federal legislation pertaining to ORV use throughout the Southeast Region. The Task Force's report, however, argued that research on ORV impacts is incomplete and that "there is a general absence of operating or action plans specifically addressing the management of ORV use." The Task Force recommended additional research on ORV impacts throughout the region and that the Southeast Regional Director require the Superintendent of each park where ORVs were permitted to develop an action plan for their use.<sup>32</sup> As a result of the Task Force's recommendations, the Preserve contracted again with the National Audubon Society's Ecosystem Research Unit to develop a study on the long-term effects of ORV use. According to Superintendent Fagergren's summary of the study in a 1988 letter to Representative Dante Fascell (D-FL), this second study "documented there were long term effects to soils and vegetation from the use of tracked vehicles."<sup>33</sup>

A steady refrain within NPS correspondence regarding ORV use was the need to tread carefully in proposing new regulations on use, given the likely public response. Off-road vehicle use was, perhaps, an even more sensitive issue than hunting, and the likelihood of creating a backlash from ill-conceived restrictions was high. The GMP team continued to deliberate throughout 1986 and 1987, and, in early 1988, released a draft ORV plan. By this time, as discussed in Chapter 4, planning for the extension of I-75 across south Florida was well advanced and included planning for rest areas and recreational points in the Big Cypress National Preserve portion of Collier County. Since one aspect of these recreation areas was to provide access for ORVs, the proposed regulations took areas that would be accessible from I-75 into consideration. Even rumors of possible regulations were enough to prompt responses, many of them as form letters provided by groups that promoted the recreational use of Big Cypress National Preserve. In January 1988, a flurry of these nearly identical letters was sent to Secretary of the Interior Donald Hodel. According to these letters, "The current BCNP [Big Cypress National Preserve] Superintendent disapproves of ORV use. Thus, the GMP will, probably, not include this use...It is important that you support our needs and make sure that the GMP also supports them." As the letters observed, the current plans for I-75 included three recreational

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<sup>32</sup> "Off-Road Vehicle Use Position Paper—Southeast Region," attached to memorandum, Joe Kelly to Members, Off-Road Vehicle Task Force, July 30, 1986; BICY 14605 Coll 00002-001-003 Box 1.

<sup>33</sup> Fred Fagergren to Dante B. Fascell, September 15, 1988; BICY 013 - 015 A 3815 SUSPENDED CONGRESSIONAL RESPONSES INQUIRIES 1988-3.

access areas within the Preserve which would provide access for ORVs and hiking, “and they all must allow for these uses.”<sup>34</sup>

Big Cypress National Preserve staff prepared draft regulations for ORV use as part of the revised draft the GMP in May 1988, following the completion of the second study of impacts from ORV use by the National Audubon Society. The most controversial component of the proposed regulations was to close the Deep Lake Unit, the smallest management unit of the Preserve, located along the northwestern edge between the Bear Island Unit to the north and the Stairsteps Unit, now the Turner River Unit, to the south. As Regional Director Robert Baker explained to a citizen who wrote to complain about this action, “Harvest data from the [Deep Lake] unit suggests a depressed deer population. We believe there is significant poaching in this unit. These conditions support the change in off-road vehicle use.”<sup>35</sup> Other components of the draft ORV use regulations included eliminating the use of tracked vehicles, an annual limit of 2,500 ORV permits for the Preserve, closing the Loop Unit to ORV use, and designating specific trails for ORV use.<sup>36</sup>

### ***Pulling it All Together: Draft and Final GMP/EIS***

In the spring of 1986, the Task Directive for the Preserve’s GMP was revised to consider the added complexities of the potential expansion of the Preserve and possible recreation access points from Interstate 75; these extended the proposed completion date to the spring of 1988. Initial planning continued throughout 1986 and included the development of planning objectives for each of the use categories or management issues; these objectives then guided the initial development of alternatives. In early 1987, the Preserve prepared a pamphlet for public distribution that contained the first version of GMP alternatives. The purpose of the pamphlet was to solicit public opinion on the various alternatives. Comments were accepted throughout the summer and summarized for public information and internal planning uses in September. As the studies for issues related to hunting, ORV use, and oil and gas activities continued throughout 1988, NPS staff at DSC, the Southeast Regional Office, and the Preserve continued to develop a draft GMP. Finally, in early 1989, a complete draft GMP and EIS was completed, and a summary document was provided in March in anticipation of the complete document. The summary document focused on the four key issues of hunting, ORVs, visitor services, and minerals management. Other topics that the GMP/EIS included were the management of water resources, vegetation, fire, wildlife, and cultural resources. The GMP/EIS did not include, however, issues related to uses by the Seminole and Miccosukee Indians or aspects related to the lands that were added to the Preserve by legislation in 1988; these issues will be discussed in separate chapters later in this document.<sup>37</sup>

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<sup>34</sup> Multiple identical letters to Donald Hodel, all dated January 19, 1988; BICY 013 015 A 3815 SUSPENDED CONGRESSIONAL RESPONSES INQUIRIES 1988-12.

<sup>35</sup> Robert Baker to Wallace Bruce Freeman, October 13, 1988; BICY, 013 015 A 3815 SUSPENDED CONGRESSIONAL RESPONSES INQUIRIES 1988-12.

<sup>36</sup> Chronology, March 16, 1990.

<sup>37</sup> Untitled highlight document, March 16, 1989; BICY 14605 Coll 00002-003-002-005 Box 2. No documents were located during the current research related to the process of preparing the draft GMP/EIS during late 1987 and 1988.

The draft GMP/EIS as completed in the spring of 1989 contained four alternatives: the status quo (as of 1985-1986), Alternative A, which emphasized recreational opportunities; Alternative B, which emphasized the protection of natural and cultural resources with limited recreational opportunities; and the Preferred Alternative, which sought to balance these two approaches. The GMP/EIS paid particular attention to hunting and ORV use as the most popular uses of the Preserve. The Preferred Alternative proposed that hunting be allowed in all of the management units, with a forty-day season in Bear Island, Turner River, Corn Dance, Loop, and Stairsteps Units. There was to be a full-season quota and a non-transferrable permit system, which the GMP argued was “an equitable selection system based on a random draw.” The combination of a full-season and non-transferrable permits “would also allow for more accurate data collection since the exact number of hunters would be known.” The use of dogs for hunting was a contentious issue, and the GMP/EIS allowed only bird dogs in the Bear Island and Corn Dance units. Dogs would be permitted in the Turner River unit for a part of the general gun season, but no dogs would be allowed in the Deep Lake and Stairsteps units. In the Deep Lake unit, only bow hunting would be allowed, and the Deep Lake and Loop units would allow only walk-in hunting to preserve the wilderness setting.<sup>38</sup>

Through the late 1980s, ORVs were able to enter the Preserve at multiple locations and travel nearly anywhere except for the Loop unit, the Eleven Mile Road, and the Florida National Scenic Trail. The GMP/EIS proposed to manage ORV use by limiting it to specifically designated trails in the Bear Island and Corn Dance units designed to guide ORV operators away from the several known Important Resource Areas (IRAs) in both units, including panther habitats, inland marshes, and hardwood hammocks. Off-road vehicles would also be allowed in the Turner River and Stairsteps units, though the Stairsteps unit would allow airboats only to the south and east of Gator Hook Strand, and no ORVs would be allowed in the Deep Lake and Loop Units. Both NPS and FGFC agreed that Interstate 75 would pass through areas with the highest concentration of Florida panthers. As a result, the proposed rest areas and recreation access points would allow pedestrian access only. In areas where ORVs were allowed, tracked vehicles would be prohibited, and the total number of permits for ORV operators would be capped at 2,500 per year (the total number of permits in the 1986-1987 season was 1,627).<sup>39</sup>

By the mid-1980s, Big Cypress National Preserve had only a minimal interpretation program, limited primarily to a visitor contact station at the Oasis Ranger Station with a fifteen-minute introductory video produced by the Harpers Ferry Center. As late as 1989, the Preserve had no dedicated interpretive specialists among the forty-person staff, with interpretation being a part of the Resource and Visitor Protection division.<sup>40</sup> The GMP’s proposal for visitor services went beyond improved and expanded interpretive offerings to include new wayside exhibits and self-guided walks, and additional backcountry and primitive camping opportunities in the nearly all of the units. The GMP/EIS also proposed construction of fifty backcountry camping shelters throughout the Preserve, the development of six primitive camping grounds, and expanded concession services for ORV tours and storage, food service, and guide services.<sup>41</sup>

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<sup>38</sup> Ibid., 7.

<sup>39</sup> Ibid., page 10.

<sup>40</sup> Annual Superintendent’s Report for 1989, attached to Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, March 28, 1990; BICY 26817, S3, SSA.

<sup>41</sup> Highlight document, page 13.

The Preferred Alternative for oil and gas exploration and extraction was little changed from the approach that had developed by the early 1980s. Plans of operation for individual projects were to be evaluated on a case-by-case basis. The GMP/EIS recommended allowing surface occupancy for exploration and production in most areas of the Preserve so long as it occurred outside designated IRAs and also recommended allowing geophysical (seismic) exploration in all units subjected to regulations. There were two exceptions to these provisions: no surface occupancy would be allowed in the Loop and Stairsteps units due to the greater density of IRAs south of U.S. Route 41 and their sensitivity to mineral exploration and extraction activities, and only existing roads and pads could be used in the Bear Island unit. For the Loop and Stairsteps units, given their sensitivity, the GMP/EIS acknowledged that NPS might need to explore the acquisition of private mineral rights in the portions of the Preserve lying south of U.S. Route 41. Finally, the GMP/EIS specified that no more than ten percent of the entire surface area of the Preserve should be influenced by oil and gas activities at any one time.<sup>42</sup> The GMP provided no justification for this limit, which in later years became a point of contention in the development of proposed new regulations.

Although the public comment period for the draft GMP/EIS extended to March 1, 1990, NPS and FGFC continued to engage in negotiations, often contentious, over the proposed hunting regulations for the Preserve. Because of the nature of the negotiations and the ideological distance on key points that remained unsettled, the two agencies engaged a mediator from the Georgia Institute of Technology in early 1989 to facilitate discussions. By early 1990, the two agencies were in agreement on most matters pertaining to the regulation of hunting in the Preserve except for three requirements by NPS: the full-season quota system, non-transferable permits, and a turkey season that did not conflict with the high hazard fire season. In the spring of 1990, FGFC Executive Director Robert Brantly met with NPS Director James Ridenour. The two agreed that the FGFC would promulgate new regulations for the 1990-1991 hunting season while continuing to negotiate on the three remaining NPS conditions. According to an NPS briefing paper regarding hunting regulations for the Preserve, NPS had consulted with USFWS, which had proposed even more restrictive regulations than those proposed by NPS. The FGFC, for its part, considered the NPS position to be “regulatory overkill” and an excessive and unnecessary restriction on activities that were specifically permitted in the Preserve’s enabling legislation. The FGFC cited data purporting to show that the density of the white-tailed deer population was driven more by the habitat’s carrying capacity than by hunting and that the status of the Florida panther “appear[s] to relate directly to deer carrying capacity, and in no case is panther use inversely related to the relative intensity of hunting pressure among management units.”<sup>43</sup>

The two agencies continued to meet throughout 1990 while the GMP/EIS was under review. Finally, in May 1991, NPS and FGFC entered into a Memorandum of Understanding

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<sup>42</sup> Ibid., 16-17. As discussed in more detail in Chapter 8, this requirement to limit the surface impacts of oil and gas activities to ten percent of the Preserve’s surface area appears to have been arbitrary, as no studies were cited to support this limitation.

<sup>43</sup> “Briefing: Big Cypress National Preserve, Hunting Regulations,” undated but approximately June 1990; BICY-313, Box 4. An explanation of the FGFC’s position and rationales during the negotiations, including the meeting with NPS Director Ridenour, can be found in a re-typed copy of a summary document by FGFC transmitted by fax to NPS, undated but between May and July 1990; BICY 26817, S3, SSA.

(MOU). While the three key issues remained unresolved, the two agencies had agreed to a request by the FGFC that there would be no new hunting regulations for a period of five years “without evidence of a need to do so for the protection of biological or other resources of the Preserve.” In the MOU, each agency recognized the authority of the other’s jurisdiction and agreed to work cooperatively and meet at least once per year regarding regulations for hunting, fishing, and trapping in the Preserve.<sup>44</sup> As will be discussed in Chapter 7, the execution of this MOU did not put an end to grave disagreements between NPS and FGFC, but it did allow the GMP/EIS to move forward to completion.

The draft final GMP/EIS was completed in the spring of 1991, and, in early July, Superintendent Fred Fagergren provided his final comments on the document. Fagergren offered several points of clarification to remove ambiguities about the numbers of designated trails and the number of available hunting days. He also noted that the draft final document still retained references to private concessions for airboat tours even though the GMP team in its last major meeting had decided to eliminate private airboat tours in the Preserve. The GMP team, Fagergren recalled, had “documented detrimental impacts of large airboats & NPS should not be sponsoring low quality experience with large boats in artificial settings (canals).” Airboat tour operators, he observed, could remain in business only by using boats capable of carrying many passengers, which can operate without damage to the Preserve’s resources in canals. Traditional airboats carrying only three or four passengers, which can enter the Preserve without causing significant damage, “could not make enough money,” he opined.<sup>45</sup>

The final GMP/EIS was released in October 1991, and incorporated all of Fagergren’s recommended edits. The final GMP/EIS included three alternatives in addition to the Preferred Alternative. The Status Quo Alternative would have continued with the existing programs and regulations in place in 1985, the benchmark year when work on the GMP began. This alternative allowed for no new interpretive programs and few opportunities for visitor services aside from the orientation film at the Oasis Ranger Station, and informal recreational activities such as hiking, bicycling, camping, and boating. Hunters, ORV users, and owners of improved properties would have been the principal users of the Preserve, with only the limited regulations in place in 1985. This included nearly unregulated ORV use except in the Bear Island unit, where access was only through the Turner River Road. The Status Quo baseline also included no mitigation for the Preserve’s hydrologic needs such as filling and dredging of canals and feeders and no restoration of the Turner River and Birdon Road canals. The management of oil and gas exploration and extraction would continue to rely on reviews of individual plans of operation but without any analysis of cumulative impacts or influence threshold. Endangered species would continue to be protected as best as possible, but the Preserve would not regulate hunting or ORV use to minimize impacts to them, and invasive vegetative species including melaleuca, Australian pine, and Brazilian pepper would continue to be treated at the rate of approximately 1,000 acres per year. Prescribed fires would continue to be used to reduce hazardous accumulations of fuel and to improve habitats for endangered species, and cultural resources

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<sup>44</sup> The final draft of the MOU is attached to a letter outlining the NPS final amendments, Fred J. Fagergren to Robert M. Brantly, May 23, 1991; BICY 26817, S3, SSA. The executed MOU was not located during the current research.

<sup>45</sup> “Comments on Final Draft of GMP,” attached to Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, July 10, 1991; BICY 14661 S2, SSA, F6.

would be managed passively under a “benign neglect” policy except in cases of direct threats from proposed actions.<sup>46</sup>

Underlying the Preferred Alternative and Alternatives A and B was an approach to the Preserve based on management zones, management units, and the identification of IRAs. The IRAs include landforms such as cypress strands, mixed-hardwood swamps, sloughs, cypress domes, marshes, hardwood hammocks, old-growth pinelands, and mangrove forests, known areas of concentration of endangered species (red-cockaded woodpeckers, Cape Sable Seaside Sparrow, bald eagles, and Florida panthers), Miccosukee Indian cultural sites, and archeological sites. Management zones referred to the emphasis that would be placed on specific lands and waters. These included the Natural Zone, which was focused on conserving natural resources and process while accommodating traditional uses and experiences as identified in the Preserve’s enabling legislation; the Cultural Resource Zone, focused on protecting, managing, and interpreting archeological sites and above-ground historic resources; the NPS Development Zone, focused on providing visitor use facilities and administrative offices; and the Special Use Zone, which included lands over which NPS had limited or no control, including highways and improved properties.

In the early years of Big Cypress National Preserve, before work began on the GMP, the land was divided into five management units. The Status Quo Alternative continued to rely on the original five units: Bear Island at the northern tip of the Preserve north of Interstate 75, Deep Lake along the Preserve’s western border, Monument encompassing all land north of U.S. Route 41 and east of the Deep Lake Unit, Loop along the southern edge of U.S. Route 41 at the eastern edge of the Preserve, and Stairsteps that formed the large southern border of the Preserve. During the GMP development, a sixth unit was added by dividing the original Monument Unit in half, creating the Turner River Unit on the west and the Corn Dance Unit on the east. The units were laid out based on important resource areas and use patterns, with roads and trails serving as boundaries for easier identification. The Preferred Alternative and Alternatives A and B were all developed around the six new Management Units (Figure 8).

Alternative A was designed to provide a level of management higher than the Status Quo but that still allowed for a great deal of development and use. This alternative provided a fuller range of opportunities for hunting, ORV use, fishing, and sightseeing, with additional interpretive programs and exhibits beyond the Preferred Alternative and, while more restrictive than the Status Quo, allowed more hunting opportunities than the Preferred Alternative, including the use of dogs in the Loop and Stairsteps Units. The use of ORVs would be permitted in nearly all the Preserve and included efforts to control damages resulting from ORV use in particular areas. Off-road vehicle access to the Bear Island Unit would be on designated trails only to protect panther habitat, and an access point would be provided to the Turner River Unit from Interstate 75. Regarding oil and gas, Alternative A maintained the requirement in the

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<sup>46</sup> *General Management Plan, Final Environmental Impact Statement, Big Cypress National Preserve, Florida, Volume 1*, 1991, pages 102-108.



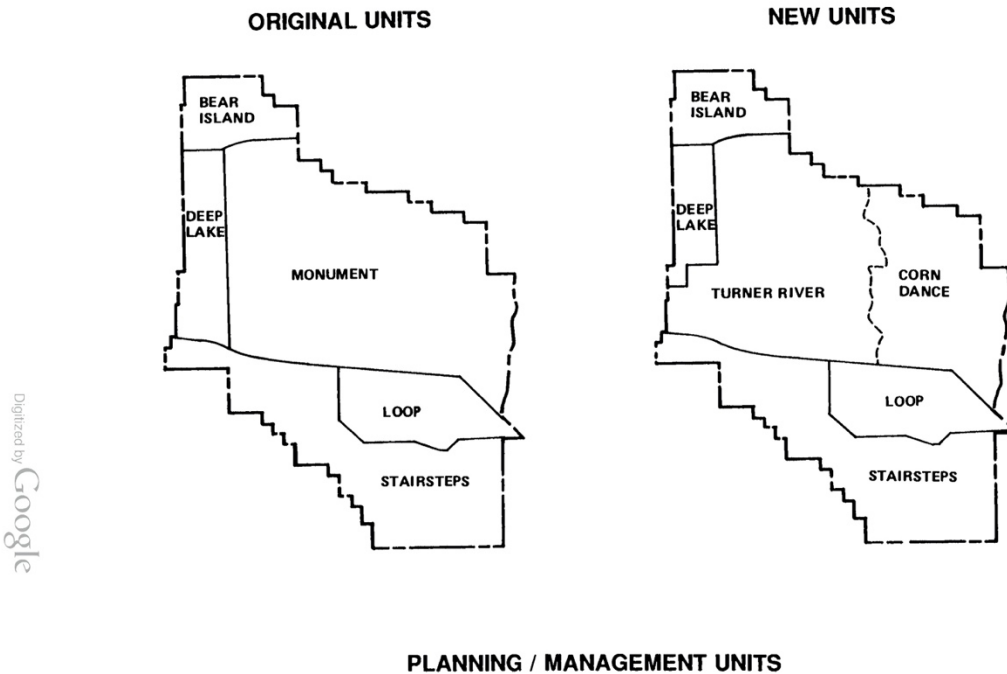


Figure 8. Management units in Big Cypress National Preserve (GMP, 1990).

Preferred Alternative that only ten percent of the surface of the Preserve could be subject to exploration or extraction at any one time, though the entire Preserve would be available to oil and gas development.

Alternative B was designed to emphasize resource protection while still providing limited recreational opportunities. Interpretation would be limited to the Oasis Ranger Station and two wayside exhibits, and there would be no interpretive trails along the Loop Road. Hunting would be limited, with a thirty-day general gun season, and would be allowed only in the Turner River, Stairsteps, and Loop Units; the Loop Unit would allow only bow and muzzle-loaded gun hunting. The purpose of the strong limits on hunting, particularly on the taking of white-tailed deer, was to support the Florida panther population. The use of ORVs for hunting would be allowed but on a more restrictive basis, and general ORV use would be prohibited in the Bear Island, Deep Lake, Corn Dance, and Loop Units. Only a skeletal network of designated trails would be provided in the Turner River and Stairsteps Units, and only 1,500 ORV permits would be issued per year. Alternative B placed for more restrictions on oil and gas development, providing only limited opportunities in the Bear Island, Turner River, and Corn Dance Units while banning such development from the Deep Lake, Stairsteps, and Loop Units. As with the other alternatives, a maximum of ten percent of the Preserve's surface could be subjected to oil and gas activities at any one time. Cultural resources, meanwhile, would receive protection through regular monitoring and patrol to prevent vandalism, and selected archeological sites

could be excavated systematically. Finally, all administrative functions would be transferred from Ochopee to the Oasis Ranger Station.

The Preferred Alternative was little changed from the draft GMP/EIS as discussed earlier in this chapter, with only minor modifications that resulted from negotiations with FGFC. For hunting, the GMP established a forty-three to forty-nine-day general gun season, including both quota and non-quota hunts. A special permit would be required for hunting in the Bear Island Unit during the non-quota season. Only bow hunting was allowed in the Deep Lake Unit during the general gun season, and bird dogs and retrievers were allowed in the Bear Island, Turner River, Corn Dance, and Stairsteps Units only; no dogs were allowed in the Loop and Deep Lake Units. The Preferred Alternative allowed dispersed ORV use in the Turner River, Corn Dance, and Stairsteps Units and on designated trails in the Bear Island Unit, but ORV use was not allowed in the Loop and Deep Lake Units. Six campgrounds were to be developed in the front country, and backcountry camping would be allowed at designated sites in the Bear Island, Deep Lake, Corn Dance, and Stairsteps Units and at undesignated sites in all others. Additionally, up to fifty backcountry shelters would be constructed. On Interstate 75, only one access point would be constructed, which would be for pedestrian access only. Because the Addition Lands were to be addressed in a separate planning effort, the GMP/EIS did not address ORV and other recreational access points on Interstate 75, leaving those areas closed to ORV use.

The Preferred Alternative proposed rehabilitation of the Turner River and Birdon Road canals and the improvement of drainages under the Loop Road and Paces Dike to restore more natural surface flows. Regarding oil and gas, the Preferred Alternative, as with Alternatives A and B, would allow exploration and development activities on a maximum of ten percent of the Preserve's surface area at any one time. The Preferred Alternative also prohibited surface occupancy in IRAs, limited surface disturbance in the Bear Island Unit to roads and other developments that already existed and would continue the case-by-case review of plans of operations with geophysical (seismic) exploration in accordance with the Minerals Management Plan, which was included as an appendix to the GMP. The Preferred Alternative proposed continuing ecological studies of the Florida panther, its habitat and relationship to white-tailed deer and feral hogs and recommended continued habitat management for the Preserve's other endangered species, including increased prescribed burning. Considering NPS operations, the Preferred Alternative proposed rehabilitation of the Big Cypress Lodge, also known as the Golden Lion Motel, at Ochopee to serve as the Preserve's administrative headquarters, the rehabilitation of the Oasis Ranger Station, provision of additional housing units at Ochopee and Oasis, and establishment of a ranger station and residence at Bear Island and near Pinecrest.

From the outset of the GMP process in early 1985, NPS staff at the Preserve, the Regional Office, DSC, and the Washington Office recognized that Big Cypress National Preserve was a vital component of NPS' plans for managing oil and gas exploration and extraction. As a result, the Task Directive for the GMP required the development of an accompanying Mineral Management Plan. The MMP was designed to be integrated with the GMP and relied on the GMP's definition of Management Zones. The Preserve's Natural Zone was defined as lands and waters "that will be managed to conserve natural resources and processes while accommodating uses and experiences that do not adversely affect the ecological integrity of the area." The Natural Zone contained several subzones, among which was the

Petroleum Development Subzone, defined as those lands within the Preserve “currently used for oil and gas operations (including oil pads, pipelines, and roads maintained by petroleum companies).” At the time of the MMP, in 1991, the Petroleum Development Subzone contained 251 acres.<sup>47</sup>

The MMP reviewed in detail the process for plans of operations that had been in place since the enactment of federal regulations governing non-federal oil and gas activities, made effective in January 1979 under 36 CFR Part 9B (“9B regulations”). These plans of operations required substantial technical information, a detailed environmental report to serve as the basis for an EA, and a general reclamation plan to be updated with a detailed plan in advance of reclamation activities. Once submitted, the Regional Office had sixty days to complete the EA; at that point, the Regional Director could approve the plan, deny the plan, or request additional information in order to continue considering the plan. The MMP defined the right and responsibility of NPS to inspect and monitor oil and gas extraction sites to insure compliance with the plan of operation and the 9B regulations and outlined the range of penalties that might be exacted for failure to comply with either. Finally, the MMP defined the stipulations that would be built into all approved plans of operation. Stipulations specific to the Preserve included a limit on ten percent of the Preserve’s surface that could be impacted by oil and gas operations at any one time, the avoidance of IRAs, the requirement to perform a one-to-one wetlands mitigation when the project required a permit under Section 404 of the Clean Water Act (one acre of mitigation for every one acre of land to be impacted by the project), and the limitation on all operations in the Bear Island Unit such that the area of direct impact in the Unit would not exceed the acreage of unreclaimed access roads, pads, and pipelines located in the unit as of May 1, 1991. The MMP also included an extensive list of operational stipulations tailored to specific phases of exploration and extraction including geophysical surveys, drilling and production, and reclamation.<sup>48</sup>

The completion of the General Management Plan/Environmental Impact Statement, which included the Minerals Management Plan as an appendix, closed the first phase of development of Big Cypress National Preserve. This phase began with the massive task of acquiring more than a half-million acres of land from tens of thousands of private and public owners and continued with the initial attempts to define a management strategy while sorting out the pressing and often controversial issues surrounding what the Preserve’s enabling legislation identified as traditional uses. As discussed in Chapter 4, an enormous amount of discussion by NPS staff at the Preserve and the Southeast Regional Office took place before and during the GMP surrounding such contentious issues as hunting, ORV use, oil and gas exploration and extraction, and the protection of the endangered and threatened species that occupied the Preserve, while initiating a series of comprehensive studies to better understand the Preserve’s natural and cultural resources and the potential impacts on them. These were not issues that could be settled with a single document, however, no matter how comprehensive, and discussions and negotiations with other agencies and public-interest groups have continued to the present. Moreover, the GMP did not address one of the major developments in the Preserve’s history, the addition of nearly 150,000 acres of land by Congressional action in 1988. The story

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<sup>47</sup> Minerals Management Plan, Appendix C of *General Management Plan*, 347.

<sup>48</sup> *Ibid.*

of this addition, and the impacts that it had on planning for the new extension of Interstate 75 across south Florida, is the subject of the next chapter.

## **Chapter 6: Interstate 75 and the Expansion of Big Cypress National Preserve**

The expansion of the Preserve to its current boundary was authorized when President Ronald Reagan signed into law the Big Cypress National Preserve Addition Act, P.L. 100-301, on April 29, 1988. The Congressional act that became law in 1988 was the direct outgrowth of planning for the extension of Interstate 75 from Tampa, the southern terminus of the federal highway at the time, to Miami. The measure was prompted, in part, by the recognition that extension of the highway across southern Florida using the Alligator Alley corridor had potential to benefit the Preserve's natural resources, because the existing road was at grade, so it both impeded the natural water flow of Big Cypress Swamp and led to the deaths of many Florida panthers by collisions with automobiles. The new highway would be designed with sufficient elevated sections to allow the restoration of the region's sheet flow and the safe passage of panthers and other wildlife from one side to the other. Additionally, the necessary acquisition of land for rights of way through privately owned properties which would be divided by the highway could be more efficiently completed by acquiring the land in fee, allowing for a combination of funds from the Federal Highway Administration (FHWA) and the Department of the Interior to be used for purchase. As the legislation progressed through the mid-1980s, additional opportunities for acquiring land and funding emerged that made the acquisition of 146,000 acres, primarily along the northeastern edge of the original Preserve together with a narrow strip along the western boundary, a nearly irresistible benefit. Given the original intent of the Preserve to balance the protection of natural and cultural resources with traditional uses that included hunting, fishing, trapping, and ORV use, however, the addition of such a vast undeveloped area created the need for extensive, and often contentious, negotiations with a variety of interest groups. Because the GMP was already in progress when the legislation was introduced in Congress, the GMP team, with the support of the Southeastern Regional Office and the Washington Office, decided not to include the new lands in the GMP in the interest of avoiding further delays. This chapter, therefore, serves as a sequel to the discussion of the GMP in Chapter 5, as NPS sought to apply the management principles as defined in the GMP to these new lands even though they were not included in it. Chapter 7 continues the story of the implementation of recreational access from Interstate 75 once the acquisition of the lands added by the 1988 legislation, frequently known as the Addition Lands, had been completed.

### ***Interstate 75 and the Legislative Background***

As discussed in Chapter 4, the Florida DOT had earlier identified State Road 93 (more commonly known as Alligator Alley) corridor as the preferred route of the Interstate 75 extension. The Final Environmental/4(f) Statement for the project, completed in August 1972, selected Alligator Alley as the best route, and the FHWA approved the corridor in 1973. The establishment of Big Cypress National Preserve in late 1974, which included a portion of Alligator Alley, incorporated Interstate 75 obliquely into the legislation, requiring that the Secretary of the Interior cooperate with the Secretary of Transportation "to assure that necessary transportation facilities shall be located within existing or reasonably expanded rights-of-way

and constructed within the reserve in a manner consistent with the purposes of this Act.”<sup>1</sup> The Florida DOT then began work on designing the new highway, a process that continued through the late 1970s.

At the same time, the Florida DOT began planning for the acquisition of the necessary rights of way to construct Interstate 75. Because Interstate highways are, by definition, limited access roads, the conversion of Alligator Alley to Interstate 75 would have an adverse impact on those property owners whose lands straddled the original road. The acquisition of rights of way on both sides of the highway would, in the parlance of highway engineering, result in severance damages: the loss in value of a property that takes place when a limited access highway renders a property inaccessible. The scope of severance damages was enlarged by the decision in the Environmental/4(f) process that, given the environmental sensitivity of the land through which the Interstate would pass, FHWA would protect those lands from being developed. This was a laudable goal on environmental grounds that, however, had significant economic impacts. By the late 1970s and early 1980s, the concerns of the Florida DOT and the FHWA regarding the costs of severance damages were raised to the Congressional level, and a win-win solution was proposed. A briefing statement from Senator Lawton Chiles’ office in approximately 1986 summarized the issues:

Public funds which must in any event be paid for severance damages will equal about half the value of this land. Consequently, under this unique set of circumstances fee title to the land can be acquired by paying the landowners the difference between the severance damages and the actual value of the lands. Thus, the public can acquire these lands for far less than what it would cost to acquire them otherwise.<sup>2</sup>

Public ownership of the land, Chiles argued, would not only prohibit future development of surrounding properties but would also allow regulation and control of the necessary access roads that would have to be built by the owners of the oil and gas rights to the land. As in the case of the original legislation, authorization for acquisition of the land by the federal government would, in most cases, not include mineral rights.<sup>3</sup> In a more candid discussion prepared for Chiles by a member of his staff in January 1985, there were concerns among Chiles’ staff regarding the Senator’s support for a massive land acquisition project at the same time that Republican members of Congress were advancing legislation aimed at dramatically reducing the federal budget. “It is important to point out, however,” the staff member advised, “that this project is viable only because of DOT’s mandatory expenditure of about \$43 million for the I-75 project. It makes sense to use this \$43 million for the fee-title acquisition of these lands instead of just paying this out and receiving nothing for it.”<sup>4</sup>

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<sup>1</sup> P.L. 93-440, Section 4(b)(8).

<sup>2</sup> “Questions/Answers on the Proposed Expansion of Big Cypress—I-75 Construction,” briefing paper in Papers of Lawton Chiles, undated but in a folder labeled as 1986.

<sup>3</sup> Ibid.

<sup>4</sup> Briefing Paper, from Lynda [no last name given, but presumably Lynda Goodgame] to Senator Chiles regarding Big Cypress Expansion Legislation, January 13, 1985; Lawton Chiles Papers. Discussions over what was to become the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985 (P.L.99-177) in December 1985 was a major news item in early 1985.

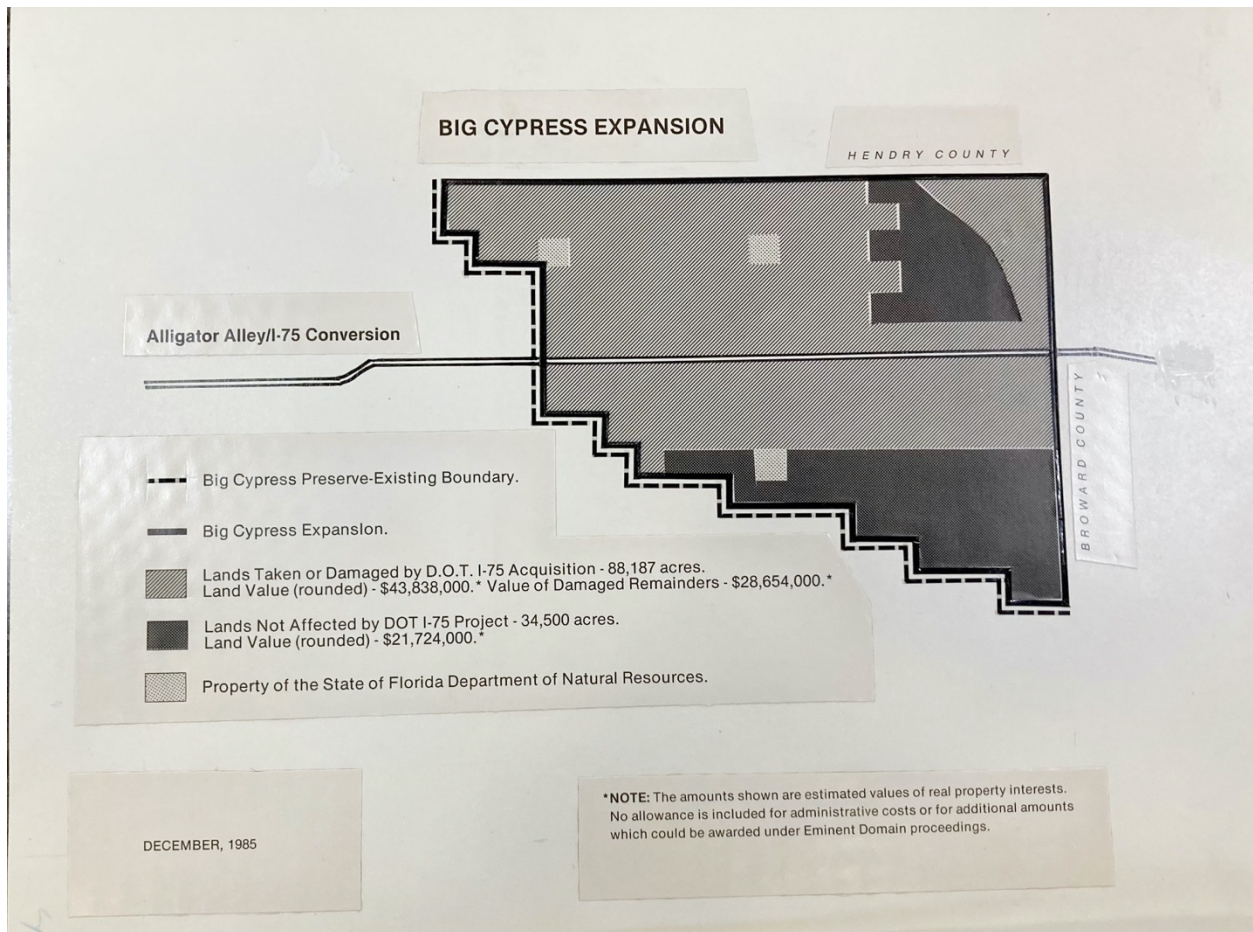


Figure 9. Proposed Big Cypress National Preserve boundary expansion, December 1985. Lawton Chiles Papers, University of Florida.

Senator Chiles' staff began working on a draft bill in 1984. At that time, the proposed area to be added to the Preserve contained 128,000 acres, which remained undeveloped though within an area that likely contained oil deposits (Figure 9). At that time, the lands to be acquired were bounded by the Preserve on the west and south, the Hendry County line on the north, and the Broward County line on the east. Only 2,400 acres were in public hands; the rest were in private ownership. Approximately 70,000 acres of this land was owned by two of the Collier family companies—Collier Enterprises and Barron Collier Company. Another 7,600 acres was owned by the Hendry-Collier Cattle Company, and the remaining land was owned by nearly 5,000 private owners, with 212 improvements.<sup>5</sup> As the idea to acquire the new lands gained momentum in 1985, the Big Cypress Land Office requested an estimate of the costs to acquire the 128,000 acres that were then envisioned. Big Cypress Land Office Chief Appraiser Raymond Cleary responded to the request in September, observing that the source of acquisition funds, whether state or federal, had not yet been determined. For the purposes of an estimate, however, Cleary assumed that the federal government would purchase the land and then reserve the necessary right of way for the highway. The total cost, he

<sup>5</sup> Director, National Park Service to Honorable Tom Lewis, October 10, 1985; Lawton Chiles Papers. See also Briefing Paper, c. 1986, op. cit.

estimated would be \$95.9 million.<sup>6</sup> This estimate was forwarded to NPS Director William Penn Mott, who, in October, included it in a response to a query from Representative Tom Lewis (R-FL) regarding the cost of the proposed acquisition.<sup>7</sup> In January 1986, Lewis introduced legislation in the House of Representatives to acquire the lands, on the same day that Senator Chiles introduced similar legislation in the Senate.

While this cost estimate was being prepared but before any legislation was introduced in Congress, an intriguing possibility emerged for reducing the federal outlay of funds. In the summer of 1985, representatives from the Collier companies began investigating possibilities with their attorneys about exchanging their landholdings in the proposed addition area for other lands held by the Department of the Interior. In particular, the Collier companies had their eyes on land in Phoenix, Arizona. In initial discussions with NPS and the Department of the Interior, the Collier companies' expression drew a favorable response, but the issue raised potential legislative obstacles. Public Law 90-401, an amendment to the original legislation that created the Land and Water Conservation Act in 1964, allowed the Department of the Interior to exchange park lands with private entities but only within a state and not between one state and another. In September 1985, however, Attorney Mark Freund suggested a possible solution in an analysis. The Preserve's enabling legislation, he observed, allowed the Department of the Interior to acquire property for the Preserve by exchange "without any jurisdictional restrictions on the property to be exchanged." It was not an ironclad argument against the proscription on interstate land exchanges, Freund argued, since the courts could decide otherwise upon challenge. "In view of this potential uncertainty," Freund concluded, "the opportunity to draft clearly controlling legislation should not be missed." Freund provided this analysis to the law firm of Aurell, Fons, Radey & Hinkle, which forwarded Freund's memorandum to the Counsel to the Governor of Florida with the admonition that "It is my understanding that you will take this matter up with Linda [sic] Goodgame," a member of Senator Lawton Chiles's staff who focused on environmental issues.<sup>8</sup>

In late October 1985, Goodgame prepared a briefing for Chiles on the status of the legislation in anticipation of a meeting between Chiles and Florida Governor Graham. Goodgame informed Chiles that they were still awaiting confirmation from the FHWA that the proposal to use funds designated for severance damages could be applied to fee simple purchases instead. There were delays arising also, she informed him, from debates over who would pay for panther crossings, discussions regarding the number of recreational access points, and whether there would be an interchange at State Route 29. The Florida DOT had completed an environmental reevaluation of the project, updating the existing EIS and Section 4(f) Statement completed in the early 1970s, and was then awaiting approval from the FHWA. Goodgame also raised the issue of the land exchange that the Collier companies had proposed and reported that it involved lands owned by the

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<sup>6</sup> Memorandum, Chief Appraiser, BCLO-LA to Land Acquisition Officer, BCLO, September 9, 1985; BICY 14661 S2, SSA, F2.

<sup>7</sup> Director, National Park Service to Honorable Tom Lewis, October 10, 1985; Lawton Chiles Papers.

<sup>8</sup> Memorandum, Mark Freund to John K. Aurell, September 4, 1985, attached to John K. Aurell to Sydney H. McKenzie, III, September 5, 1985; Lawton Chiles Papers.



Bureau of Land Management (BLM). She explained that it likely would face opposition from the Department of the Interior on the grounds of precedent: “The problem we face is that by authorizing an interstate land exchange, we are in fact affecting another state’s public land inventory. This was the reason the restriction on interstate land exchanges was first imposed in 1976.” Allowances for such exchanges since then had been few, she noted, and she proposed that all of the parties involved—NPS, BLM, Collier, and the Arizona and Florida Congressional delegations—work out an agreement for specific lands that could be incorporated in the legislation. Goodgame anticipated that all these outstanding issues—funding questions, environmental reviews, and the proposed Collier land exchange—could be resolved by the late fall, which would enable legislation to be introduced in early 1986.<sup>9</sup>

Senator Chiles’ legislative staff, as well as staff for Representative Lewis, prepared the draft legislation in late 1985 and early 1986, and, on January 30, 1986, the two members of Congress introduced identical bills in the Senate and the House of Representatives. In his introductory comments on the Senate floor, Chiles repeated the origins of the legislation relative to the extension of Interstate 75 across south Florida, arguing that the proposed acquisition of land would provide “a unique opportunity to utilize Federal dollars allocated for the construction of an interstate highway to accomplish equally important goals of environmental restoration and endangered species protection.” He went on to talk about the improvement that Interstate 75 would make over the existing Alligator Alley corridor in terms of restoring the natural flow of water from Big Cypress to the Everglades and allowing the passage of the Florida panther from one side to another without being endangered by automobiles. In his view, the addition of 128,000 acres to Big Cypress was part of a much larger federal acquisition program that included the USFWS wildlife refuge at Fakahatchee Strand to provide habitat for the endangered panther. He argued that the State of Florida had pledged its support through matching funds, paying 20% while the federal government would provide 80%, to acquire land in the area to be added to the Preserve. Chiles also explained the need to move quickly on the legislation before the Florida DOT began making offers to landowners for severance damages.<sup>10</sup>

The Senate bill was referred immediately to the Subcommittee on Public Lands and Reserved Water of the Committee on Energy and Natural Resources. The Committee on Energy and Natural Resources requested comments from the Department of the Interior in February, from the FHWA in March, and from the Department of Transportation in July before the Subcommittee held hearings on the bill in September 1986. The bill in the House of Representatives, meanwhile, was referred immediately to the Subcommittee on National Parks and Recreation of the Committee on Interior and Insular Affairs which, in March, requested comment from the Department of the Interior. The Subcommittee then held hearings on the bill in May 1986, and forwarded a marked-up copy of the bill to the Committee on Interior and Insular Affairs in June.

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<sup>9</sup> Memorandum, Lynda Goodgame to Senator Chiles, October 29, 1985; Lawton Chiles Papers.

<sup>10</sup> Comments of Senator Lawton Chiles as printed in *Congressional Record*, January 30, 1986, page S735, in Lawton Chiles Papers.

As the bill was making its way through subcommittees in the House and Senate, Acting Southeast Regional Director C.W. Ogle provided comments to the Washington Office announcing his support in principle for the bill but requesting several clarifications. In particular, Ogle urged that the bill make fewer promises regarding consulting with the State of Florida and the number of recreational access points on Interstate 75 and recommended that the bill include funding support for the continuation of the Resource Baseline Inventory.<sup>11</sup> In July, however, General Counsel for the U.S. Department of Transportation Jim J. Marquez wrote to the Chairman of the House Committee on Energy and Natural Resources voicing his department's opposition to the bill. Marquez expressed concern that the language in portions of the bill was imprecise and could lead to a requirement for a new Section 4(f) study, particularly in those sections that acknowledged the possibility that additional recreational access points could be built beyond the two that the original 4(f) document anticipated. In addition, Marquez cited the lack of clarity regarding the process of acquisition which could lead to property owners being offered severance damages and the price of acquisition of fee title.<sup>12</sup> Later in July, attorneys for the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida provided comments on the draft bill, requesting that the preferential rights regarding visitor services contracts which they enjoyed in the original enabling legislation be included in the new expansion legislation.<sup>13</sup> The House Committee on Interior and Insular Affairs issued a report in July, and the bill was sent to the floor of the House for a vote later that month, where it was approved. The marked-up bill as approved by the House was then forwarded to the Senate in September 1986, where hearings were held by the Subcommittee on Public Lands and Reserved Water later that month. The bill, however, stalled at that point and did not emerge from the Senate subcommittee. It, therefore, awaited re-introduction in 1987.

One of the missing pieces in the bill as it was introduced in 1986 was the possibility of a land swap in which the Collier companies would exchange their 70,000 acres for a property in Arizona: the former Indian School land then owned by BLM. This substantial property in downtown Phoenix, containing a school for Native Americans that was soon to be closed, was seen as a prime development opportunity. The deal, however, as complicated as it was originally, became even more so in 1986 as a result of political disagreements between the Salt River Pima Maricopa Indian Community and the State of Arizona. The plan as originally conceived by the Collier companies and as summarized by Senator Chiles' legislative assistant Carol Browner, was that the Colliers would use "their estimated \$50 million in severance damages for the cash payment plus the land in Florida which they hope would be valued at \$50 million, thereby meeting the \$100 million value of the Arizona land." This plan was upended, however, when the State of Arizona proposed to build a highway through tribal reservation lands. The tribe, in response, closed a road through the reservation that was essential for traffic from Scottsdale to Phoenix. Browner provided a succinct summary of the deal as proposed by Arizona Governor Evan Mecham:

The Arizona DOT would become a limited partner with the Colliers by paying the \$50 million in cash to the BLM [owners of the Indian School property]. Arizona would then give its half-share of the Indian property to the Salt River Pima

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<sup>11</sup> Memorandum, Acting Regional Director, Southeast Region to Assistant Director, Legislative and Congressional Affairs WASO, March 17, 1986; BICY 14661 S5 F1.

<sup>12</sup> Jim J. Marquez to Honorable James A. McClure, July 16, 1986; Lawton Chiles Papers.

<sup>13</sup> Theodore A. Shields to Carnie Haynes (office of Lawton Chiles), July 31, 1986; Lawton Chiles Papers.

Maricopa Indian Community in return for the seven mile easement needed to build the freeway. The Colliers and the Indian Community would then be joint partners in the development of the Indian School land.<sup>14</sup>

While the Collier companies were negotiating with BLM and the State of Arizona regarding the land that they hoped to acquire, they were also seeking to protect the mineral rights of the lands that they were conveying to NPS. In December 1986, attorneys for the Collier companies requested that three stipulations be placed in the deeds of conveyance, all of which sought to limit the regulatory scope of NPS regarding oil and gas in the lands to be acquired and, significantly, to apply retroactively to the Colliers' oil and gas rights within the original boundaries of the Preserve. These stipulations, in part, sought to have the lower standards of review that pertained to USFWS lands apply to land within the Preserve, in which the burden of proof of detrimental effect and of initiating any court action would lie with the NPS rather than the operator who proposed the work. As Big Cypress National Preserve Superintendent Fagergren summarized the approach, "Unless FWS documents a detrimental effect to the resources and obtains court action halting the oil and gas activity, the operation proceeds." Later that month, Superintendent Fagergren met with representatives from the WASO Lands Office and USFWS to come to an agreement on these proposed stipulations. In his summary of their discussions, Fagergren observed that the stipulations proposed by the Collier companies "would short circuit the NEPA process, Endangered Species Act requirements, and would bypass the existing NPS regulations and interagency permitting process which exists within the Big Cypress Swamp." It would also be inconsistent with the Preserve's enabling legislation and "would result in inconsistent application of regulations to operators and preferential regulatory treatment of the principal mineral owner and would raise serious implications of equity under the law."<sup>15</sup> In a memorandum to the Assistant Secretary for Fish and Wildlife and Parks, NPS Director Mott expressed his support for not accepting the Collier companies' deed stipulations, arguing that the regulations defined in 36 CFR Part 9B should guide the regulation of oil and gas activities at the Preserve, rather than any deed stipulations. However, he reassured that NPS would abide by any decision made by the Assistant Secretary.<sup>16</sup>

As Senator Chiles and Representative Lewis prepared to re-introduce legislation to expand the Preserve's boundary in early 1987, a compromise position was being worked out among NPS, USFWS, and the Collier companies. Rather than requiring deed stipulations that defined a lower level of review for the addition lands (and that would apply retroactively to the original Preserve lands), the parties agreed to include a section on procedures for review as an appendix to the conveyance agreement. The NPS Washington Office took the lead on developing the procedures, modeled on the review process for the Atchafalaya National Wildlife Refuge, Louisiana, a USFWS property. As prepared by the Washington Office, the procedures for the Preserve would require the Southeast Regional Director to render a decision on a plan of operations within thirty days. If the Regional Director denied the plan of operation based on expectation of adverse effects to natural resources, the operator could either modify the plan of

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<sup>14</sup> Memorandum, Carol M. Browner to Senator Chiles, January 5, 1987; Lawton Chiles Papers.

<sup>15</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, December 16, 1986; BICY 14605 Coll 00002-001-004 Box 1.

<sup>16</sup> Memorandum, Director, National Park Service to Assistant Secretary for Fish and Wildlife and Parks, December 17, 1986; BICY 16183 S2, SSA, SSS2, F3.

operation or object on the basis that the NPS objections were not founded on solid information, were not feasible on technical or economic grounds, or were not consistent with safety or legal requirements. The NPS would then have to obtain a court order to halt the implementation of the plan. In the analysis of the Washington Office, however, a court order denying implementation of a plan of operations could be construed as a federal taking of property, and the government “has no means to enforce resource protection stipulations if those stipulations would, by court order, result in a taking.” In addition, the analysis noted, the full requirements of NEPA review and compliance with the Endangered Species Act could not be met within the thirty-day period defined in the procedures.<sup>17</sup> However, the analysis observed, the addition of lands to the Preserve in association with Interstate 75 were dependent on the Collier companies conveying their 70,000 acres to NPS; without the Collier companies’ participation, the proposed addition with its benefits to NPS would be lost.

To keep the legislative process moving in anticipation of the Florida DOT’s need to begin acquiring land for Interstate 75, land conveyance with the regulatory review procedures as described were incorporated into the bill when it was re-introduced. On January 6, 1987, Senator Chiles and Representative Lewis again introduced the Big Cypress National Preserve Addition Act in their respective branches of Congress. The new legislation included several refinements from the initial bill, including an increase in the acreage of the addition from 128,000 acres to 136,000 acres as result of revised measurements and the addition of 10,000 acres in the Fakahatchee Strip, a parcel of land lying east of State Road 29 running north and south between U.S. Highway 41 and State Road 84 along the western edge of the Preserve. The revised bill also included provisions for the Seminole and Miccosukee Indians that replicated those in the Preserve’s original legislation and allowed for three recreational access points within the Preserve.<sup>18</sup>

Although much about the re-introduced legislation remained the same as that of the previous year, the 1987 bill included references to the proposed land swap involving the Collier companies, of which Congress had not yet been informed. In early February, Roy Cawley, president of the Collier Enterprises Real Estate Group, testified in a hearing before the Senate Subcommittee on Public Lands of the Committee on Energy and Natural Resources. Collier Enterprises was one of two companies, with the Barron Collier Company, which managed the immense landholdings of the Collier family. These land holdings, Cawley explained, “are the traditional financial base of the diversified business activities of Collier Enterprises and the Barron Collier Company, which are concentrated in the areas of real estate development, agriculture, natural resource development, and investment.”<sup>19</sup>

Cawley announced that the Collier companies strongly supported the expansion of the Preserve by the addition of 136,000 acres—63% of which then belonged to the Collier companies—but urged the Senators to consider several improvements to the bill. First, he argued

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<sup>17</sup> Proposed procedures attached to a report of telephone call between Michael S. Bilecki and Pam Mathis (WASO), February 2, 1987; BICY 14605 Coll 00002-001-004 Box 1.

<sup>18</sup> Memorandum, Carol M. Browner to Senator Chiles, January 5, 1987; Lawton Chiles Papers.

<sup>19</sup> “Statement of Roy E. Cawley, President of Collier Enterprises Real Estate Group, to Hearings Before the Subcommittee on Public Lands, Committee on Energy and Natural Resources, United States Senate, on S.90, The Big Cypress National Preserve Addition Act,” undated, but Senate subcommittee hearings were held on February 19, 1987; Lawton Chiles Papers.

strongly for a faster acquisition process than NPS had accomplished in the initial round of land purchases. Being the owner of a property while waiting for acquisition, he explained, “is much like being eternally betrothed. The land is still ‘ours,’ but it is promised to someone who has not gotten around to taking it. We have not received a thing in exchange for it, but we certainly cannot use it for anything else.” By way of incentive for an accelerated purchase schedule, Cawley suggested the possibility of a sunset clause, that the designation could be terminated if the government failed to acquire a significant portion of the land within a specified period of time. From that suggestion, Cawley dove straight into the proposed land exchange as an alternative approach. In addition to the lands to be added to Big Cypress National Preserve, he announced, the Collier companies would include another 30,000 acres, which included the Ten Thousand Islands area, to be conveyed to USFWS as a National Wildlife Refuge. In exchange, the Collier companies would receive 105 acres on the site of the Indian Affairs Boarding School in Phoenix, Arizona, then owned by BLM. He pointed out to the Senators that the cost of the land in Arizona was twice the value of the land in Florida, which was appraised at \$50 million, that the Collier Companies would pay the remaining \$50 million to the federal government, and Congress would decide the uses to which the funds would be put. Cawley spoke positively of the progress on the land exchange, noting the level of support that the deal was receiving in Arizona, including provisional support from the Inter Tribal Council of Arizona, which was predicated on an agreement to use the additional cash payment by the Collier companies to support educational and health-related programs for the American Indian community in Arizona.<sup>20</sup>

With these positive comments concluded, Cawley went on to express concern regarding the treatment of mineral rights in the land that the Collier companies would convey for the Big Cypress National Preserve addition. He noted that the existing regulations regarding oil and gas exploration and extraction in the Preserve had worked well; though they proved expensive and time-consuming, they had resulted in methods that were environmentally sound while allowing for successful oil drilling. Cawley made veiled references to the turmoil over Shell Oil’s attempts to secure a permit for seismic testing and observed that several of the alternatives then being considered for the GMP would significantly reduce the ability to continue oil and gas activities at the Preserve. Cawley strongly urged the Senators to ensure that the streamlined procedures for the environmental review of plans of operation be incorporated into the legislation, that Congress “should not enact this legislation without in some manner clarifying its intent, and providing private mineral owners with a means for enforcing their rights against regulatory restrictions that would effectively appropriate valuable oil and gas resources, without providing adequate compensation for doing so.” Cawley then concluded his statement with a request that Congress ensure that the legislation retain the private gates on the new portion of Interstate 75 that would allow oil and gas operators to access their roads to development sites.<sup>21</sup>

In testimony before the same Senate subcommittee, the director of The Wilderness Society’s National Parks Program offered strong support for the legislation. The Department of the Interior, however, represented by Assistant Secretary for Fish and Wildlife and Parks William P. Horn, opposed the legislation as written, “unless it is amended to provide for acquisition only by exchange.” Horn, who, as Assistant Secretary, had responsibility for the

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

National Park Service, was a key younger member of President Regan's administration whose appointment raised fears among environmentalists of a pro-development bias. In his testimony before the Senate subcommittee, Horn expressed grave concern for the expenditure of federal funds on the addition lands in the face of a significant backlog of acquisitions throughout the National Park System during an era of growing federal budget deficits. However, he gave strong support for the proposed land exchange, while noting that the 80/20 cost-sharing arrangement between the State of Florida and the federal government would cover the costs of the remaining private lands that would be acquired. He encouraged the subcommittee to amend the legislation to make specific allowances for the proposed Collier land exchange. Horn also asked the subcommittee to ensure that the oil and gas operators had access to their exploration and drilling sites to avoid any suggestions of federal takings of mineral rights that would have to be compensated.<sup>22</sup>

In early April, the Senate Committee on Energy and Natural Resources reported the bill out favorably with minor amendments to clarify the number of acres and remove references to a specific number of access points for oil and gas activities. In the House of Representatives, meanwhile, the bill was referred to the Committee on Interior and Insular Affairs which, on March 27, 1987, prepared a report for the full House. House Report 100-30 included a copy of the statement made by Assistant Secretary Horn before the Senate subcommittee with a cover letter from Horn repeating the Department of the Interior's position that its support for the bill was contingent on the acceptance of the land exchange proposed by the Collier companies, which would provide environmental protections while not having a direct impact on the federal budget.<sup>23</sup> The House Committee on the Interior and Insular Affairs then reported the bill out to the House, where it was passed by voice vote on March 1, 1987 before being sent to the Senate.

Representatives from the Department of the Interior, meanwhile, had been meeting with representatives from the Collier companies throughout March, trying to resolve any remaining issues surrounding the land exchange, including issues of concern held by the Inter Tribal Council of Arizona and political and civic leaders in Phoenix. By the end of the month, when Assistant Secretary Horn wrote with an update to Senator Dale Bumpers (D-AR), the Chairman of the Subcommittee on Public Lands, National Parks and Forests, the Collier companies had reached an agreement with the City of Phoenix regarding land use development, and the Department of the Interior had completed its environmental reviews for impacts to the Preserve. Nearly all the substantive issues had been resolved, and Horn expected the agreement to be in place by April 7, 1987.<sup>24</sup> On that day, Horn wrote to Senator J. Bennett Johnston (D-LA), Chairman of the Senate Committee on Energy and Natural Resources, confirming that the agreement with the Collier companies was virtually complete and that he would forward the documents pertaining to the exchange to Bennett for review, but he requested that the Committee

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<sup>22</sup> "Statement of William P. Horn, Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Before the Subcommittee on Public Lands, National Parks, and Forests of the Senate Committee on Energy and Natural Resources Concerning S.90, a Bill to Establish the Big Cypress National Preserve Addition in the State of Florida, February 19, 1987;" Lawton Chiles Papers.

<sup>23</sup> House Report no. 100-30, "Establishing the Big Cypress National Preserve Addition in the State of Florida, and for Other Purposes," 100<sup>th</sup> Congress, 1<sup>st</sup> Session, March 27, 1987; copy in BICY 26817, S3, SSA.

<sup>24</sup> William P. Horn to Senator Dale Bumpers, March 30, 1987; Lawton Chiles Papers.

refrain from reviewing and marking up the bill until after the Easter recess in late April in order to allow for the completion of negotiations.<sup>25</sup>

The Senate Committee on Energy and Natural Resources denied that request, however, and, on April 21, issued its report on the legislation. The Committee adopted an amendment to the bill that authorized the interstate land exchange that had been negotiated between the Collier companies and the Department of the Interior. In doing so, according to the Committee's report, the Committee neither sanctioned nor opposed the agreement before Congress had a chance to review the final version. Instead, "the Committee endorses the concept of seeking to acquire these lands by means other than outright purchase." The amendment could be modified during the course of the bill through Congress if the terms of the agreement were altered, but "The Committee urges the Department and the Colliers, in the strongest possible terms, to meet this latest deadline set forth in the March 30<sup>th</sup> letter to Senator Bumpers."<sup>26</sup>

The bill, however, languished on the Senate floor for the rest of 1987. In early May 1987, the National Parks and Conservation Association (NPCA) wrote to Senator Bob Graham (D-FL), having only just learned of the proposed land exchange agreement. The NPCA vehemently opposed the agreement on the grounds that the procedures for oil and gas that were prepared as an amendment to the agreement would not allow NPS to adequately protect the Preserve's natural resources from oil and gas activities. The procedures, the NPCA argued, are "an illegal encroachment on the NPS authority to control the effects of oil and gas leasing in the Preserve" as defined in the Preserve's enabling legislation and in the 9B regulations. The NPCA argued further that the Department of the Interior sought Congressional approval not just for an interstate land exchange, "but also, as is made clear in the Agreement, so that the protection standard for Big Cypress National Preserve can be severely weakened."<sup>27</sup>

Later that month, the Everglades Coalition, consisting of eleven national and state conservation organizations including the Sierra Club, the Wilderness Society, the National Audubon Society, and Florida Defenders of the Environment, sent a similarly-worded letter to Senator Chiles regarding the procedures for oil and gas review that were incorporated as an amendment to the agreement. The Everglades Coalition was vitally interested in the expansion of Big Cypress National Preserve for the environmental protections that it offered but had concerns regarding what it viewed as constrictions placed on NPS in reviewing oil and gas activities. Beginning in late July 1987, members of the Everglades Coalition met with representatives of the Collier companies. In a letter to Senator Chiles in late August, the Everglades Coalition reported that, as a result of the negotiations, the Collier companies had agreed to remove the oil and gas procedures from the amendment "and all other language that would arguably affect the relative rights of the National Park Service and the subsurface owners in the regulation of oil and gas exploration and development" within the Preserve and the addition lands. In return, the Everglades Coalition agreed to support a revision to the legislation to establish a review and promulgation of oil and gas regulations applicable to the Preserve, establish specific time frames for the review of proposed oil and gas activities, and establish "an adequately staffed and funded

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<sup>25</sup> William P. Horn to Honorable J. Bennett Johnston, April 7, 1987; Lawton Chiles Papers.

<sup>26</sup> Senate Report No. 100-45, "Big Cypress Addition," 100<sup>th</sup> Congress, 1<sup>st</sup> Session, April 21, 1987; copy in BICY 26817, S3, SSA.

<sup>27</sup> T. Destry Jarvis to Hon. Bob Graham, May 6, 1987; BICY 14605 Coll 00002-001-004 Box 1.

Minerals Management Office within the Office of the Superintendent at Big Cypress.” Following these negotiations, the Everglades Coalition and the Collier companies agreed to the specific language for the legislation.<sup>28</sup>

As a result of this agreement, the legislation was amended in the fall of 1987 with the addition of a new section that required the Secretary of the Interior to promulgate new regulations for oil and gas activities in the Preserve within nine months. According to the legislation, the new regulations would include specific time frames for NPS review and approval and would establish and appropriate funds for a Minerals Management Office within the Preserve’s organization. In debate on the floor of the Senate in December 1987, both Senators Chiles and Graham supported the legislation. Senator Graham observed that details of the land exchange were still being finalized but urged that the Senate approve the bill so that legislation could be signed into law as soon as the agreement was completed. Graham also urged that language in the legislation pertaining to the rest areas and interchanges on Interstate 75 be removed, as those discussions were still ongoing. The Senate approved these amendments, and, on December 12, 1987, the Senate passed the bill by voice vote and sent the legislation to the House of Representatives.

Concluding the negotiations regarding the exchange of land between south Florida and Phoenix, Arizona, proved more challenging than was expected due, in part, to difficulties evaluating the relative values of the two sets of properties. To move forward with the acquisition of land necessary for the planning and construction of Interstate 75, however, Congress decided to proceed with the Big Cypress Preservation Addition Act while vowing to enact a separate piece of legislation to authorize the interstate exchange of lands by the Department of the Interior. Accordingly, the House of Representatives took up the original legislation, returning it to the Committee on Interior and Insular Affairs in February 1988. Taking note of the new strategy regarding the Collier land exchange, the Committee proposed amendments dealing with this strategy to the legislation, which was then passed in the House of Representatives by voice vote on March 1, 1988, and returned to the Senate. The Senate then agreed to an amendment by Senator Chiles that clarified the intent of the bill regarding the continuation of hunting and fishing opportunities in the addition lands and passed the amended bill by voice vote on March 31, 1988. The House of Representatives unanimously concurred in the Senate’s amended legislation on April 12, and the bill was signed in the Senate on April 19. On April 29, 1988, President Ronald Reagan signed the bill into law as P.L. 100-301. President Regan released a statement upon signing the legislation, saying that he did so with the understanding that additional legislation authorizing the exchange of lands would be forthcoming later that year. The exchange of land, Reagan proclaimed, “would eliminate any direct cost to the Federal government of expanding the Preserve.” His administration, he said, would oppose any appropriations to make a direct purchase of the addition lands, making vital the negotiations being led by the Department of the Interior.<sup>29</sup>

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<sup>28</sup> Cynthia R. Lenhart to Honorable Lawton Chiles, August 21, 1987; Lawton Chiles Papers. The letter refers to an earlier letter dated May 21, 1987, in which the Everglades Coalition wrote to Chiles with objections to the proposed oil and gas procedures; this letter was not located during the current research.

<sup>29</sup> “Statement by President Ronald Reagan Upon Signing S.90,” 24 Weekly Statement of Presidential Documents 545, April 29, 1988.



The reason for separate legislation to accomplish the land exchange became clear when Representative Morris Udall (D-AZ) introduced H.R. 4519 on May 3, 1988, authorizing the Florida-Arizona Land Exchange, and Senator John McCain (R-AZ) introduced a similar bill in the Senate later that month. As challenging as the negotiations were regarding the original addition lands, they paled in comparison to the complications involved in the entire land-exchange deal. In late June, the House Committee on Interior and Insular Affairs released a detailed report on H.R. 4519, providing a substantial background on the extent of the negotiations as they had expanded throughout 1988 even after the legislation authorizing the expansion of Big Cypress National Preserve was passed. The House Report stated that the legislation is based upon and ratifies an agreement reached between the Department of the Interior and three of the Collier family companies (in addition to the Barron Collier Company and Collier Enterprises discussed earlier, the Collier Development Corporation was added to the final agreement) on May 15, 1988. The purpose of the legislation, according to the House Report, was to facilitate the acquisition of 107,799 acres in south Florida owned by the Collier companies for addition to three different units of the National Park System. Besides conveying the land, the Collier companies would also pay \$34.9 million in cash and, in return, would receive 68.41 acres in Phoenix, Arizona, associated with the Phoenix Indian School, which was then being closed. All cash realized in the exchange would be placed in a trust for the benefit of American Indian educational needs. In addition to the land being transferred to the Collier companies, 11.5 acres of the Indian School property was designated for the expansion of a Veterans Administration medical facility, 4.5 acres was designated for the State of Arizona for a veterans' nursing home, and twenty acres was designated for the City of Phoenix for use as open space.<sup>30</sup>

Much of the House Report explained in great detail the appraisal process for the Florida and Arizona lands and the specifics of the timetable and methods for the development of the Indian School property in Phoenix. Regarding the land in Florida, however, the House Report noted that, of the 107,799 acres of Collier company land which would be conveyed to the Department of the Interior, 83,070 acres would become part of Big Cypress National Preserve. This included 70,010 acres located adjacent to the northeast corner of the Preserve, important for the region's hydrologic health, the Interstate 75 corridor, and a strip of land totaling 13,060 acres along the western border of the Preserve which was important habitat for the Florida panther. In addition to the lands designated for Big Cypress National Preserve, 5,109 acres would be added to the Florida Panther National Wildlife Refuge, and 19,620 acres would be added to the Ten Thousand Islands National Wildlife Refuge, both of which were managed by USFWS (Figure 10).<sup>31</sup>

The Senate and the House legislation had both drawn strong detractors who argued that the deal worked out by the Department of the Interior was skewed strongly in favor of the Collier companies. After several amendments, however, the House of Representatives passed the bill on

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<sup>30</sup> House Report no. 100-744, "Providing for the Disposition of Certain Lands in Arizona Under the Jurisdiction of the Department of the Interior by Means of an Exchange of Land, and for Other Purposes," 100<sup>th</sup> Congress, 2<sup>nd</sup> Session, June 30, 1988; copy in BICY 26817, S3, SSA.

<sup>31</sup> According to the 1988 House Report, the federal government had already purchased 10,184 acres of the Florida Panther National Wildlife Refuge, but it provides no information regarding the legislative authority under which the purchase was made, when the purchase was completed, or the agency that was charged with managing the land. As a result of the proposed land exchange, the House Report observed that the Refuge would consist of 15,293 acres.

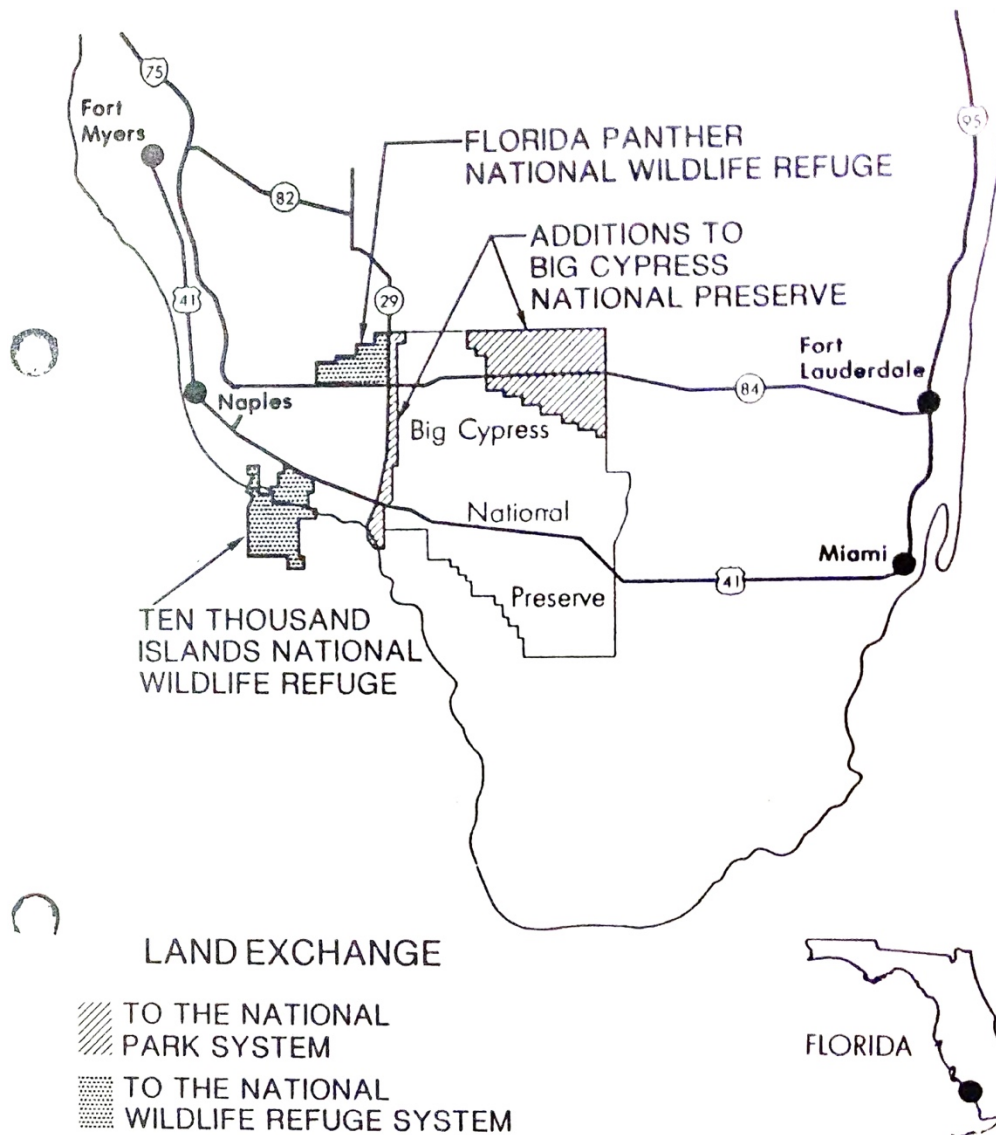


Figure 10. 1986 map showing proposed Collier companies land to be exchanged for land in Arizona.

July 27, 1988, and forwarded it to the Senate. The bill was then sent to the Committee on Energy and Natural Resources, which reported the bill back to the full Senate on September 22, 1988. In October, the Senate voted unanimously to postpone the bill indefinitely, after which it was joined to new legislation, S.2840. This was an omnibus bill that created several new conservation units of the National Park System and contained another complicated exchange for land in Idaho in addition to the Arizona-Florida land exchange with the Collier companies. This sprawling bill passed through Congress quickly and was signed into law by President Reagan on November 18, 1988 as P.L. 100-696. The legislation incorporated a large set of conditions that had to be met in order to for the exchange to be completed. These conditions required several more years of negotiations, and the Department of the Interior and the Collier companies closed the deal in late December 1991.<sup>32</sup> This allowed NPS to start negotiations to begin acquiring the land, a process that took nearly five years.

<sup>32</sup> Don Harris, "Arizona -Florida Land Swap: Finally a Done Deal," *Washington Post*, December 22, 1991.

### *Interstate 75 in the Addition Lands: Recreation Access*

The details of the land exchange were nearly endless, and controversies and lawsuits continued from the passage of enabling legislation in late 1988 nearly to the start of research for this administrative history, primarily regarding the Arizona component of the exchange. The key issue for this chapter, however, is that what became known as the Addition Lands after passage of P.L. 100-696, embracing a substantial portion of the new corridor for Interstate 75, were authorized for inclusion in the Preserve in April 1988, before the Florida DOT began negotiating for severance damages. As discussions regarding the addition of lands continued through 1987 in preparation for the initial legislation, FLDOT began making plans for an interchange at State Route 29, with the support of Senator Chiles and Governor Graham, although debates regarding the number and location of rest areas and recreation access points continued unabated. By the summer of 1987, Interstate 75 was under construction in Broward County, to the east of the Preserve, and in the Collier County portions of the highway lying west of State Route 29. With the possibility of new recreational access points pending, FLDOT, in late August 1987 prepared a new reevaluation of the original 1972 Final EIS. By that time, designs for the highway included a rest area with recreational access at MM 38 (within the Addition Lands), and at MM 65, the Miami Canal located east of the Addition Lands, and a third recreational access point at MM 71, the last two of which are in Broward County. The 1987 environmental reevaluation included three additional recreational access points: MM 32, with access to the Preserve's Bear Island and Monument units, already one of the most heavily used areas of the Preserve; MM 49, for boating and walk-in access only; and MM 61 in Broward County, to the east of the Addition Lands. These points, the environmental reevaluation report observed, were, by then, principal points of access where impacts from past recreational access already existed and were developed as "a result of balancing too much access from one point with spreading access over a larger area with numerous points." The proposal would result in fewer access points, which could be monitored for impacts, and exact locations would be developed to minimize effects to endangered species and wetlands. The FLDOT also recommended that ORV access be allowed at all six of the proposed recreation access points.<sup>33</sup>

The legislation that authorized the Addition Lands required NPS and other federal agencies to 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." The legislation mandated three recreational access points within the Addition Lands, and required NPS to submit a report on a plan for the Addition Lands that included a review of existing management, a summary of public use and the status of access points, coordination with other state and federal agencies, and "a determination made in conjunction with the State of Florida, of the adequacy of the number, location, and design of the recreational access points on I-75/Alligator Alley for access to the Big Cypress National Preserve, including the Addition."<sup>34</sup>

In May 1989, one year after passage of the law and with one year left to submit the plan to Congress, Preserve staff began work on planning for access to the Addition Lands. By that

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<sup>33</sup> "Florida Department of Transportation Project Reevaluation Form," approved by FHWA on August 28, 1987.

<sup>34</sup> P.L. 100-301.

time, FLDOT was already at work on the construction of Interstate 75 across the Preserve. Construction contracts for the final section were to be let within one month, and construction was due to be completed in 1991. With such rapid progress, NPS was coming under increasing political pressure to make decisions regarding its preferred recreational access points. The State of Florida had already purchased the 50,000 acres in the Addition Lands for eventual transfer to NPS, though NPS owned no land there at the time and had little resource information about the new area. Superintendent Fagergren intended to produce an access study and environmental analysis that would lead to an interim recreation access plan in anticipation of a final plan to be completed as part of a GMP addendum. The target date for completion of the interim plan of access was spring 1990.<sup>35</sup> As noted in the 1989 Task Directive for the interim access plan, the project was already gaining a great deal of attention. The USFWS had alerted NPS and FLDOT that the project area contained important habitat for the Florida panther, “and national environmental organizations have expressed the view that the area should be managed as a panther refuge with minimal human activity.” The FGFC, at the same time, “has indicated an interest in maximizing hunting and ORV use in the area, and this view is supported by local hunting and ORV groups.”<sup>36</sup>

The FLDOT had offered to build the infrastructure to support the recreational access areas, but only if it could do so while the highway itself was under construction. This forced an accelerated schedule for preparing the interim recreation access plan and its associated environmental assessment. The Denver Service Center was tasked with preparing the plan, and staff attended meetings through the fall and winter of 1989-1990 with several state and federal agencies, private organizations, and Miccosukee and Seminole representatives to identify needs and concerns. As a result of these meetings, DSC released a draft recreation access plan and environmental assessment in April 1990. The draft plan incorporated the three well-established recreation access points at MM 31, 38, and 49, with pedestrian access only at MM 31 and both foot and ORV access at MM 38 and 49. The draft plan also incorporated plans for canal bank and boat fishing and planned for a system of designated ORV trails rather than dispersed ORV use. The environmental assessment portion of the document included two management alternatives in addition to a no-action, status quo, alternative providing for ORV use, hiking, backcountry camping, uses by Miccosukee and Seminole Indians, and selected the alternative with the best balance of environmental protection and public recreational access. The plan also observed that FLDOT intended to construct a rest area at MM 38, which NPS urged should also house an orientation and information center. The environmental assessment observed that a more comprehensive planning process for such topics as recreational hunting, fire management, habitat management, and the regulation of oil and gas activities would begin later, resulting in a future addendum to the GMP, what later became the GMP for the Addition Lands.<sup>37</sup>

The draft recreation access plan was available for public review throughout the summer of 1990, and received comments from more than twenty state and federal agencies as well as

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<sup>35</sup> Big Cypress NP—Interim Plan of Access, discussion points, May 4, 1989.

<sup>36</sup> “Task Directive: Big Cypress National Preserve Addition Lands Addendum to the General Management Plan,” September 1989; BICY 25.

<sup>37</sup> “I-75 Recreational Access Plan and Environmental Assessment, Big Cypress National Preserve, Florida,” draft report, April 1990; BICY 25. See also “Briefing Statement: I-75 Recreational Access Plan/Environmental Assessment,” May 1990; BICY 14661 S2, SSA, F6.

from nearly 100 individuals. The FGFC urged NPS to provide for ORV access at the MM 31 rest area and to create additional parking areas. In commenting for the FGFC, Robert Brantley argued for more widely dispersed ORV access to reduce the impacts on any one area. On the other end of the spectrum, a law firm representing several environmental and animal rights groups in Florida asserted that NPS had not fulfilled the requirements of NEPA by failing to prepare an analysis of the long-term and cumulative impacts of hunting on the Addition Lands and that the draft recreation access plan failed to provide the data in sufficient depth to allow an assessment of impacts. The Florida Department of Environmental Regulation expressed concern that the number of parking spaces being made available might be too high, and supported a reduction in the number of miles of designated ORV trails. The Collier companies, meanwhile, expressed no preference regarding ORV access, though they were concerned that the recreation access trails might be located too close to the access roads set aside for their for oil and gas activities; the Collier companies were primarily concerned that their ability to access oil and gas exploration and extraction sites not be impaired.<sup>38</sup>

The DSC and Preserve staff worked through the fall of 1990 on revisions to the draft recreational access plan, and, in February 1991, the Southeast Regional Office approved the plan and released a Finding of No Significant Impact (FONSI) which precluded the requirement for a more-involved Environmental Impact Statement (EIS). The FONSI provided a review of the comments on the draft plan, noting that, among the responses from state and federal agencies, only the FGFC requested more provisions for access than the draft plan had, including ORV access at MM 31 and additional parking spaces at the others. Other agencies either supported the preferred alternative or requested less development and less access to the Addition Lands. The USFWS advised that the preferred action was unlikely to jeopardize the Florida panther population but added that additional conservation efforts could further mitigate any potential adverse effects. The final recreational access plan incorporated these efforts in its proposed action. As described in the FONSI, these included coordinating with the U.S. Attorney regarding fines and penalties for violations of hunting and ORV regulations and coordinating with FGFC on studies of types and levels of human activities in the Addition Lands and the continuation of FGFC's telemetry studies of panther movements in the Preserve. In addition, the public access points would not be opened until USFWS was satisfied with the gate system to protect wildlife from crossing Interstate 75 and until NPS had acquired a sufficient number of acres to put in place management controls including restrictions on the total number of ORV permits for the Preserve. Finally, NPS would not allow hunters to access the Addition Lands for a period of two or three years following the opening of the lands to ORV use in order to conduct the studies necessary to determine the impact of recreational activities on panther habitation. If those studies showed no adverse impacts from recreational uses, NPS would coordinate with USFWS and FGFC on allowing hunter access and imposing limitations on hunting activities. These safeguards allowed the Southeast Regional Office to determine that the final recreational access plan would not have an adverse environmental impact, and that an EIS was not required.<sup>39</sup>

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<sup>38</sup> See comments from multiple agencies in BICY 25, including "Review of Public Responses to Big Cypress I-75 Recreation Access Plan," undated but faxed on September 13, 1990.

<sup>39</sup> "Plan Approval and Finding of No Significant Impact: I-75 Recreational Impact Plan/Environmental Assessment, Big Cypress National Preserve, Florida," NPS Southeast Regional Office, date obscured but subsequent correspondence indicates February 1991; BICY 16183 S2, SSA, SSS2, F21.

The FGFC responded with a letter of disagreement, continuing to support ORV access at MM 31 and finding the delay in allowing hunting to be “totally unnecessary.” The FGFC agreed that a baseline study to determine the resources and historic uses of the Addition Lands should be conducted, “but that it should be conducted now, prior to public ownership (and/or concurrent with the acquisition effort). Such a study would provide a sound basis for both resource and recreational management strategies that would be implemented at such time as the addition lands become public property.” While the study was in process, however, FGFC advocated that hunting should be allowed once the property has been acquired “at least at levels that are comparable to recent use levels.”<sup>40</sup> This position was supported by Lawton Chiles, by then Governor of Florida.

As NPS continued to work toward acquiring the Addition Lands in the early 1990s, Preserve Superintendent Wally Hibbard maintained discussions with FGFC regarding hunting and ORV access. As had his predecessor, Fred Fagregren, Hibbard was forced to operate between the competing demands of FGFC, which wanted to expand recreational access to the Preserve overall and the Addition Lands in particular, in their conviction that hunting was compatible with panther survival, and USFWS, which urged greater caution in allowing hunting in the Preserve in an effort to protect the Florida panther. Hibbard met with both agencies in May 1992, and held firm to the recommendation that no ORV access should be allowed on the north side of the recreation access point at MM 31 but expressed openness to ORV access to the south. As Hibbard noted in a letter to FGFC Executive Director Robert Brantley, “Access to the south would be on a corridor that has a long history of ORV use. It is likely that we would find that such access would have no significant impacts to the south of I-75.” At the same time, Hibbard informed Brantley, “other individuals and groups may not share this opinion and their views would have to be solicited and considered through an open public involvement process.” This could be another lengthy process, and he was concerned that it would delay construction of the access point. He recommended that the discussion be shelved for the time being. Brantley responded graciously, disagreeing with the limitations but agreeing that the development of rest areas on Interstate 75 should not be delayed. Brantley also repeated his recommendation that the Addition Lands be opened for hunting and ORV use as soon as NPS acquired sufficient property while the baseline inventory study was being conducted.<sup>41</sup>

In early 1993, FLDOT began working on developing all six recreational access points on the extension of Interstate 75 in Collier and Broward Counties, a joint project with NPS. This included the three access points within the Preserve at what were then identified as MM 31, MM 38, and MM 49. In the summer, FLDOT submitted permit applications for the work at all six sites to the U.S. Army Corps of Engineers (USACE). The permits were required under the Clean Water Act because of their potential impacts on wetlands. Two sites in the Preserve, at MM 31 and MM 49, were planned as recreational access points only, but the MM 38 site was also planned as a rest area with the intent of providing vehicular access to this remote section of the park for fishing, hunting, and hiking, as well as providing interpretation and visitor orientation. These permit applications included the initial design plans for the rest area as provided by FLDOT, which Preserve staff reviewed in September 1993. The FLDOT plans, according to Preserve Environmental Specialist Patrick Kenney, called for far more parking spaces than the

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<sup>40</sup> Robert M. Brantley to Janice L. Alcott, April 24, 1991; BICY 16183 S2, SSA, SSS2, F21.

<sup>41</sup> Robert M Brantley to Wallace A. Hibbard, July 14, 1992; BICY 25.

1990 recreational access plan and environmental assessment had indicated. These early plans also failed to include wildlife fencing, one of the most important components in the protection of the Florida panther and other wildlife but did not include any assessment of environmental impacts.<sup>42</sup>

The U.S. Army Corps of Engineers consolidated the permit applications for the six recreational access sites into a single release available for public review in December 1993. The applications generated an extensive and vigorous response from environmental organizations in early 1994, who repeated concerns first made during the public review of the recreational access plan that NPS had provide insufficient study of the potential impacts to the Florida panther that would result from increased hunting in the Addition Lands. In February 1994, the EPA expressed concerns about potential extensive impacts to wetlands, reporting that “the project may result in substantial impact to aquatic the of national importance,” and opined that, since the project is not water-dependent, “practicable alternatives exist which are less environmentally damaging.”<sup>43</sup> In April, the Florida Biodiversity Project was even more forthright, arguing that the rest area at MM 38 in particular might violate the National Environmental Policy Act by not considering reasonable alternatives that would have fewer impacts on habitat important to the Florida panther.<sup>44</sup> Even the FGFC, which had consistently argued in favor of greater recreational access to the Preserve, wrote in opposition to the permit applications. Executive Director Allan Egbert, who succeeded Robert Brantley, stated in his letter that “the level of public access facilitated at each access point will be greater than we consider acceptable, possibly resulting in adverse effects on sensitive environmental values. The number of parking spaces provided at each recreation access site is an important mechanism for regulating the number of persons and off-road vehicles that can access the area from each site.”<sup>45</sup>

In the face of this sudden and unexpected opposition, particularly regarding ORV access, FLDOT, USFWS, USACE, and NPS met in late April 1994 to revise plans for the recreational access sites. The proposed access point at MM 49 was withdrawn temporarily, and the rest area at MM 38 was resubmitted without the recreational access facilities. As the public notice from USACE in April 1994 explained, FLDOT “has eliminated all recreational access components from its facility designs until land use/management issues are resolved...Due to the elimination of the recreational access project purpose, the public safety need, and Federal funding schedules, the Corps has separated the review of this project from the original five proposals.” Permits for the sites with recreational access only “will be requested when the secondary impacts of such activities have been properly evaluated by State and Federal agencies.”<sup>46</sup> As the Corps stated in a summary of the project’s permit activities, the recreational access points at MM 38 and MM 49

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<sup>42</sup> Memorandum, Environmental Specialist to Chief, Resource Management, September 20, 1993; BICY 16183 S2, SSA, SSS2, F21.

<sup>43</sup> W. Ray Cunningham to Terrence C. Salt, February 11, 1994; BICY 25.

<sup>44</sup> Brian C. Scherf to District Engineer, April 20, 1994; BICY 25.

<sup>45</sup> Allan L. Egbert to Steve Brooker (US Army Corps of Engineers), February 11, 1994; BICY 25. See also letters from many other environmental groups and individuals in the same collection.

<sup>46</sup> Public Notice of permit application for I-75 rest area, MM 38, by U.S. Army Corps of Engineers, April 7, 1994; BICY 25.

“were temporarily withdrawn pending panther studies and transfer of ownership of the Addition Lands.”<sup>47</sup>

However, the permit application for the access point at MM 31, also known as the Turner River site, remained in place since it did not provide for any ORV access. In July 1994, FLDOT submitted a new permit application for the rest area at MM 38 and the recreational access point at MM 49. In October 1994, the EPA again recommended that the three sites together would result in substantial and unacceptable impacts to aquatic resources of national importance, recommending that the permits for MM 38 and MM 49 again be denied. For the recreational access point at MM 31, by then renumbered as MM 70, the EPA offered to remove its objection if the size of the access point was significantly reduced. In early 1995, FLDOT revised its plans for a re-submitted permit application, reducing the wetlands impacts by the thirty percent. In May 1995, the EPA released its comments on the revised plans for what was then the MM 70 recreational access point. As with its comments on the proposed recreational access point in the fall of 1994, the EPA remained concerned that the project would have “unacceptable impacts to aquatic resources of national importance.” Because of the nature of the project and its funding requirements, however, the EPA issued recommendations for the design to reduce the impact rather than delaying the project.<sup>48</sup> For its part, USFWS remained concerned about the Florida panther and other endangered species but, in May 1995, provided a Biological Opinion that the Turner River site at what was, by then, known as MM 70 was not likely to jeopardize the panther, the snail kite, or the wood stork. Instead, USFWS focused its attention on the nature of the fencing at the Turner River site to prevent panther and other animals from crossing into the traffic on Interstate 75.

The project to provide recreational access points on Interstate 75 in the Addition Lands found its strongest critics in several environmental organizations. In addition to the Florida Biodiversity Project, discussed earlier in this section, the Fund for Animals was outspoken in its opposition. In February 1994, as its review of the draft permit applications, the Fund for Animals delivered three volumes of information on Big Cypress and its ecosystem and was particularly concerned about ORV access and its impact. In doing this, the Fund for Animals directly challenged the validity of the environmental assessment that was part of the 1990 recreational access plan which had received a FONSI from the Southeast Regional Director. Because of the legislative mandate to provide recreational access to the Preserve, however, USACE acknowledged that a No Action alternative was not a possibility, and, given the topography of the Preserve, “there is no alternative available that will avoid wetland impacts.”<sup>49</sup> In its Statement of Findings for the Turner River site, USACE acknowledged that NPS’ 1990 environmental analysis for the recreational access plan did not evaluate the secondary and cumulative impacts of ORV use and hunting on the Florida panther, and that USFWS also had not completed its study of the human impacts on the panther. Since the Turner River site would not allow ORV access, however, USACE, in its Statement of Findings in May 1995, determined

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<sup>47</sup> Memorandum for Record: Department of the Army Environmental Assessment and Statement of Finding, May 25, 1995, page 14; BICY 25. This invaluable document, which serves as a Statement of Findings for the development of the Turner River Site at MM 70 (formerly MM 31), provides a record of the convoluted process of permitting for all three sites, with a review of public comments and agency response.

<sup>48</sup> John H. Hankinson, Jr. to Terry L. Rice, May 10, 1995; BICY-25. See also Wallace A. Hibbard to Jon R. Hall, October 28, 1994; BICY 25.

<sup>49</sup> Memorandum for Record, op cit., page 15.



that the secondary impacts resulting from the pedestrian access would be minimal and issued a FONSI for the site's development.<sup>50</sup>

### ***ORV Use and the Florida Biodiversity Project Lawsuit***

Plans to develop the recreational access points at MM 38 and MM 49 were further complicated in early 1995 when the Florida Biodiversity Project filed a lawsuit in the U.S. District Court regarding plans for ORV access to the Preserve. The suit, naming NPS Director Roger Kennedy, Secretary of the Interior Bruce Babbitt, USFWS Director Mollie Beattie, EPA Administrator Carol Browner, Secretary of the Army Togo D. West, Jr., and Chief of Engineers Arthur E. Williams, alleged that NPS failed to carry out its duties under the Clean Water Act, the National Environmental Protection Act, the Endangered Species Act, and others when developing its permitting program for ORV use in the Preserve. The other agencies were named for failing to fulfill their oversight responsibilities: USFWS for “arbitrarily concluding its section 7 consultation [under the Endangered Species Act] that extensive ORV use in BCNP [Big Cypress National Preserve] would not jeopardize the Florida panther,” and the EPA and USACE “when they arbitrarily and capriciously decided to allow recreational ORV use at BCNP while they conducted a study of indefinite duration on ORV impacts, although it is already clear beyond any doubt that a section 404 permit [under the Clean Water Act] is required before extensive ORV use is allowed in BCNP.”<sup>51</sup>

The Florida Biodiversity Project's argument against NPS drew largely from the process of finalizing the GMP. The draft GMP proposed allowing up to 2,500 ORV permits per year. In the face of opposition on this point from environmental groups, NPS revised the number of ORV permits downward to 2,000 per year in the final GMP. The 1992 Record of Decision for the GMP, however, raised the number back up to 2,500 permits per year, and “No supplemental analysis was conducted regarding the environmental impacts associated with this increase.”<sup>52</sup> In addition, the Florida Biodiversity Project argued that NPS should have, but failed to, seek a permit under Section 404 of the Clean Water Act for its recreational access plan with regard to ORV use. The Florida Biodiversity Project lawsuit also observed that, in its Biological Opinion regarding the GMP, USFWS stated that hunting and ORV use in the Preserve may adversely affect the Florida panther, but that it is not likely to jeopardize the survival of the panther. “In its Biological Opinion, the FWS failed to take into consideration the cumulative impacts on the Florida panther of the implementation of the GMP and other actions that could harm the panther, including a proposal to construct and operate access areas for the increased use of ORVs in BCNP and BCNP Addition Lands.”<sup>53</sup>

In the wake of the filing of the Florida Biodiversity Project lawsuit, attorneys from the Department of the Interior began meeting to discuss the implications and the extent of NPS liability and to plan for a settlement. At the same time, with funding quickly made available from

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<sup>50</sup> Ibid., page 22-23.

<sup>51</sup> United States District Court for the Middle District of Florida, Fort Myers Division, The Florida Diversity Project et al. vs. Roger Kennedy et al., September 15, 1995, page 3; BICY 16183 S2, SSA, S2, F24.

<sup>52</sup> Ibid., page 23. A written notation by NPS staff at this quote asks, “Was it necessary.”

<sup>53</sup> Ibid., page 28.

the Southeast Regional Office, the Preserve began work to develop an ORV Management Plan. Working through the Cooperative Park Studies Unit, Virginia Polytechnic Institute and State University (Virginia Tech) Department of Forestry Jeffrey L. Marion prepared a proposal for the ORV Management Plan in late July 1995, envisioning it as a three-year project to run from September 1995 through September 1998 that would study the effects of ORV use in the Preserve. The study was designed to build on two earlier studies by Michael Deuver, in 1981 and 1986, that analyzed the short- and long-term impacts of ORV use under varying conditions. The study would also be collaborative in nature, inviting the participation of ORV users and other stakeholders while also supporting the requirement for an assessment of effects in accordance with the requirements of NEPA.<sup>54</sup>

In August 1995, the Florida Biodiversity Project and the Department of the Interior were nearing the conclusion of their settlement negotiations, primarily involving the pledge of preparing the ORV Management Plan that included analysis of cumulative impacts and consultation with USFWS under the Endangered Species Act. In addition, regarding the Addition Lands that NPS hoped to acquire by 1996, NPS pledged to coordinate with FGFC to obtain quantitative data regarding human activities in the Preserve and their compatibility with the Florida panther. The draft settlement agreement also repeated the NPS assurance that there would be a two-year moratorium on hunting and recreational ORV use after NPS acquires the Addition Lands to allow time for development of a baseline inventory and panther monitoring program, giving time to consult with USFWS and FGFC on acceptable hunting levels in the Addition Lands.<sup>55</sup> A wrench was thrown in the judicial gears in August, however, when USACE and the EPA announced that NPS did not need to obtain a permit under section 404 of the Clean Water Act for its ORV permitting program. The Florida Biodiversity Project then amended its lawsuit to include this decision.<sup>56</sup>

Finally, in October 1995, following depositions by Michael Duever, the lead author of the two ORV studies at the Preserve in 1981 and 1986, and by wildlife biologist David S. Maehr, who argued that ORV use in the Preserve did not lead to permanent damage, the Florida Biodiversity Project and the Department of the Interior reached a settlement.<sup>57</sup> The terms of the settlement agreement were essentially the same as the draft, with a pledge from NPS that it would develop the ORV Management Plan in consultation with USFWS, EPA, and USACE.<sup>58</sup> Later in the fall of 1995, while awaiting approval for the settlement agreement from the judge in the case and with the ORV Management Plan under way, NPS began meeting with USACE to discuss planning for the two remaining recreational access points at MM 38 (the rest area by then identified as Big Cypress Main Access, renumbered MM 63) and MM 49 (also known as L-28

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<sup>54</sup> Jeffrey L. Marion, "Off-Road Vehicle Management Plan for Big Cypress National Preserve: A Project Proposal," second draft, July 21, 1995; BICY 16183 sS2, SSA, SSS2, F24. The final ORV Management Plan will be discussed in Chapter 7.

<sup>55</sup> Draft Settlement Agreement, *The Florida Biodiversity Project et al. vs. Roger Kennedy et al.*, government review draft, August 25, 1995; BICY 25.

<sup>56</sup> *The Florida Biodiversity Project et al. vs. Roger Kennedy et al.*, Motion to Amend the Complaint and Memorandum in Support Thereof, August 18, 1995; BICY 25.

<sup>57</sup> *The Florida Biodiversity Project et al. vs. Roger Kennedy et al.*, Affidavits of David Maehr and Michael Duever, September 29, 1995 and October 5, 1995, respectively; BICY 16183 S2, SSA, SSS2, F21.

<sup>58</sup> *The Florida Biodiversity Project et al. vs. Roger Kennedy et al.*, Settlement Agreement, executed October 25, 1995; BICY 25.

Interceptor Canal site).<sup>59</sup> Staff from the Preserve had begun designing ORV trail networks, using mostly existing roads and trails that had already been impacted by ORV use, resting on the decision by USFWS that ORV access without hunting would not jeopardize the Preserve's resources. This also allowed FLDOT to begin designing the recreational access at the Main Access and L-28 Interceptor sites in January 1996.<sup>60</sup>

Throughout this period of discussion and negotiation regarding the potential impacts of ORV and hunting use resulting from the construction of Interstate 75, NPS was also working to acquire the 146,000 acres that constituted the Addition Lands. On December 18, 1996, the Arizona-Florida land exchange was completed, transferring 87,000 acres from the Collier companies to NPS. By early 1998, the State of Florida had acquired approximately 33,000 acres, and donation of this land to the federal government was pending. This left approximately 28,000 acres yet to be acquired. The Preserve submitted funding requests through FY 1999 to complete these acquisitions, which were mostly of smaller properties, many of which had improvements. Efforts to continue acquiring the remaining properties continued into 2003, and, in 2005, the State of Florida lifted the restrictions on an additional 14,155 acres that had restricted the land to being used only for the purposes of public education and voted to transfer these properties to NPS, including 1,920 acres within the Addition Lands.<sup>61</sup>

The portion of the Addition Lands belonging to the Collier companies was the largest single acquisition. As this acquisition was being finalized in 1996, FLDOT was able to begin planning and design for the remaining rest area and recreation access points on Interstate 75 in the Addition Lands. The completion of the facilities, however, became part of the larger conversation among many agencies and stakeholders regarding recreational use throughout the Preserve, the relationship between ORV access and hunting, and the impacts of both on endangered species, particularly the elusive Florida panther. The story of these conversations, including the development of an ORV Management Plan, its implementation, and subsequent lawsuits, continued on for many years following the completion of the Addition Lands acquisition program and led to the preparation of an addendum to the original GMP. That lengthy and involved process is the subject of the following chapter.

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<sup>59</sup> Fact Sheet, I-75 Recreational Access and Rest Areas, November 16, 1995; BICY 25.

<sup>60</sup> Email, Stephen Brooker [Corps] to multiple recipients, December 18, 1995; BICY 25. See also Fact Sheet, I-75 Recreational Accesses and Rest Areas, February 2, 1996; BICY 25.

<sup>61</sup> Untitled document, undated but apparently 2005, detailing procedures for transferring public school lands to the Preserve; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA. See also Briefing Statement, Land Acquisition, February 21, 2003; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

## Chapter 7: Recreational Use in Big Cypress National Preserve

The addition of more than 140,000 acres to the Preserve in the 1990s, a result of the 1988 legislation that authorized the Preserve's expansion and prompted largely by the extension of Interstate 75 across south Florida, was an enormously significant accomplishment in the attempt to protect the natural resources of south Florida. The potential for improving the water flow and quality in the region and for preserving habitat for the area's endangered species increased substantially with the Addition Lands. At the same time, the acquisition of so much undeveloped land for the Preserve in 1996 brought to the fore questions regarding access for traditional activities that had been addressed only partially during the past decade of planning. These questions got to the heart of the ever-present challenge facing NPS regarding the Preserve, that of balancing the competing requirements of the enabling legislation for recreational uses, for oil and gas exploration and extraction, for traditional uses by the Miccosukee and Seminole Indian tribes, and for the protection of water and natural resources. For two decades and more after the acquisition of the bulk of the Addition Lands in the mid-1990s, succeeding Superintendents at the Preserve sought various ways to find that balance, some placing greater emphasis on the protection of resources and others focusing on provisions for greater access, though all recognized the singular importance of the Preserve and what it meant to south Florida. It was abundantly clear, however, that the enabling legislation for the original Preserve and for the Addition Lands called for the inclusion of recreational activities as part of the management task. The competing and overlapping issues surrounding the Addition Lands starting in the mid-1990s created a dense thicket through which to navigate, with the question of off-road vehicles being, perhaps, the thorniest and most interwoven component. Nearly every NPS staff member who provided an oral history interview for this project referred to ORVs and the development of a management plan for their use as the most significant management challenge for the Preserve. The preeminent role given to this one issue was due largely to the heated passions which it engendered on both sides—greater ORV access that would allow for more recreation, or more restrictive ORV access that would emphasize resource protection—together with the importance placed on ORV management at the Preserve by the Regional Office and the Washington Office as setting the standard throughout NPS, the long duration of the issue, which extended throughout the 2010s and beyond, and the impacts of the nearly continuous rounds of litigation.

As discussed in greater detail in Chapter 6, FLDOT, in conjunction with NPS, identified three points along the new Interstate 75 extension where travelers could access the Preserve. From west to east, these were at MM 31 (later MM 70, also known as the Turner River Site), MM 38 (later MM 63, also known as the Big Cypress Main Access), and MM 49 (later MM 52, also known as L-28 Interceptor Canal site). In addition, FLDOT proposed to build three recreational access points east of the Preserve's Addition Lands in Broward County. All six were originally grouped into a single permit application. As originally proposed, the Turner River Site access point would allow pedestrian access only, although Superintendent Wally Hibbard at one point signaled his openness to allowing ORV access from the southern, eastbound side. The Big Cypress Main Access would be a full rest area that also allowed ORV access, and the L-28 Interceptor Canal site would also allow ORV access. In 1990, NPS released an environmental assessment of the impacts of recreational access points but deferred an evaluation of the impacts of ORVs pending forthcoming resource studies. As planning for the three recreational access

points progressed through the early 1990s, proposals for all three identified potential impacts on wetlands. This triggered the need to apply for a permit from the U.S. Army Corps of Engineers (USACE), which has responsibility for the waters of the United States. The review of these permits then involved the EPA and USFWS, which had oversight responsibility for the Clean Water Act and the Endangered Species Act, respectively.

The publication of these permit applications also entailed soliciting comments from public and private entities. It was this review that spurred the lawsuit by the Florida Biodiversity Project in 1995, as discussed in Chapter 6, which alleged that the Corps of Engineers, NPS, EPA, and USFWS had all been negligent in not providing sufficient analysis of the potential impacts of ORVs in the Addition Lands. Former Superintendent John Donahue recalled that earlier planning documents

deferred putting an Off-Road Vehicle Management Plan in place and said they would do it some day later. Well, that never came until the Florida Biodiversity lawsuit, and when the court found that the National Park Service was in complete violation, the settlement included the development of an Off-Road Vehicle Management Plan.<sup>1</sup>

The National Park Service's response was not immediate, however, and planning work for the recreational access points continued to move forward. The USACE removed from public review the draft permit applications for all of the original six sites proposed by FLDOT in early 1995 following the initial adverse reactions. The recreational access point at the Turner River Site, at the northwestern edge of the Preserve, was quickly reinstated, however, since it included no ORV access. In mid-June 1995, while the Florida Biodiversity Project lawsuit was pending and NPS was discussing its options for settlement, USACE announced plans that it would again accept permit applications for the five remaining recreational access points on the Interstate 75 extension, including the two within the Preserve: the Big Cypress Main Access and the L-28 Interceptor Canal sites. Construction of the recreational access point at the Turner River Site (formerly MM 31) was taking place at the same time and was completed by the spring of 1997.<sup>2</sup> In January of that year, FLDOT began planning for the recreational access point at the L-28 Interceptor Canal, and Superintendent Hibbard gave FLDOT right of access to NPS property to begin work in early February.<sup>3</sup> A year later, in early 1998, Superintendent Hibbard approved the transfer of land to FLDOT to begin planning for the rest area at the Big Cypress Main Access site.<sup>4</sup>

These projects were subject to new permit applications to the Corps of Engineers under the Clean Water Act, because of the need to deposit fill in wetland areas, and under the Endangered Species Act because of the presence of the Florida panther and others that had the potential to be impacted by the increased recreational access. The Corps of Engineers released the permit applications to the public for comment for both projects in late 1997, and responses were returned during the late winter and spring of 1998. The responses, from organizations such

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<sup>1</sup> John Donahue, oral history interview, February 22, 2021.

<sup>2</sup> L.M. Courtney, Jr. to Wallace Hibbard, May 16, 1997; BICY 16183S2, SSA, SSS2, F21. See also Charles E. Wood to Wallace Hibbard, August 26, 1996; BICY 16183S2, SSA, SSS2, F21.

<sup>3</sup> Derrick H. Vardy to Wallace A. Hibbard, January 28, 1997, with attached Letter of Authorization executed by Hibbard on February 3, 1997; BICY 16183S2, SSA, SSS2, F21.

<sup>4</sup> Wallace A. Hibbard to J.R. Skinner, January 21, 1998; BICY-378, Box 9 to be cataloged into BICY 26817, S3, SSA.

as the Florida Biodiversity Project and from federal agencies alike, were again highly critical. The Corps of Engineers summarized these responses in a letter to the consultant handling the planning process on behalf of FLDOT in April 1998. Both the EPA and USFWS recommended denial of the projects because of the potential unacceptable impacts on significant wetlands, and both agencies requested additional information. At the same time, the Florida Biodiversity Project and the Biodiversity Legal Fund repeated their contention that a full environmental impact statement (EIS) was required and referred to the ongoing studies regarding hunting and ORV use in the Addition Lands that should be completed before allowing any recreational access. In light of the comments, as well as requests from EPA and USFWS for additional information, USACE concurred that it could not complete the consultation required to either approve or deny the permits. In particular, “no further progress toward the issuance or denial of your DA [Department of the Army] permit applications or a decision on the need to prepare an EIS will be made until completion of the on-going addition lands and Florida panther studies and until an acceptable ORV Management Plan has been submitted by the NPS.”<sup>5</sup>

### ***Off-Road Vehicle Management Plan***

The onus was, therefore, on NPS to complete development of an ORV Management Plan, an initial proposal for which had been developed in the summer of 1995.<sup>6</sup> Superintendent Wally Hibbard led the plan’s development beginning in 1996, entering into a Cooperative Agreement with Virginia Tech in September.<sup>7</sup> The ORV Management Plan team held extensive public meetings with a wide variety of stakeholder groups and solicited additional public input through the internet, emails, and visitor surveys. As a result of this public input, which the planning team evaluated in light of the Preserve’s legislative mandate and NPS regulations, several issues came to the fore. These included the negative environmental effects of ORV use, with cumulative effects that were unknown but potentially significant; conflicts with nonmotorized visitors to the Preserve; public concerns for the intrusiveness of ever-increasing the rules and regulations; and a lack of communication on the part of NPS when it came to making planning and management decisions.

This process of gathering public input and efforts by the NPS planning team resulted in a draft ORV Management Plan in September 1998. In keeping with the settlement agreement that followed the Florida Biodiversity Project lawsuit, the draft plan was accompanied by a draft EIS. The draft plan outlined the legislative and regulatory framework for the use of ORVs in the Preserve. Building on the 1991 GMP, it went on to identify only two management alternatives for the original Preserve: a no-action, status quo alternative maintaining management practices in place as of 1995-1996, and what had been the preferred alternative in the 1991 GMP. The discussion of the no-action alternative, therefore, provides a useful summary of how ORV use

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<sup>5</sup> Ronald H. Silver to Ralph L. Bingham, April 21, 1998; BICY 16183S2, SSA, SSS2, F21. This letter from USACE to the FLDOT consultant contains copies of the comment letters from USFWS, EPA, State of Florida Department of Community Affairs, and the Biodiversity Legal Fund, all of which urged denial of the permit. A separate letter from the Florida Biodiversity Project, dated March 27, 1997, is located in the same file, BICY 16183S2, SSA, SSS2, F21.

<sup>6</sup> Marion, Off-Road Vehicle Management Plan for Big Cypress National Preserve, A Project Proposal, July 21, 1995.

<sup>7</sup> See Briefing Statement, Off-road Vehicle Management Planning and Lawsuit, July 10, 2000; BICY 26817, S5, SSB.

was managed just four years after the completion of GMP, which had yet to be fully implemented. All ORV users in the Preserve were required to obtain an annual permit (for a \$35 fee) for each ORV they planned to use within the Preserve. Each permitted ORV was subjected to an inspection at the Oasis Ranger Station so that Preserve staff could ensure that the vehicle complied with safety requirements and had the proper width and type of tires (tracked vehicles were banned from use in the Preserve in 1988). Once on the Preserve, ORV users faced three general sets of approaches to managed use: options for temporary closures based on ground conditions or the proximity of sensitive natural or cultural resources, designated trails, and dispersed use. The latter two were divided primarily by management unit: the Bear Island Unit contained the fifty miles of designated trails, twenty-two of which had been built above grade. Dispersed ORV traffic was allowed in the Turner River and Corndance Units. The Loop Unit in the southeastern part of the Preserve and the Deep Lake Unit along the western edge were closed to all ORV use, as were the Addition Lands at that time. The Loop Unit had been reserved for primitive recreation (including hunting) since 1977, and the Deep Lake Unit contained vital habitat for the Florida panther. The Stairsteps Unit that formed the Preserve's southern boundary, where airboats are the primary ORV due to the generally water-covered conditions, was divided into four management zones with varying restrictions on the use of airboats and terrestrial ORVs.<sup>8</sup>

Rather than presenting a preferred alternative for the original Preserve, the draft ORV Management Plan reviewed a series of twelve widely-varying general strategies that could be available to the Preserve. These strategies included increasing public education, allowing for dispersed traffic in remote areas, using designated trails or reduced use in sensitive areas, developing maintenance programs for designated trails, requiring modifications to ORVs or prohibiting particular types of ORVs, and adjusting or reducing the times that the Preserve is available for ORV use. The draft ORV Management Plan recommended that the final recommendation incorporate the results of further discussions with stakeholders. In all cases, however, the draft ORV Management Plan recommended a robust and long-term monitoring program to study the effects of ORV use in the Preserve. The program would include research into the different effects on vegetation and soil types resulting from different types of ORVs, as well as ORV trail construction and maintenance programs.<sup>9</sup>

Regarding the Addition Lands, which were not included in the original GMP, the draft ORV Management Plan presented three management alternatives: closure to ORVs, full access to ORVs, and restricted access to ORVs. The latter of these was identified as the preferred alternative. The draft ORV Management Plan distinguished between the vast majority of the Addition Lands, located at the northeastern edge of the original Preserve boundary and known as the Northeast Addition, and the narrow strip of land added to the entire length of the western edge of the Preserve, the Western Addition. The new approach to ORV management would apply only to the larger mass of the Northeast Addition; management of lands in the narrow western strip would be identical to the particular adjoining Management Unit: Bear Island (designated trails only), Deep Lake (closed to ORVs), Turner River (open to all ORVs), and Stairsteps unit 1 (open to all ORVs except airboats). Within the Northeast Addition, however, the

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<sup>8</sup> "Draft Off-Road Vehicle Management Plan, Environmental Impact Statement, Big Cypress National Preserve, Florida," Review Draft, September 1998, pages 21-23; BICY 16183 S2, SSA, SSS2, F24.

<sup>9</sup> *Ibid.*, 27-37.

draft plan recommended restricting ORV use to designated trails only and only in the area to the south of Interstate 75.<sup>10</sup>

As part of the EIS, the draft ORV Management Plan provided a summary of ORV use and potential impacts. The Preserve first regulated and issued permits for ORVs in 1980, when 871 permits were issued; this number reached a peak in 1992 when 2,255 ORV permits were issued for the Preserve. The number of permits fluctuated, typically in response to the weather, with fewer permit requests in wetter years when trails were often inaccessible. By the late 1980s, however, the annual number of ORV permits remained at the 2,000 level. The use of ORVs was also strongly associated with hunting; the two activities together were the primary recreational use of the Preserve. Four types of ORVs were used in the Preserve: street legal 4x4s, all-terrain vehicles, swamp buggies, and airboats.

The monitoring of ORV use and its effects was one of the GMP recommendations, and a plan for monitoring was developed in 1991 by Big Cypress National Preserve Resource Management Specialist Tony Pernas. Unfortunately, the monitoring study, which included fifteen permanent stations along designated ORV trails to observe the changing conditions, suffered from insufficient funding and was never implemented. Shorter-term observation studies were conducted through the early 1990s, however, including occasional monitoring along the Bear Island Trail system and airboat trails in the Ochopee Prairie area. According to the draft ORV Management Plan, a more intense and systematic monitoring study consisting of a series of transects running perpendicular to designated ORV trails was then under way, and contractors from the University of Georgia's Center for Remote Sensing and Mapping Sciences were also conducting a study using aerial infrared photographs. In its report on the assessment of effects resulting from ORV use, the draft management plan used this 1998 study by the University of Georgia, which mapped in great detail the many primary, secondary, and tertiary trails to supplement and reinforce the earlier studies by Michael Duever. This study identified a total of 29,799 miles of ORV trails in the Preserve, two-thirds of which were tertiary trails. In particular, the new study showed a "dramatic increase in trail miles over previous estimates," and the use of infrared photography clarified the extent of the impacts: "ORV use can cause long-term changes in vegetation composition and/or soils, effects which are clearly evident on color infrared photographs even following many years of nonuse and recovery." In the Management Units where ORV use was allowed, the University of Georgia study found that between eight and thirty-six percent of the area was impacted by ORV use, totaling more than 148,000 acres, or twenty percent of the Preserve's total acreage.<sup>11</sup>

The EIS component of the draft ORV Management Plan was developed by Parson's Engineering Science, Inc., under contract to the Denver Service Center. The EIS evaluated the potential environmental effects of the two proposed alternatives. The no-action, status quo alternative entailed impacts on vegetation, soil, water, and wildlife. The EIS also took into consideration what were termed "Social Effects," which included the disturbances to other visitors to the Preserve from the operation of ORVs. These effects included noise, concerns for human safety, and the presence of ORV trails in otherwise primitive settings. "Such conflict," the EIS observed, "is rarely confrontational; the mere presence of ORVs and the hunting

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<sup>10</sup> Ibid, 39.

<sup>11</sup> Ibid., 60-61.



normally associated with their use can deter many alternative recreational activities. The primary recreational activities in conflict with ORV use include campground visitors, hikers, canoeists, and mountain bikers.”<sup>12</sup> Under the preferred alternative, which proposed the use of designated trails only, the visible impacts in areas within the Preserve that had been disturbed by ORV use were expected to decline gradually, with a new monitoring program designed to evaluate the success of the program over time. Within the Addition Lands, where the alternatives were complete closure, full access, and partial access on designated trails (the preferred alternative), the use of designated trails under the preferred alternative would allow a gradual reduction in the total number of acres disturbed by ORV use. The Addition Lands would see varying degrees of ORV access, which would be more tightly restricted in the northern portion while the western part would allow greater access.<sup>13</sup>

Finally, the draft ORV Management Plan included a Management Practices Manual for ORV use. The Management Practices Manual provided a series of potential methods to manage ORV use in the Preserve and a process for selecting management practices, without making any recommendations. The Manual emphasized regular and meaningful communication with all stakeholders as a key component of the process. While stating clearly that decisions regarding ORV access must be made in accordance with Congressional mandates and administrative policies, “numerous strategies and tactics may be potentially applicable or effective in resolving any given issue. Selection of a preferred set of tactics requires consideration of many factors and is most optimal when stakeholders are involved in an open participatory process.”<sup>14</sup> The Manual placed a strong emphasis on eliminating the practice of dispersed traffic and encouraging the concentration of ORV use in popular areas, recognizing that the impacts in the designated trails would be greater, but the total disturbed surface area would decrease.

The draft ORV Management Plan was revised through late 1998 and early 1999 and released for public comment in the early summer of 1999. The revised draft was not located during the current research, but, based on comments, it appears it was amended to provide greater specificity, including restrictions on alterations to ORVs known as “stumpknockers” in which devices at the front allowed the ORV to plow over, and potentially uproot, heavy brush and small trees, weight restrictions on ORVs, a maximum width and horsepower capacity of airboats, and new restrictions on accessing the Corndance Unit.<sup>15</sup> By August of that year and continuing throughout the fall, comment letters began flooding into the Preserve office, mostly from supporters of ORV access who were opposed to the draft plan, the majority of them nearly identical. This response showed the immense reach and passion of those who favored traditional recreational access to the Preserve. Some were concerned that specific aspects of the revised draft plan were too restrictive; others were driven by fear that NPS planned to eliminate ORV use altogether, while others still were concerned about the impact of ORV restrictions on hunting in the Preserve.

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<sup>12</sup> Ibid., 73.

<sup>13</sup> Ibid., 77-78.

<sup>14</sup> Ibid., 108.

<sup>15</sup> In comments on a draft version of this administrative history, former Resource Management Chief Ron Clark provided the description of “stumpknockers” used in this sentence. Clark also pointed out that the Preserve also placed restrictions on certain kinds of boats: “The restrictions on boats, in addition to horsepower, was a ban on the use of a type of boat generically called go-devils, a powerboat that deploys a prop extended from a long pole or boom beyond the transom.”

More substantive comments were prepared by FGFC, by then renamed the Florida Fish and Wildlife Conservation Commission (FWCC). Allan Egbert, Executive Director of FWCC, observed that the criteria that NPS would use to determine when to close trails or Management Units for the safety of either resources or visitors was not included in the revised draft plan. This absence, he argued, made a comprehensive review of the draft plan impossible. In addition, he challenged the requirement for a weight limit on ORVs based on the ground pressure (the revised draft limited ORVs to a maximum of two pounds per square inch). Again, he argued that, without knowing the basis for this limit and without studies that show how the reduced weight impacts the Preserve's natural resources, a full review was not possible.<sup>16</sup>

The revised draft ORV Management Plan went through a final round of revisions in the late fall of 1999 and into 2000. During this time, Superintendent Hibbard accepted a transfer from the Preserve to the Southeast Regional Office, where he served as the Associate Regional Director for Park Operations and Education. He was succeeded at Big Cypress National Preserve in the spring of 2000 by John Donahue, until then the Superintendent of Thomas Stone National Historic Site, Maryland, where he also served concurrently as the Special Assistant to the Assistant Secretary for Fish, Wildlife, and Parks in the Department of the Interior. Donahue recalled that the revised draft ORV Management Plan which was sent out for public review did not have sufficient environmental guidelines. When Hibbard transferred to the Regional Office, he continued, "I was brought in and specifically asked to make sure that the Off-Road Vehicle Management Plan was substantial and that it set the right tone in regulations for the preservation of the resources inside the Preserve."<sup>17</sup>

Donahue's concerns regarding the need to augment the ORV Management Plan's resource protections was driven in part by aerial views of the Preserve that he experienced from one of the Preserve's two helicopters. He frequently took visitors, including the officials and environmental groups, for helicopter tours:

If you were from Washington or an environmental group or anybody, we would take you up in the helicopter, right? We would go and fly at a low level—like twenty feet off the ground, and you could see that you couldn't see the impact [of ORV traffic] at your own eye level. Then we'd fly up a hundred feet, and you'd be like 'Oh, my gosh!' And we'd go up about five hundred feet, and you'd go, 'Oh, my God! It looks like spaghetti!'<sup>18</sup>

In the face of vigorous lobbying and widespread vocal support from the adherents of wider ORV use, the Regional Office and the Washington Office were coming increasingly to see not just that the Preserve needed increased protection from the dispersed use of ORVs, but that the Preserve was the key setting to define the National Park Service's approach to ORV use throughout the National Park System. This position was supported actively by the Florida Biodiversity Project, whose lawsuit in 1995 prompted the new ORV Management Plan, the leaders of which were in direct contact with Assistant Secretary for Fish, Wildlife and Parks Donald Barry. In an email to

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<sup>16</sup> Allan L. Egbert to Wallace A. Hibbard, October 26, 1999, attached to memorandum, Manley Fuller (Florida Wildlife Federation) to Interested Parties, October 27, 1999; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

<sup>17</sup> Donahue, oral history interview, February 22, 2021.

<sup>18</sup> Ibid.

Barry in May 2000, while the plan was undergoing final revisions, Brian Scherf with the Florida Biodiversity Project reported that an aerial video of the Preserve shown at a conference generated widespread disgust: “I listened to many ORV horror storys [sic] from activists around the country—but none matched the scale and intensity of ORV impacts of Big Cypress. People were agast [sic] at the video!” As he observed, the Preserve “is the worst case scenario in the entire country—THE national case study in bad ORV management. I bring this up because I fear that the NPS will again propose more interim halfway measures.” Replying the next morning, Barry, having just returned from an international conference on endangered species, agreed to raise the issue with Donahue.<sup>19</sup>

Because USFWS was named in the original Florida Biodiversity Project lawsuit in 1995, the agency was directly involved in preparation of the ORV Management Plan. Reporting in the fall of 1999 that the revised draft plan was more conceptual in nature and focused on planning, USFWS recommended additional action items in a second revised draft. These concerns were mirrored in November 1999 by the EPA, which reported “environmental objections” to the proposed plan. The USFWS then held regular meetings with NPS staff throughout early 2000, including a public stakeholder meeting in early March and informal meetings and consultations between NPS and USFWS continuing into June. The draft final ORV Management Plan and EIS was then released for agency review in early 2000, with a formal request from Superintendent Donahue for consultation with USFWS regarding impacts to endangered species. By this time, the ORV Management Plan included proposals to restrict ORV use to designated trails and access points only and several areas of the Preserve where no ORV use would be allowed. The draft final ORV Management Plan also included information on trail protection techniques and a trail restoration program, and proposals for ongoing research to determine optimal trail locations on an iterative basis. The draft final plan did not, however, include ORV use for the Addition Lands, deferring those discussions to the proposed GMP amendment. In its Biological Opinion, USFWS concurred in the NPS recommendation that the plan would have either no effect or no adverse effect on multiple threatened and endangered species except for the possibility of adverse effects on the Florida panther.<sup>20</sup>

With the completion of agency consultation, NPS released the final ORV Management Plan and EIS in August 2000. Under the proposed action, the Preserve would allow a maximum of 2,000 annual permits selected through a random drawing. Once selected, an ORV user would need three permits: a vehicle permit (\$50), an operator’s permit (free), and a daily use backcountry permit (free). There would be no dispersed use. Instead, ORVs would be limited to designated trails only. The plan envisioned a maximum of 400 miles of primary trails to be designated within the Preserve, with fifteen access points allowing a limited number of users. The plan also provided for the development of secondary trails, the purpose of which would be to provide access to private property inholdings or specific destinations such as campsites. Significantly, in light of the concerns that first drove the permit applications resulting in the Florida Biodiversity Project lawsuit, the plan provided no access points from Interstate 75 within the original Preserve boundary. Certain sensitive areas of the Preserve would be closed to all

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<sup>19</sup> Email, Brian Scherf to Donald Barry, May 8, 2000, with reply on May 9, 2000; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

<sup>20</sup> Summary letter of USFWS Biological Opinion to John Donahue, July 14, 2000; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

ORV traffic in addition to closure of all lands between 10 pm and 5 am, a sixty-day seasonal closure for trail maintenance and rehabilitation, and closures triggered by high water or low water conditions. Under the plan, all permitted ORVs must pass a vehicle inspection, and all ORV users must attend an education program. In addition, the final ORV Management Plan called for regular service of trails, trail restoration programs, and ongoing research to inform management decisions. Different types of ORVs would be allowed in certain areas based on ground conditions, including swamp buggies, all-terrain cycles, street-legal four-wheel-drive vehicles, and airboats. The program envisioned in the ORV Management Plan would be implemented over the course of ten years, and the implementation would be guided by the concept of adaptive management in which regular monitoring, including the use of Geographic Information System-based modeling, would guide future actions. Under the plan, dispersed ORV use would be eliminated gradually as more designated primary ORV trails were built, though some sensitive areas would be closed immediately (Figure 11). The anticipated annual expense of implementing the plan was \$1.3 million annually and an additional \$5.3 million spread over the ten-year period for educational startup and environmental permitting and compliance. As a component of the extensive EIS, the final ORV Management Plan also included copies and summaries of all comments provided for the earlier draft plans from agencies and individuals, along with the NPS response on how those comments were addressed.<sup>21</sup>

A month after the release of the Final ORV Management Plan, NPS issued a Record of Decision (ROD) approving the plan. The ROD provided a brief summary of the plan and a timeline of actions and defined the preferred alternative as also the environmentally preferred alternative, causing the least damage to the biological and physical environment. In his recollections of the ORV Management Plan, Superintendent Donahue emphasized the Service-wide significance of the document. Most RODs, he observed, are issued by the pertinent Superintendent and the Regional Director. “In this case,” he recalled, “I signed it, the Regional Director, Jerry Belson, signed it, and the [NPS] Director, Bob Stanton, signed it. So, you know, that may not mean anything to people that are not NEPA-nerds, but it’s the only time I’ve ever seen that done, and I think it echoed the sentiment that this was an important change.”<sup>22</sup>

The response from supporters of ORV use and access in the Preserve was swift. In January 2001, a group of plaintiffs consisting of the Wildlife Conservation Fund of America, the Everglades Protection Society, Inc, the Collier Sportsmen and Conservation Club, and four private individuals filed a lawsuit against Department of the Interior Secretary Bruce Babbitt, Acting Assistant Secretary for Fish, Wildlife and Parks Kenneth Smith, NPS Director Robert Stanton, Southeast Regional Director Jerry Belson, and Superintendent John Donahue. According to the lawsuit, the Department of the Interior and NPS “have shattered Congressional promises made and enshrined in the 1974 Big Cypress National Preserve Act.” The ORV Management Plan, the lawsuit continued, “has imposed unwarranted restrictions on traditional airboat and swamp buggy access” to the Preserve, has “dismissed preemptorily the statutory role

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<sup>21</sup> *Final Recreational Off-Road Vehicle Management Plan and Supplemental Environmental Impact Statement, Big Cypress National Preserve, Florida* (undated, August 2000); BICY 25.

<sup>22</sup> Donahue, oral history interview, February 22, 2021. The ROD was executed by NPS Director Robert Stanton on September 28, 2000, with recommendations by Big Cypress National Preserve Superintendent John Donahue and Southeast Regional Director Jerry Belson, both on September 25, 2000; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

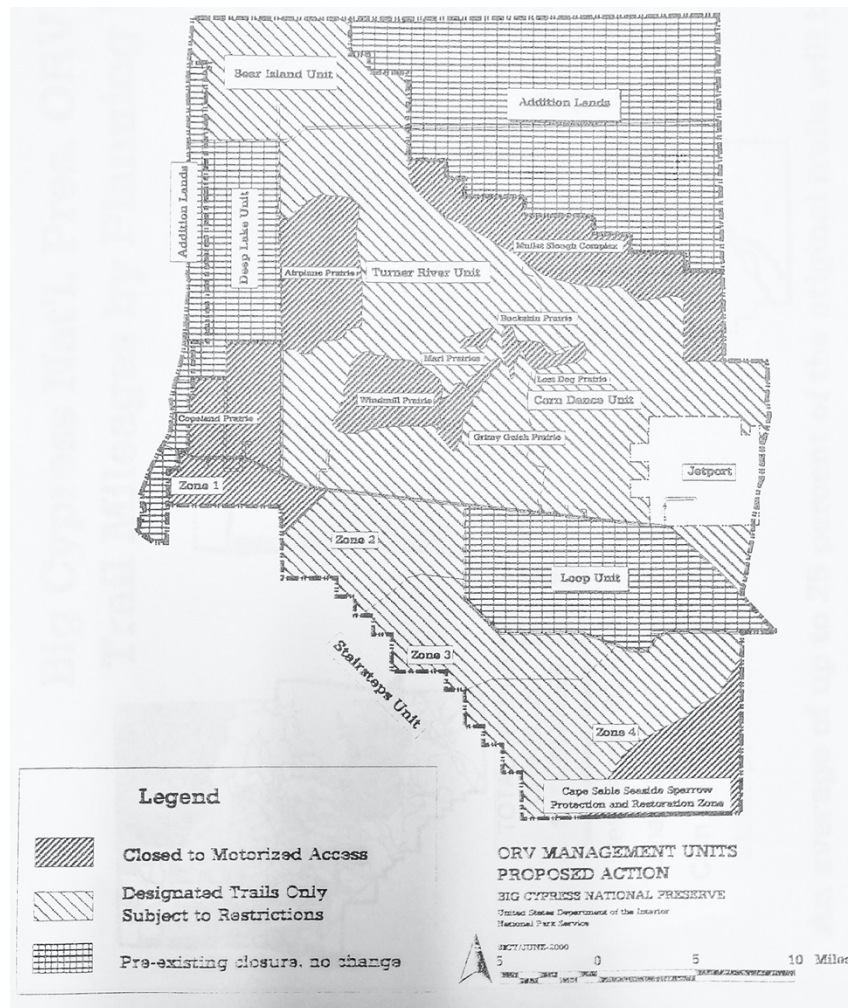


Figure 11. Map from ORV Management Plan (2000) showing areas where ORV use was allowed and disallowed.

given to the State of Florida, and concocted ‘facts’ and conclusions in pursuit of a political crusade against motorized access in Big Cypress Preserve and other national park units.” A month later, a group of eleven organizations, led by the Florida Biodiversity Project and two private individuals filed a motion to intervene as co-defendants in the lawsuit. These proposed intervenors argued that the Final ORV Management Plan was a direct result of the settlement agreement that followed the Florida Biodiversity Project’s 1995 lawsuit by which NPS was legally bound.<sup>23</sup> To complicate the matter further, in April 2001, the same entities that joined the lawsuit as intervenors filed a Notice of Violations against NPS, arguing that the continued allowance of dispersed ORV access to the Preserve was adversely impacting the Florida panther in violation of the Endangered Species Act.<sup>24</sup>

Throughout the spring and early summer of 2001, solicitors on behalf of NPS met with attorneys for the plaintiffs who sought greater ORV access to the Preserve in an attempt to reach a settlement. The plaintiffs presented an offer of settlement on July 19, 2001, which

<sup>23</sup> The lawsuit filed by Wilderness Conservation Fund of America et al., dated January 18, 2001, is located in BICY 313, Box 1, and the motion to intervene, dated February 20, 2001, is located in BICY 26817, S3, SSA.

<sup>24</sup> Amy Atwood and Eric Glitzenstein to Gale Norton et al., April 30, 2001; BICY 26817, S5, SSB.

Superintendent Donahue characterized as one that “would destroy a great opportunity to highlight an actual example of successful multiple use management of the National Park Service (NPS) lands.” The proposed settlement offer made many demands, including the continuation of ORV management practices before the ORV Management Plan while NPS conducted another Supplemental EIS, a halt to any new trail construction, the opening of areas of the Preserve closed under the plan, and the elimination of the ban on use of ORVs at night for travel to inholdings. Donahue asserted that the proposed settlement offer “includes a large number of interim measures which, collectively, negate the purpose of the 2000 Off-Road Vehicle/Supplemental Environmental Impact Statement.”<sup>25</sup> The NPS response to the offer emerged from discussions between Superintendent Donahue and Southeast Regional Director Jerry Belson in the fall of 2001 that were elevated to NPS Director Fran Mainella and to Ann Klee, who provided legal counsel to the Secretary of the Interior. Mainella and Klee provided guidance to Department of the Interior and Department of Justice solicitors regarding the government response. In a memorandum to Belson, Donahue observed that “In most substantive areas, we rejected the requests of the litigants.” The plaintiffs and NPS held meetings after this, but the plaintiffs broke off negotiations in January 2002.<sup>26</sup> Because the settlement talks failed, the lawsuit went to Federal district court, and oral arguments were presented in July 2002. The Magistrate assigned to the case recommended in favor of NPS on all counts in August 2003, and, in February 2005, the district court ruled in favor of NPS, upholding the validity of the ORV Management Plan.<sup>27</sup>

While the settlement talks were progressing, Preserve staff began work on two of the provisions in the ORV Management Plan: an ORV Advisory Committee and the extensive designated trail network. The purpose of the Advisory Group was to serve as a forum to allow substantial public input to the execution of the plan and the ongoing management of ORV use in the Preserve. This group was to include representatives of groups that supported as well as those who opposed expanded ORV use. In 2001, Superintendent Donahue prepared an initial list of twelve people who would be invited to sit on the Advisory Committee, many of whom were part of the 2001 lawsuits as plaintiffs or intervenors on behalf of the defendants, such as Franklin Adams with the Florida Wildlife Federation, Brian Scherf with the Florida Biodiversity Project, Barbara Jean Powell with the Everglades Coordinating Council, and Gary Beardsley with the Sierra Club.<sup>28</sup> The list of prospective members underwent continual revisions as various organizations as well as the Governor’s office proposed new members. Indeed, one item in the proposed settlement agreement by the plaintiffs in the 2001 ORV access lawsuit was to have control over the composition of the ORV Advisory Committee, which was one of the several points to which NPS objected. The issue lingered for several years. In the spring of 2006, Superintendent Karen Gustin, who had entered on duty a year earlier, revisited the question of the ORV Advisory Committee and, in the summer of 2007, finally took the requisite steps to create it. A Notice of Intent from Secretary of the Interior Ken Kempthorne was published in the

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<sup>25</sup> Memorandum, Superintendent, Big Cypress National Preserve to Files, August 27, 2001; BICY 26817, S3, SSA. See also the July 19, 2001, with cover letter from Douglas S. Burdin to T. Neal McAliley, in the same file.

<sup>26</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, January 30, 2002; BICY 26817, S3, SSA.

<sup>27</sup> Big Cypress National Preserve Superintendent Karen Gustin, Information Memorandum for the Secretary, October 10, 2007; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>28</sup> Email, John J. Donahue to Jerry Belson, February 20, 2002, with attached draft list of names for ORV Advisory Group; BICY 26817, S5, SSB.

Federal Register; this announcement coincided with Secretary Kempthorne's appointment of fourteen people to serve on the Advisory Committee.<sup>29</sup>

### ***Off-Road Vehicle Trail Construction***

The ORV Management Plan proposed nearly 400 miles of designated trails, with priority given to using already established corridors such as lumber tram lanes, filled roadways, and existing trails (Figure 12). This ambitious program was initially planned to include twenty-seven segments of trail through FY 2008.<sup>30</sup> Preserve staff began implementing the guidelines of the ORV Management Plan in early 2002 by hardening with limerock more than twenty miles of the Monroe Station South trail extending southwest from the intersection of US 41 and Loop Road. The work included smoothing the existing trails to remove ruts, placing a geotextile fabric over the native soil, and then covering the fabric with a five-inch layer of screened and washed limestone rock graded to match the surrounding elevation, creating a trail twelve feet wide.<sup>31</sup> This work was halted in May 2002 when the USACE reported that the work had impacted wetlands over which it had jurisdiction, but NPS had not applied for a permit for the work, which constituted a violation of Section 404 of the Clean Water Act. The USACE referred the issue to the Environmental Protection Agency for enforcement, which, in November 2002, issued a Consent Decree that required NPS to submit an after-the-fact permit application to the Corps of Engineers and prepare a mitigation plan for the thirty-four acres of impacted jurisdictional wetlands.<sup>32</sup>

The USACE issued a permit for the overall trail restoration project in February 2004, with a ten-year time limit for the work to be completed.<sup>33</sup> This allowed the trail restoration program to begin in earnest. Although the Preserve began work on an ORV trail in the Stairsteps Unit in the southern portion of the Preserve more than a year earlier, much of the early work was focused on the Bear Island Unit at the northwest corner. By early 2003, thirty-five miles of existing raised bed roads in Bear Island had been hardened, with an additional twenty-five miles

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<sup>29</sup> *Federal Register*, vol. 72, no. 147, August 1, 2007, page 42108; Secretary Kempthorne's notice was dated June 14, 2007. See also Karen Gustin to Frank E. Denninger, April 17, 2006. Both documents in BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB. The date of Secretary Kempthorne's appointment of the Committee is found in Memorandum, Big Cypress National Preserve Superintendent Karen Gustin to the Secretary, January 2, 2008; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>30</sup> *ORV Management Plan*, 31. The proposed schedule of trail improvements is detailed in John Donahue to Karen Johnson (South Florida Water Management District), June 13, 2002; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

<sup>31</sup> Methods for hardening the trails is found in permit application to South Florida Water Management District, October 17, 2002; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.

<sup>32</sup> United States Environmental Protection Agency, Consent Agreement, executed by John Donahue on behalf of the Department of the Interior on November 12, 2002, and James Giattina, EPA, on November 21, 2002; BICY-378, Box 7 to be cataloged into BICY 26817, S3, SSA.

<sup>33</sup> The Corps of Engineers permit was executed on March 22, 2004, and was set to expire on February 19, 2014. It was attached to John R. Hall to Carol A. Clark, March 22, 2004; BICY-399 ORV Supt's Office Box 1 of 3 to be cataloged into BICY 26817, S5, SSB.



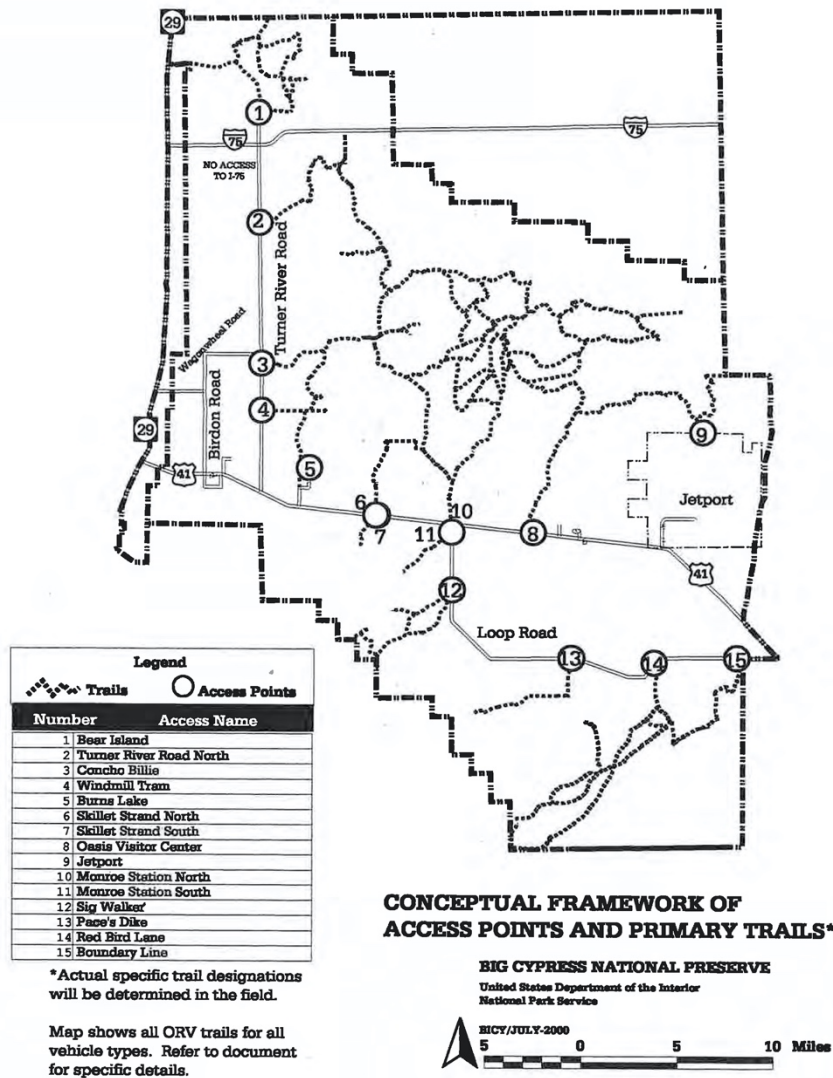


Figure 12. Map from ORV Management Plan (2000) showing proposed trail network.

hardened in four other areas.<sup>34</sup> The lawsuit filed in 2001 by ORV advocates was dismissed in early 2005, and, in 2007 the ORV Advisory Committee was in place, providing public input and guidance on ORV issues at the Preserve, particularly regarding the planning, maintenance, and opening and closing of ORV trails. The combination of these two events with the USACE permit approval allowed planning and construction work to continue and expand.

From March 2006 to February 2007, however, Preserve staff embarked on a re-evaluation of the trails in the Bear Island Unit and on a substantial public involvement program for trail

<sup>34</sup> Briefing Statement, Off Road Vehicle Trail Restoration, February 21, 2003; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.



management while also consulting with other federal and state agencies. More than 2000 notices were mailed to announce a public meeting on August 15, 2006, to solicit input on the status of the primary and secondary trails in the Bear Island Unit. The proposed plan for closing and reopening portions of trails was based on new information regarding the Florida panther that the population in south Florida was growing as a result of genetic restoration and that Florida panthers were identified as occupying all areas of the Preserve, not just Bear Island as had been previously understood. After receiving confirmation from USFWS in February 2007 that the proposed plan would not require modification of the earlier Biological Opinion, on February 28, 2007, the Preserve reopened 15.2 miles of primary trails, closed 4.6 miles, and established 9.4 miles of secondary trails. The announcement of these changes spurred a new lawsuit in which Defenders of Wildlife and several other environmental organizations claimed that NPS and USFWS violated multiple laws, regulations, the Preserve's enabling legislation, and the 1998 settlement agreement by reopening portions of the Bear Island Unit to ORV use. After discussions with the plaintiffs through the summer and fall of 2007, Defenders of Wildlife and other organizations filed a new lawsuit in December 2007 with the same claims and demanded that NPS complete a full EIS of the proposed reopening plan.<sup>35</sup> After several years of studies and attempted settlements, a federal district court judge in 2012 found in favor of the plaintiffs. The court determined that the number of miles of trails in the Bear Island Unit was beyond the limits of the ORV Management Plan and that the secondary trails went beyond the definition as provided in the plan "to provide access to private property or specific destinations such as campsites." The court found, instead, that the designated secondary trails were, in essence, primary trails. As a result of the 2012 decision, the Preserve closed all newly-created trails in the Bear Island Unit.<sup>36</sup>

By early 2008, however, while these lawsuits were making their way through the courts, the ORV Advisory Committee agreed to a new approach to trails. According to a Briefing Statement, this approach prescribed "a more selective treatment approach to trail stabilization aiming to preserve the traditional and primitive visitor experience. This selective treatment approach results in the treatment of only areas determined to require stabilization, leaving the majority of the trail system in its natural state."<sup>37</sup> By 2010, the Advisory Committee began meeting on a quarterly basis to better monitor and advise on trail development. The Preserve continued to develop and improve primary and secondary trails through 2012, when a second lawsuit was filed by several environmental groups specifically targeting secondary trails. This lawsuit alleged that the length of most of the secondary trails exceeded the intent of the ORV Management Plan and that most of the secondary trails did not provide access to specific destinations. In settlement negotiations, the Preserve offered to reduce the size of the secondary trail network by 42% and to begin an EIS to consider the relationship between secondary trail placement and backcountry use. Perhaps sensing that the legal momentum was on their side, the plaintiffs rejected the settlement offer and filed a new lawsuit in May 2013. By this time, the Preserve had closed the secondary trails in accordance with the offer of settlement and begun the EIS process. This served as the basis for an attempt by the Department of Justice to dismiss or

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<sup>35</sup> Briefing Paper, The Big Cypress National Preserve Off-Road Vehicle Management Plan/Lawsuit, January 8, 2008; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>36</sup> Briefing Statement, Secondary Trails Litigation, June 20, 2014; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>37</sup> Gustin, Information Memorandum for the Secretary, January 2, 2008.

stay the case, but their motion was denied in May 2014. According to a summary prepared by the Preserve in June 2014, “The Judge’s order signaled that she is not considering our case favorably on its merits and going so far as suggesting that all secondary trails should not have been opened prior to the completion of the additional NEPA [EIS preparation].”<sup>38</sup> It was this legal process that spurred the development of a Backcountry Access Plan, which will be discussed later in this chapter.

Before discussing the subsequent planning documents, however, it is important to note that the success of the lawsuits over ORV access and the use of secondary trails created political challenges for Preserve staff. While all superintendents at Big Cypress National Preserve worked to find the correct balance between the protection of natural resources and access to the Preserve for recreational and extractive uses, the emphasis of each varied in one direction or the other, often in line with NPS leadership. Superintendent Fagergren through the 1980s emphasized the protection of resources, seeking to hold the line on encroachments until the GMP was in place and baseline studies could help to identify impacts to resources. His successor, Wallace Hibbard, was more eager to work with supporters of recreational access, seeking to find consensus among the various interests as he worked through the initial implementation of the GMP in the early and mid-1990s. John Donahue brought a strong conservationist ethos to the Preserve when he entered on duty in 2000 to oversee the completion of the ORV Management Plan, emphasizing the damages caused by unrestricted and dispersed ORV use in the Preserve. Following Donahue’s departure, Acting Superintendent Carol Clark continued this emphasis until appointment of the next Superintendent in 2005.

In April 2005, partly as a result of conversations between politically connected sportsmen’s organizations in Florida, including Franklin Adams, one of the earliest supporters of the Preserve, and NPS Director Fran Mainella, Karen Gustin was appointed Superintendent of Big Cypress National Preserve. Her appointment signaled an important return of the Preserve’s management toward closer collaboration with those who sought to access the Preserve while still protecting resources. Three months before Gustin’s appointment, Southeast Regional Director Patricia Hooks had appointed Pedro Ramos as Deputy Superintendent; Ramos shared Gustin’s willingness to work with recreational enthusiasts to fulfill the Preserve’s legislative mandate, a concern that he still retained when he entered on duty as Superintendent of Big Cypress National Preserve in January 2009.<sup>39</sup> Both the Department of Justice and the Department of the Interior’s Solicitor’s Office recommended that the Preserve close all secondary trails until the EIS was concluded. This put the Preserve in a difficult situation: closing secondary trails would allow settlement discussions to move forward, hopefully avoiding a lengthy trial, but it would also “be very controversial and objected to by the Sportsmen community, State of Florida, and Congressional Delegation,” and was “likely to adversely affect our working relationship with the state and many stakeholders as it relates to our work to establish Everglades Headwaters NWR [National Wildlife Refuge] as well as agency and department efforts” at Biscayne National Park and Everglades National Park. Despite these concerns, Ramos, in his 2014 Briefing Statement, recommended making a settlement offer to close all secondary trails in the Preserve pending the

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<sup>38</sup> Briefing Statement, June 14, 2014.

<sup>39</sup> Franklin Adams, oral history interview, September 14, 2020.

completion of an EIS.<sup>40</sup> All secondary trails in the Preserve remain closed as of the writing of this Administrative History.

### ***Addition Lands: General Management Plan Addendum and Wilderness Studies***

The Preserve's efforts to implement the ORV Management Plan through the early and mid-2000s took place concurrently with the development of an addendum to the 1991 GMP focused on the Addition Lands. Although the Addition Lands were originally part of the draft ORV Management Plan in the late 1990s, they were removed from consideration until the Preserve had the chance to plan for them more comprehensively. The Addition Lands were, therefore, closed to nearly all ORV traffic (except for access to oil and gas exploration and extraction sites and to some private properties). Instead, the ORV Management Plan recognized that ORV use in the Addition Lands would have to be incorporated into an overall development plan. In addition, the ORV Management Plan included the requirement that NPS conduct a Wilderness Suitability Study before allowing ORV use in the Addition Lands.

The planning process for the Addition Lands GMP formally kicked off in June 2001 with the first public workshop. Held in Naples, the purpose of the meeting was to solicit ideas and concerns regarding the Addition Lands from agencies and the public for what was intended as a three-year project. The Preserve began developing management alternatives in late 2001 and, by the spring of 2002, had settled on four in increasing levels of protection for natural resources: the Preserve as a Destination, Multiple Recreational Opportunities, Emphasize Backcountry Experience, and Preservation. Only the Preservation alternative would ban ORV use entirely, but the Emphasize Backcountry Experience would designate only a limited ORV trail system "that enhances an isolated backcountry experience." In addition, the GMP team had developed three Management Zones around which to organize the alternatives: front country, backcountry, and primitive backcountry. The planning team also incorporated discussions of oil and gas regulations, tribal access, and the wilderness study, and submitted the draft alternatives to the Southeast Regional Office for review.<sup>41</sup> In late June 2002, Acting Regional Director Patricia Hooks wrote to Superintendent Donahue noting that the current draft alternatives were an improvement over an earlier version. Hooks reported, however, that "Neither the Denver Service Center nor this Office supports the inclusion of a wilderness assessment, wilderness study, draft wilderness proposal, or final wilderness proposal in the Addition Lands General Management Plan and Environmental Impact Statement." Instead, Hooks urged Donahue to include a list of potential wilderness areas in an appendix, and that appropriate management zones acknowledge potential future wilderness designation. "In our opinion," she continued, "tying the completion of the GMP/EIS to any official wilderness proposal will jeopardize the timely completion of the GMP/EIS." Hooks recognized that several areas in the Addition Lands might qualify as

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<sup>40</sup> Briefing Statement, June 14, 2014. The Everglades Headwaters National Wildlife Refuge had been created in 2012 with the donation of ten acres, but was, in 2014, actively working with public and private partners to acquire more land or interest in land through donation and acquisition to protect the inflow of water to Lake Okeechobee.

<sup>41</sup> Agenda for Alternatives Workshop #2, April 30-May 2, 2002, attached to email, Damon Doumlele to multiple recipients, April 22, 2002; BICY 26817, S3, SSA.

wilderness and outlined the methods that the planning should use when making these evaluations in a future wilderness study.<sup>42</sup>

Hooks' admonition to abandon the wilderness study was not adopted, however, and by early 2003, the planning team was finalizing the GMP alternatives and a revised draft Wilderness Suitability Assessment for submittal to the Southeast Regional Office. These draft documents were forwarded to the Washington Office, where Preserve staff briefed the NPS Director and staff from the Department of the Interior in July 2003.<sup>43</sup> From that point, however, the process slowed considerably. In June 2003, superintendent John Donahue accepted a lateral transfer to serve as Superintendent of Delaware Water Gap National Recreation Area, Pennsylvania, and was replaced on an acting basis by Deputy Superintendent Carol Clark. Acting Superintendent Clark transferred to Canaveral National Seashore in January 2005, where she served as Superintendent. Karen Gustin entered on duty at Big Cypress National Preserve as Superintendent in April 2005, having served as Superintendent of Pictured Rocks National Lakeshore, Michigan. Gustin led the resumption of activities on the Addition Lands GMP. In May, she contacted leaders of the Miccosukee and Seminole Tribes seeking their participation in the GMP process for the Addition Lands and, in December, organized an Open House program in Everglades City to discuss the draft GMP.<sup>44</sup>

By that time, however, planning was underway to re-orient the Addition Lands GMP. As Gustin explained in a memorandum to the Acting Southeast Regional Program Manager in March 2006, the Addition Land's enabling legislation and the ORV Management Plan both called for a wilderness study to be completed. She secured concurrence from the Southeast Regional Director to prepare a combined document that included a Wilderness Study, GMP, and ORV Management Plan for the area. Gustin observed that this expanded document would be a comprehensive development plan and "will allow us to provide a full range of public access to these lands upon completion of the plan. After 17 years since the expansion of the preserve the public is very interested in these lands being opened for recreational use."<sup>45</sup> The challenge with the requirement to study the Addition Lands for eligibility as a Wilderness Area lay in the ban on motorized or mechanical transport entailed by such designation; once an area is proposed for wilderness designation under the Wilderness Act of 1964, the use of ORVs would not be allowed.<sup>46</sup>

The planning team held a special workshop in July 2006 to discuss the wilderness suitability of the Addition Lands, which was followed by field investigation of eleven areas within the Addition Lands. In September 2006, Preserve staff hosted a meeting in Naples to

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<sup>42</sup> Memorandum, Regional Director, Southeast Region to Superintendent, Big Cypress National Preserve, June 25, 2002; BICY 313, B 4.

<sup>43</sup> Annual Narrative Report, Big Cypress National Preserve, 2003; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>44</sup> Karen Gustin to Mitchell Cypress, May 19, 2005, BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA; Gustin, circular letter to Residents of Everglades City, December 13, 2005, BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

<sup>45</sup> Memorandum, Superintendent, Big Cypress National Preserve to Acting Program Manager, Planning and Special Studies, March 16, 2006; BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

<sup>46</sup> Big Cypress National Preserve Wilderness Fact Sheet, May 2006; BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

develop a revised set of management alternatives for the GMP that took into account ORVs and the wilderness study.<sup>47</sup> This meeting resulted in the identification of six alternatives, which were made available for public review in a newsletter in early April 2007. In addition to the alternatives, the management zones had been expanded, and included a developed zone in addition to front country, backcountry, and primitive backcountry zones. The interplay among the various zone designations within the several alternatives created a complicated mosaic of uses throughout all the Addition Lands. Alternative A was the status quo/no action alternative, with the area remaining closed to hunting and ORV use. Alternative B would divide the land between a backcountry recreation zone (60%) and designating the remaining land as wilderness except for two strips of land, a front country zone and a developed zone along State Route 29. Alternatives C and D consisted of varying mixtures of uses including all four zones and wilderness areas. Alternative E designated the majority of the Addition Lands as backcountry/wilderness zones, and Alternative F was the most ecologically conservative, with much of the area designated as primitive backcountry and wilderness.

The Denver Service Center provided a summary of the 4,800 public comments submitted. Approximately 4,600 of the comments were the result of two separate email campaigns organized by Defenders of Wildlife. The emails that resulted from these campaigns were nearly identical, all of them voicing support for either Alternative A or Alternative F. Approximately 100 comment forms were submitted by mail, divided equally between Alternative B, calling for greater motorized access, and one of the more restrictive alternatives. Another 100 comments were received through the NPS planning website, 75% of which supported the more restrictive alternatives. Finally, there were thirty letters, equally divided between Alternative B and one of the more restrictive alternatives. In addition, USFWS submitted comments in June, raising several technical points to be considered including the ORV permit system, defining enforcement methods, relationships to the Comprehensive Everglades Restoration Program (CERP), hydrologic triggers for closures of areas based on water levels, and potential impacts to the West Indian Manatee in the southwestern corner of the Western Addition. Regarding the Alternatives, USFWS did not make a firm recommendation but stated its ability to collaborate on modifications to Alternate D.<sup>48</sup>

In August 2007, Preserve staff met with staff from the Washington and Southeast Regional Offices and the DSC for a three-day GMP planning session. Using the Choosing By Advantages decision-making process, the group identified Alternative D as the most advantageous as initially prepared and then modified it by adding high-ranking components of the other alternatives. Most of these modifications entailed adjusting zone boundaries to allow access to designated ORV trails and visitor contact stations on Interstate 75 at MM 63 and MM 51. With these modifications, Alternative D became the preferred alternative. At a follow-up staff meeting in September to refine the preferred alternative, Deputy Superintendent Ramos

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<sup>47</sup> Big Cypress National Preserve Addition Wilderness Suitability Assessment, July 11 and 12, 2006, BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA; Big Cypress National Preserve (BICY) Addition Lands Revised Preliminary Alternatives Workshop, Meeting Notes, September 12-14, 2006, BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

<sup>48</sup> Memorandum, Project Manager, Denver Service Center to Superintendent, Big Cypress National Preserve, undated but c. July 2007; BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA. See also Memorandum, Paul Souza (USFWS) to Karen Gustin, June 2007; BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

recommended that the team discuss the possibility of providing more access to the Addition Lands in ways that would not compromise the wilderness values. This discussion led to additional recommendations regarding connecting ORV trails from the original Preserve with those in the Addition Lands, including providing access to the Bear Island Unit.<sup>49</sup> At the direction of the Acting Southeast Regional Director, Preserve staff in March 2008 began meeting with multiple stakeholder groups, those who supported increased ORV access and those who supported additional wilderness designation. “From these meetings,” according to a summary prepared in May 2008, “it became apparent that the preliminary preferred alternative would encounter significant and widespread opposition if it were to go forward.”<sup>50</sup>

This strong response led Preserve staff to meet again with stakeholder groups in the spring of 2008 in an attempt to find elements which all could accept and develop new alternatives. Based on these discussions, a new Draft GMP was released in May 2009, including the wilderness study, ORV management plan, and EIS. By this time, Preserve and DSC staff had revised the list of alternatives to four. The no-action alternative and Alternative F, the most restrictive, remained largely the same. Alternative B would emphasize recreational opportunities with up to 140 miles of primary ORV trails and a secondary trail network in the areas zoned as backcountry recreation, which held 94,817 acres. In addition, 48,919 acres would be zoned as wilderness. The Preferred Alternative would include 85,862 acres zoned as wilderness, and 52,431 acres zoned as backcountry recreation. This alternative “would provide diverse frontcountry [sic] and backcountry recreational opportunities, enhance day use and interpretive opportunities along road corridors, and enhance recreational opportunities with new facilities and services.” In addition, the Preferred Alternative included visitor facilities on Interstate 75 at MM 51 and MM 63, 140 miles of primary ORV trails, and a maximum of 700 ORV permits per year.<sup>51</sup>

The May 2009 Draft GMP was released for public review and generated approximately 17,000 comments. Armed with this input, the planning team returned to work and prepared a draft final GMP, which was presented to the Southeast Regional Office in December 2009 and to the Washington Office in January 2010. An additional workshop in early 2010 focused on the eligibility criteria for wilderness designation, and NPS Director John Jarvis signed a revised Wilderness Eligibility Assessment in May. Final comments were integrated into the GMP, the final version of which was then released in October 2010. In the final GMP, the Preferred Alternative identified 65% of the Addition Lands, 96,413 acres, as primitive backcountry, 33% as backcountry recreation, with one percent each developed and front country zones. The lands designated as primitive backcountry included 47,067 acres found to be eligible for wilderness designation, where no motorized vehicle use would be allowed and which would be managed to protect natural values. Approximately 130 miles of primary ORV trails would be provided, and a maximum of 650 ORV permits would be issued per year. Development of the miles of primary trails and increases in the number of permits would be accomplished in phases. The GMP also

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<sup>49</sup> Choosing by Advantages Workshop Summary Report, Big Cypress National Preserve, Addition GMP/EIS, September 7, 2007; Big Cypress National Preserve Addition GMP Planning Team Meeting Notes, September 12, 13, 2007; BICY 399 GMP Supt's Office to be cataloged into BICY 26817, S5, SSA.

<sup>50</sup> Transcriptions of Selected Easel Pad Notes, Stakeholder Workshop: Big Cypress National Preserve Addition Lands GMP, Marco Island, Florida, May 20, 2008; BICY-378, Box 8 to be cataloged into BICY 26817, S3, SSA.

<sup>51</sup> *Big Cypress National Preserve—Addition: Draft General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan/Environmental Impact Statement*, May 2009.

included new access points for non-motorized recreational opportunities, including hiking, bicycling, horseback riding, hunting, and paddling. On Interstate 75, the GMP proposed a new access point at MM 51, providing both motorized and non-motorized activities, with visitor orientation and interpretation panels. At MM 63, the GMP proposed using the existing FLDOT rest area to create a new parking area with access for both motorized and non-motorized activities, together with a new visitor center and NPS operations facility.<sup>52</sup> In November 2010, USFWS released its Biological Opinion, determining that the GMP and ORV Management Plan for the Addition Lands “is not likely to jeopardize the continued existence of the Florida panther.”<sup>53</sup> A Record of Decision was then signed in February 2011.<sup>54</sup>

### ***Wilderness Designation and the Backcountry Access Plan***

Challenges to the Addition Lands GMP on procedural and legal grounds began almost immediately and compounded the series of lawsuits pertaining to ORV trails that had been filed from 2007 through 2012. A private organization, Public Employees for Environmental Responsibility (PEER), first filed a complaint regarding the wilderness eligibility portion of the Addition Lands GMP, arguing that it was not transparent, against accepted practices, internally contradictory, and in violation of the Wilderness Act of 1964 and NPS policies. The Southeast Regional Director refuted the charges in a June 2011 response, and a similar response was made by NPS Director Jarvis in September 2011. In October 2011, the National Parks and Conservation Association filed a complaint in federal court alleging that the wilderness eligibility assessment violated multiple Acts of Congress, NEPA, and the NPS regulations pertaining to ORV use, and that the USFWS Biological Opinion violated the Endangered Species Act. The Department of the Interior’s Regional Solicitor determined that, while the NPS position was defensible, NPS faced potential vulnerability regarding the wilderness eligibility assessment and, by late 2011, recommended that it be reconsidered.<sup>55</sup>

The Record of Decision (ROD) for the Addition Lands GMP, issued on February 4, 2011, provided a useful timeline of the internal discussions and evaluations regarding eligibility of some Addition Lands for wilderness designation. The first review of potential Wilderness Areas in the Addition Lands began in the summer of 2006, resulting in the determination that 111,601 of the 146,000 acres met the criteria for wilderness designation. This initial determination was incorporated into the draft GMP in 2009. Alternative F retained the entire 111,601 acres as wilderness; Alternative B proposed 48,919 acres for wilderness designation, and Alternative D, the preferred alternative, proposed 85,862 acres be designated as wilderness. As discussed earlier, the 2009 draft GMP generated extensive public comment, including many complaints about the extent of the total wilderness designation. Many of the commenters cited the extent of human disturbance in large parts of the Addition Lands, while others objected to the

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<sup>52</sup> *Final General Management Plan/Off-Road Vehicle Management Plan/Wilderness Study/Environmental Impact Statement, Big Cypress National Preserve*, October 2010, 80-82.

<sup>53</sup> United States Fish and Wildlife Service, “Biological Opinion for Final General Management Plan—Addition,” submitted to Big Cypress National Preserve,” November 17, 2010.

<sup>54</sup> A summary of the process of finalizing the GMP for the Addition Lands is provided in Briefing Statement, General Management Plan/Off-Road Vehicle Management Plan/Wilderness Study/Environmental Impact Statement, Big Cypress National Preserve, October 12, 2011; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>55</sup> *Ibid.*

restrictions on ORV use that designating the large amount of wilderness lands ensured. In response, NPS staff from the Preserve, the DSC, the Southeast Regional Office, and WASO revisited the 2006 wilderness eligibility assessment. This reevaluation of data resulted in the elimination of all wilderness designations in the Northeast Addition north of Interstate 75, as it had been farmed extensively and would require treatment for exotic weed control and fire management. In addition, the 2009 wilderness eligibility assessment eliminated all wilderness designation in the narrow Western Addition due to the need to establish buffers around the existing roads. As a result, the revised wilderness eligibility assessment found that a total of only 71,262 acres in the Addition Lands met the wilderness criteria; for the preferred alternative, 48,130 acres would be designated as wilderness.

All the environmental organizations that submitted comments on the draft final GMP for the Addition Lands opposed the preferred alternative and supported Alternative F, primarily on the grounds of the wilderness designation. Given the legislative mandate to balance recreation access with resource protection, the question of the Preserve's eligibility under the Wilderness Act of 1964 turned almost immediately to a question of access. Any portions of the Preserve determined eligible as wilderness would then be subject to stricter regulations regarding access for ORV and hunting uses, making the stakes high for advocates on all sides.

In the wake of completion of the Addition Lands GMP and the subsequent legal challenges beginning in late 2011, Preserve staff turned its attention to the original boundary of the Preserve, temporarily leaving the Addition's GMP and wilderness designation to its tortuous path through the court system. As discussed in Chapter 3, the Preserve's initial Wilderness Study was completed in 1980 and found no areas suitable for wilderness designation. With the elimination of dispersed ORV use, the acquisition of many private property inholdings, and the elimination of other incompatible uses since 1980s, however, many areas of the original Preserve had regained their wilderness setting. In 2013, Preserve staff began planning for a Backcountry Access Plan to revisit the question of wilderness eligibility within the original boundaries of the Preserve. In the fall of 2013, the Preserve announced a request for public input into the preliminary scoping document for the Backcountry Access Plan, preparation of which was originally intended to begin in November. The public comment period was extended to the end of February 2014, and then was reopened from March 11 to May 11 following the publication of a Notice of Intent to begin preparation of the plan. The Preserve received more than 230 comments during this period, and two open house events in April 2014, in Broward and Collier Counties, drew more than seventy people as NPS solicited input on a wide range of access issues, the qualities and values that the public associated with the Preserve, and current and potential public facilities. According to the announcement, the plan would include provisions for secondary ORV trails, non-motorized trails, camping management, and a permanent route for the Florida National Scenic Trail. Although based on the original ORV Management Plan of 2000 and the recent Addition Lands GMP, NPS acknowledged that "there is a need to further clarify the Preserve's management approach as related to secondary trails, camping, and other backcountry opportunities."<sup>56</sup> Although the Public Scoping Report noted that questions of wilderness and its protection had been raised, a wilderness eligibility assessment was not at that time specified as a component of the Backcountry Access Plan.

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<sup>56</sup> "Backcountry Access Plan Scoping Newsletter, Big Cypress National Preserve," Fall 2013; see also "Public Scoping Report: Backcountry Access Plan/Environmental Impact Statement," August 2014.



Later in 2014, however, NPS followed up on its Addition Lands wilderness eligibility assessment to examine the extent of possible areas of wilderness in the original Preserve boundaries. In January 2015 the Preserve released its report, identifying 188,323 acres that met the criteria for wilderness designation out of the total of 557,065 acres. The report was approved by the Southeast Regional Director in January, and by NPS Director John Jarvis in June. With the eligibility assessment completed, NPS announced on June 29, 2015, its intent to expand the scope of the Backcountry Access Plan to include a wilderness study. In January 2016, Superintendent Tammy Whittington announced a request for public input into the draft alternatives that NPS staff had developed for the Backcountry Access Plan. At that time, she also announced that the alternatives specifically for the wilderness designation components of the plan would be included with the Draft Backcountry Access Plan.

Of the five alternatives, the no-action alternative was the most restrictive, as it would include no secondary and no new primary ORV trails. The existing sixty-day ORV closure would remain, nonmotorized trails would continue to align closely with ORV trails, and dispersed camping would still be allowed. Alternative 2 was only slightly less restrictive than the no-action alternative, allowing only existing secondary ORV trails on resilient substrate soils but eliminating dispersed backcountry camping in favor of a limited number of camping sites to be available only by advance reservation. Under Alternative 3, new secondary ORV trails would be created to allow access to a broader range of areas. Dispersed backcountry camping adjacent to trails would be disallowed, but additional camping opportunities would be created at the ends of new secondary ORV trails and dispersed camping would be allowed in more remote areas of the Preserve. Alternative 4 retained the same secondary ORV trails as in Alternative 3 but would open new primary trails in accordance with the recommendations of the ORV Advisory Committee. Additional dispersed camping would be allowed in backcountry areas, and new campgrounds would be developed in the Addition Lands. Finally, Alternative 5 allowed the greatest access, allowing extensive new secondary ORV and hiking trails.<sup>57</sup>

In early 2018, Superintendent Whittington and Chief, Resource Management Division Ron Clark both left the Preserve, which put the Backcountry Access Plan on hold as the management of the Preserve underwent changes. Finally, in October 2020, under the leadership of Superintendent Tom Forsyth, who entered on duty in late 2019, the Preserve released the draft plan for public comment. During the period from crafting the draft alternatives in 2016 to completing the draft plan in 2020, the planning team made the decision to again separate the wilderness study from the Backcountry Access Plan. Citing federal regulations at 40 CFR 1508.25, the draft plan observed that the Backcountry Access Plan and the wilderness study “are neither connected nor interdependent actions and thus can be addressed appropriately in separate planning documents.” In addition, the planning team incorporated the wilderness eligibility assessments developed for the Addition Lands in 2010 and the original Preserve in 2015 into the draft Backcountry Access Plan, “with the result that all motorized recreational opportunities would avoid wilderness-eligible areas.”<sup>58</sup> In other ways, however, the Backcountry Access Plan

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<sup>57</sup> “Big Cypress National Preserve Backcountry Access Plan/Wilderness Study/Environmental Impact Statement Preliminary Alternatives Newsletter,” undated but likely January 2016.

<sup>58</sup> *Big Cypress National Preserve Backcountry Access Plan/Draft Environmental Impact Statement*, October 2020, page 1.

was similar to the draft alternatives presented in 2016. The Backcountry Access Plan contained five alternatives, including the no-action alternative, modified only slightly from the 2016 draft. Many of these changes reflected removal of areas designated as wilderness-eligible from access using ORV trails. Under Alternative 3, for example, the number of miles of secondary ORV trails decreased from ninety-four in the 2016 draft to eighty-eight in 2020, and the number of backcountry campsites was reduced to eighty-eight rather than ninety-eight. In the 2020 draft Backcountry Access Plan, Alternative 5 was identified as the preferred alternative, “because it provides the greatest amount of public access to the preserve [sic] while providing for protection of cultural and natural resources.” For the 2020 draft plan, the secondary ORV trails were decreased from 192 miles to 154, and the number of backcountry campsites fell from 229 to 203.

Released for public comment on October 26, 2020, the Draft Backcountry Access Plan and EIS was available for public comment through December 15. Preserve staff held public meetings on November 10, 12, and 18, 2020, conducted online due to the COVID-19 pandemic. No information on formal comments, from individuals, organizations, or agencies, was located during the course of this research. The response from environmental organizations, however, was clearly negative, and strongly worded. An article published online in December by PEER reprinted portions of a comment letter submitted by former Big Cypress National Preserve Superintendent John Donahue. According to the article, Donahue opined “The proposed backcountry access plan is the exact opposite of the prescription needed to accomplish your mission.” Echoing comments that he made at the same time in his oral history interview for this Administrative History, Donahue continued by observing that “It is tragic that for so many decades the National Park Service has spent most of its time and appropriations trying to accommodate the tiny number of visitors who enjoy being ORV users.”<sup>59</sup>

In response to the comments and during the first year of new leadership in the NPS Washington Office following the 2020 Presidential elections, Preserve staff rapidly undertook a massive and thoroughgoing revision of the Backcountry Access Plan. In a little over eighteen months, in August 2022, the Preserve presented a Supplemental Draft Backcountry Access Plan and EIS, which again included a wilderness study.<sup>60</sup> This new plan superseded the 2020 draft plan. Substantial components of the plan and its foundational data were revised completely, most notably the alternatives. From the set of five alternatives in the 2020 plan, which included up to 220 miles of new primary and secondary ORV trails, the 2022 plan was reduced to three alternatives. Alternative 1 remained the no-action alternative, which maintained the existing 278 miles of primary ORV trails and no secondary trails, allowed limited backcountry access, and had ORV and non-ORV users sharing most of the existing trail network, including the Florida National Scenic trail. The no-action alternative also included no recommendations for wilderness designation in the original Preserve. Alternative 2, which, in the 2020 draft provided the least access of the new alternatives, remained the same with some modifications. It retained the existing 278 miles of primary ORV trails, and added only fifteen miles of secondary trails, approximately 94% of which were on resilient to highly resilient soils. Alternative 2 also

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<sup>59</sup> “Big Cypress ORV Plan a Travesty: Former Superintendent,” published online by PEER: <https://peer.org/big-cypress-orv-plan-a-travesty-former-superintendent/> (accessed August 23, 2023). See also Donahue, oral history interview, February 22, 2021.

<sup>60</sup> *Big Cypress National Preserve Supplemental Draft Backcountry Access Plan/Wilderness Study/Environmental Impact Statement*, August 2022.

recommended twenty-four new backcountry camping sites and closed one existing site in the Stairsteps Unit to protect resources. Trails for ORV and non-ORV users, including those using the Florida National Scenic Trail, would be separated to allow for true backcountry hiking experiences. Under this alternative, 190,528 acres in the original Preserve and the Western Addition would be recommended to Congress for wilderness designation.

Alternatives 3, 4, and 5 from the 2020 plan were eliminated entirely and replaced by a new Alternative 3, the Preferred Alternative. Under this alternative, an additional fifty-four miles of primary ORV trails would be created from existing trails, and fifty-two miles of secondary ORV trails would be opened. More than 90% of the primary and secondary trails would be on resilient to highly resilient soils. The new primary trails included thirty-nine miles of airboat trails in the Stairsteps Unit and additional primary trails linking the Addition Lands to the original Preserve at Bear Island and through Mullet Slough. Trails for ORV and non-ORV users would be separated as in Alternative 2, and the hiking trail system would be expanded by 141 miles. This alternative also opened eighty-four new backcountry camping sites, including one in the Bear Island Unit on a former oil drilling pad, and closed the one site in the Stairsteps as in Alternative 2. In addition, dispersed backcountry camping would be permitted by pedestrian or nonmotorized access only. Finally, Alternative 3 included the recommendation that Congress designate approximately 147,910 acres of land in the original Preserve and the Western Addition as wilderness.

One of the key aspects of the 2022 draft was a redefinition of ORV trail resiliency. For the draft alternatives document in 2016, Preserve staff drew from the 2000 ORV Management Plan and a report prepared by Dr. James Burch in 2011 to determine the ability of particular soils and substrates to withstand ORV traffic. This approach led to four categories of substrate suitability: highly resilient, resilient, least resilient, and unsuitable. In preparing for the 2022 supplemental draft Backcountry Access Plan, Preserve staff visited and reassessed all proposed ORV trails to determine resiliency, which was defined using new standards for each of the four categories. According to the 2022 supplemental draft, “The on-the-ground assessment by preserve [sic] staff has revealed that much of the ORV trail mileage in the former [2020] preferred alternative is located on least resilient to unsuitable substrates.” This reassessment, combined with the desire to minimize impacts resulting from ORV use, led to the significantly scaled-back ORV trail mileage located primarily on resilient to highly resilient soils in the 2022 supplemental draft.<sup>61</sup>

The 2022 Supplemental Draft Backcountry Access Plan signaled another adjustment in approach for the Preserve’s management back to a stronger emphasis on protection of natural and cultural resources while maintaining and slightly expanding recreational access. In particular, the 2022 draft placed a greater emphasis on non-motorized recreational access such as hiking and bicycling, which were expected to have far less impact on the Preserve’s natural and cultural resources. This plan and its EIS have not been completed as of the writing of this Administrative History, and the Preserve’s secondary trails remain closed.<sup>62</sup> According to the Preserve’s website, the Backcountry Access Plan will “provide off-road vehicle (ORV) trails, non-ORV trails, and a camping management approach that protects the Preserve’s natural and

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<sup>61</sup> Ibid., page x.

<sup>62</sup> Christine Clark, oral history interview, September 17, 2020.

cultural resource values while providing for public enjoyment.” The Backcountry Access Plan will refer back to the 2000 ORV Management Plan and the 2010 GMP Amendment for the Additional Lands, but “there is a need to further clarify the Preserve’s management approach as related to secondary trails, camping, and other backcountry opportunities.”<sup>63</sup>

### *Hunting and the Florida Panther*

The use of ORVs on the Preserve has always been closely connected to recreational hunting. As discussed in Chapter 4 and Chapter 5, many of the concerns that Big Cypress National Preserve would become another national park came from those who advocated hunting as a valid recreational activity.<sup>64</sup> However, hunting, together with trapping and fishing, were explicitly protected in the Preserve’s enabling legislation, though all were subject to regulations in the interest of protecting the region’s natural and cultural resources. On the part of the Preserve’s early staff, hunting posed two challenges in particular: its association with ORV use, which was the only practical means to access large swaths of the Preserve, and its impact on the Florida panther, which relied on an abundant source of white-tailed deer for food; these same deer were the principal focus for hunters in the Preserve. The discussions related to hunting on the Preserve and its regulation were intimately tied to the relationship between NPS and FGFC, the state agency with responsibility for regulating hunting. Although the Preserve was federal property, the State of Florida had also designated the Big Cypress Swamp as an Area of Critical State Concern and a Wilderness Management Area, which allowed the state to establish additional land-use regulations and assured FGFC a role in how hunting was managed in Big Cypress Swamp. As described in Chapters 4 and 5, relations between NPS and FGFC often were contentious, as each had different views on how hunting should be managed on the Preserve and who had final responsibility for promulgating regulations. These competing visions were on full display during the preparation of the Preserve’s GMP in the late 1980s. After entering into an initial Memorandum of Understanding (MOU) in 1976, the two agencies commenced discussions about a renewed MOU in the fall of 1990, in which each agreed to cooperate with the other “in the joint enforcement of applicable wildlife and fish laws by utilizing existing Concurrent Jurisdiction and enforcing these laws and regulations” and to consult with each other prior to proposing regulations that affected hunting and fishing within the Preserve. In addition, NPS and FGFC agreed not to change the existing hunting regulations for a period of five years “without evidence of a need to do so for the protection of biological or other resources of the Preserve.”<sup>65</sup>

The two agencies continued with active discussions regarding the MOU, working with mediators throughout 1991 and into 1992, but relations continued to sour. Sticking points regarding the MOU remained the volume of hunting—measured in hunter-days per year—that would be allowed, whether and how quotas for harvests would be established, and whether

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<sup>63</sup> <https://parkplanning.nps.gov/projectHome.cfm?projectID=49334> (accessed August 17, 2023).

<sup>64</sup> Hunting, fishing, and trapping are prohibited in National Parks, but allowed in sixty-four of the 423 units of the National Park System. These units are designated as national preserves, national recreation areas, national rivers, national lakeshores, national seashores, etc. Big Cypress National Preserve was among the first units of the National Park System to specifically allow hunting in its enabling legislation.

<sup>65</sup> Draft Memorandum of Understanding between National Park Service and the Florida Game and Fresh Water Fish Commission, attached to letter, Fred J. Fagergren to Robert M. Brantly, May 23, 1991; BICY 26817, S3, SSA.

annual permits could be transferred from one hunter to another. At the same time as these institutional discussions were taking place, however, substantial discord at the staff level was emerging as well. The dissension arose from wildlife studies in the Preserve, which both agencies were conducting through the 1980s and into the 1990s, focusing on black bears as well as panthers. James Snyder, who served as Biologist at the Preserve beginning in 1984, and who continued in the same role and duty-stationed at the Preserve through multiple reorganizations that involved the National Biological Service and the U.S. Geological Survey, recognized the need for the Preserve to have a wildlife specialist. In the late 1980s he hired Deborah Jansen, then working for the FGFC, as a temporary wildlife technician with a focus on the Florida panther.<sup>66</sup> Superintendent Fagregren then created a full-time Wildlife Biologist position in 1991, hiring Jansen for the job. Jansen then led the planning and development of the Preserve's ongoing panther studies.<sup>67</sup>

Many of the challenges that NPS staff, including Jansen and her supervisor, Resource Management Specialist Buck Thackeray, encountered were the result of actions of FGFC Wildlife Scientist David Maehr, then recognized as one of the nation's leading experts on the Florida panther. In 1992 and 1993, the FGFC was conducting radio telemetry studies of the Florida panther in collaboration with NPS in hopes of determining their range. Jansen lodged multiple complaints against Maehr and the FGFC during that time, principally over what was seen by NPS as an unwillingness to communicate with NPS regarding findings, failure to secure permission to conduct research in the Preserve, lack of enforcement of hunting regulations, and an overall negative attitude toward inter-agency collaboration.<sup>68</sup> In the wake of Jansen's first complaint, Superintendent Hibbard wrote to the FGFC Bureau of Wildlife Chief of the complaints, singling out Maehr and his refusal to coordinate with NPS on research activities.<sup>69</sup> From his position with FGFC, Maehr was then developing the Panther Habitat Evaluation Model, which has since been discredited, in which he asserted that the Florida panther did not travel from forested areas. By the late 1990s, USFWS was using this model to determine that large areas proposed for development were unsuitable for the Florida panther and thus required no mitigation.<sup>70</sup>

The difficulties with David Maehr continued into 1993 despite a slow improvement in relations between the two agencies. In June 1993, Thackeray wrote to Superintendent Hibbard, summarizing the complaints that he and Jansen had made regarding Maehr. Thackeray recommended "that the pseudo-harmony between the NPS and Mr. Maehr be discontinued. This should be accomplished by removing Mr. Maehr's privilege to conduct research in Big Cypress National Preserve until such time he is willing to abide by NPS requests." As Thackeray noted,

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<sup>66</sup> James Snyder, oral history interview, September 18, 2020.

<sup>67</sup> Big Cypress National Preserve, Superintendent's Annual Narrative Report, 1991, identifies Wildlife Biologist Deborah Jansen as one of the fifteen permanent position changes during 1991.

<sup>68</sup> Memorandum, Deborah Jansen to BICY Resource Management File, March 3, 1992, BICY 26817, S3, SSA; Memorandum, Deborah Jansen to Supt. Hibbard, February 12, 1993, BICY 26817, S3, SSA.

<sup>69</sup> Wallace A. Hibbard to Tom Logan, March 25, 1992; BICY 26817, S3, SSA.

<sup>70</sup> See a summary of the Panther Habitat Evaluation Model and its rejection by leading scientists in the early 2000s, in John Kostyack and Karen Hill "Discrediting a Decade of Panther Science," January 2004, published on the National Wildlife Federation website, <https://www.nwf.org/~media/PDFs/Wildlife/DiscreditingaDecadeofPantherScience.ashx> (accessed August 24, 2023).

however, the dispute lay primarily with Maehr himself, and “I do not see the need for disrupting the continued improvement in interagency relations that both you and Col. [Robert M.] Brantly have committed so strongly to.”<sup>71</sup> The improved relations to which Thackeray referred included a series of discussions in late 1992 and early 1993 leading to agreement on several changes in the Preserve’s hunting regulations, particularly regarding additional restrictions on hunting in the Deep Lake Unit, as well as formal recognition that NPS has responsibility for camping and the use of ORVs.<sup>72</sup> In 1995, FGFC and NPS redefined their relationship through a “Letter of Concurrence,” which had similar but streamlined provisions as the earlier draft MOU and required collaboration and consultation on the promulgation and enforcement of hunting regulations on the Preserve, research support, and the mutual use of buildings and other facilities. As a sign of this cooperation between the agencies, Superintendent Hibbard announced in November 1995 that portions in the western section of the Preserve would be opened for hunting, though much of the eastern section, including the Corn Dance Unit, the Loop Unit, and portions of the Stairsteps Unit remained closed to hunting.<sup>73</sup>

The long-time Executive Director of FGFC, Col. Robert M. Brantly, retired in late July 1995, and was replaced by his former deputy, Dr. Allan Egbert. Superintendent Hibbard and Executive Director Brantly had apparently come to a general consensus and good working relationship, a reflection of Hibbard’s inclination to support recreational access to the Preserve. Brantly’s successor, however, seemed inclined to maintain the traditional distance between the two agencies, and relations again soured into the early 2000s, particularly following the appointment of John Donahue as Superintendent. As discussed earlier regarding ORV management, Superintendent Donahue came to the Preserve with a stronger conservation focus than his predecessor. In the spring of 2002, Donahue prepared two lengthy memoranda for the files regarding the worsening relations with Egbert, who was retiring from what, by then, was called the Florida Fish and Wildlife Conservation Commission (FWCC). In April 2002, Donahue wrote in response to two recent letters from Egbert to NPS Director Fran Mainella regarding the breakdown in relations between the agencies. Egbert alleged that the dissension was rooted in an assumption on the part of NPS that it had sole authority for managing hunting; in contrast, he claimed, the relationship was meant to be one of co-management due to the State of Florida’s role in acquiring Preserve lands and the legislative requirement to consult with what was then FGFC. “We know now,” Egbert stated in his letter to Mainella, “that this perception has led to a painful misunderstanding. The NPS never considered that it shared management responsibility with any agency and consistently endeavored to counter that perception by rulemaking, unilateral policy decisions, and assertion of jurisdictional authority.” Egbert took particular umbrage at what he claimed were unwarranted emergency closures of portions of the Preserve due to either high or low water conditions which cited impacts to wildlife and water as reasons for the closures. “Our staff,” he contended, “felt these concerns were exaggerated and that the closures would result in significant and unnecessary disruption of established hunting seasons and recreational activities.” Egbert also accused Preserve staff of seeking “an inexorable, deliberate transformation of the Preserve into a national park with ever-increasing restrictions on access

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<sup>71</sup> Memorandum, Chief, Resource Management Division to Superintendent, June 17, 1993; BICY 26817, S3, SSA.

<sup>72</sup> Robert M. Brantly to Wallace A. Hibbard, February 1, 1993; BICY 26817, S3, SSA.

<sup>73</sup> Unsigned Letter of Concurrence between FGFC and NPS attached to letter, Wallace A. Hibbard to Allan Egbert with request for signature, October 5, 1995, BICY 26817, S3, SSA; Press Release, November 3, 1995, BICY 26817, S3, SSA.

and allowable uses. NPS staff have always maintained that the Preserve shall be managed as a unit of the national park system (i.e., like a national park) and express little appreciation for the Preserve's unique history and uses."<sup>74</sup>

In his response for the Preserve's files, Donahue refuted the charges of lack of communication, observing that Egbert had directed Donahue to coordinate with FWCC Regional Director Mark Robson rather than Egbert, and that he regularly communicated with FWCC personnel. He also refuted the contention that NPS wanted to turn the Preserve into a national park, claiming that "We make every effort to ensure that those traditional activities are not only allowed but that they flourish." At the same time, he pointed out, Big Cypress "is not a game preserve it is a national preserve. We are bound by all laws that govern the management of the National Park System and have additional mandates that require some consumptive uses as well." The burden of NPS staff, he continued, "is to allow those consumptive uses in such a manner as to leave those resources unimpaired for future generations." Donahue noted the strong support that the Preserve had provided for scientific studies of wildlife, including financial and staff support for FWCC, and reaffirmed NPS' responsibility for compliance with the Endangered Species Act, writing "My staff, my predecessors and I have provided financial and personnel support to the FWC on panther management for many years. We have made every effort to accommodate the work and requests of FWC staff and have behaved professionally in every case."<sup>75</sup>

The growing conflict between FWCC and NPS regarding hunting was taking place at the same time as the ORV Management Plan was being completed and as planning was beginning for the Addition Lands GMP. In his letters to NPS Director Mainella, Egbert was particularly concerned about these issues, specifically the restrictions that had already been placed on ORV use by the recent management plan and the potential for further restrictions on ORV use and hunting in the Addition Lands. The Addition Lands had remained closed to nearly all public use since the 1988 legislation, first, because NPS did not acquire any of the land until 1996, and after 1996 they remained closed until an ORV Management Plan could be approved and a series of studies completed. These studies included baseline wildlife inventories and studies of the impacts that hunting might have on the endangered Florida panther.

In the wake of the GMP for the original Preserve in 1991 and the Addition Lands awaiting use, the status of the Florida panther continued to deteriorate. By the early 1990s, fewer than fifty of these elusive animals were known to exist. The Florida Panther National Wildlife Refuge was established on June 21, 1989, on 26,270 acres immediately west of the Preserve's Western Addition acquired as part of the land swap with the Collier family. It is administered by the U.S. Fish and Wildlife Service This was an important step, but additional studies to determine their habitat, how to support larger populations, and the impacts of hunting and other recreational use on their survival were needed. As discussed in Chapter 4, FGFC initiated its

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<sup>74</sup> Allan L. Egbert to Fran Mainella, February 25, 2002, attached to Memorandum, Superintendent, Big Cypress National Preserve, to Files, April 25, 2002; BICY 26817, S3, SSA.

<sup>75</sup> Donahue to Files, April 25, 2002. See also Donahue to Files, March 22, 2002, reporting on a conversation with FWCC Regional Director Mark Robson, who alleged that Egbert was not seeking cooperation between the agencies. Instead, "He told me that NPS had put them (FWC) in its place and implied that now it was their turn. . . He insisted that they were not trying to create a cooperative environment and that they had their own agenda." BICY 26817, S3, SSA.



studies of the Florida panther in the early years using radio telemetry, which began by placing radio collars on two adult males in 1982. Due to the difficulties in finding other panthers, however, FGFC ceased its work in the area south of Alligator Alley by the mid-1980s, choosing to focus instead on the northern area, though both FGFC and NPS continued to monitor the two collared animals. In 1989, NPS began its own studies of the Florida panther, monitoring four male and three female animals through 1995, and, in the early 1990s, NPS biologists removed two panther kittens for an attempted captive breeding program.<sup>76</sup> In 1995, NPS biologists received permission from USFWS to import eight female cougars from Texas to Big Cypress in an attempt to augment the Florida panther's gene pool; of these, five gave birth to healthy litters, with twenty-seven known offspring by 1999. Although some harmful genetic mutations have emerged as a result, estimates of the Florida panther population increased to approximately 200 by the early 21<sup>st</sup> century.<sup>77</sup> In 2000, Preserve scientists led by Wildlife Biologist Deborah Jansen captured and collared ten panthers, two of whom had been collared previously, "resulting in a 150% increase in the number of panthers now monitored by NPS staff."<sup>78</sup>

By the early 2000s, Preserve staff provided annual updates on threatened and endangered species, classified in three ways: stable, improved, and unknown. Red-cockaded woodpeckers and the state-listed bald eagle were both categorized as stable, panthers were categorized in the improved group, and Cape Sable Seaside Sparrows, manatees, and wading birds, especially wood storks, were in the unknown category. Big Cypress National Preserve had become an important component in the study of threatened and endangered species in Florida. Staff took an active role in the Multi-Species Ecosystem Recovery Team (MERIT) and the Wood Stork Research and Monitoring Working Group, both of which had been organized by USFWS. Monitoring of the Preserve's Florida panther population continued throughout the decade, and, by 2009, Superintendent Pedro Ramos reported that approximately 100 to 120 panthers were known to exist in south Florida, including twenty-five to thirty individuals in the Preserve. In the wake of the genetic restoration program of the mid-1990s, the number of documented panther dens had more than doubled. Telemetry surveys were conducted regularly and kittens tagged and microchipped for tracking. The problem by 2009, Ramos announced, was less the genetic deficiencies of the 1980s and 1990s and more the inability to preserve suitable habitat for the panther population that existed. It was up to the managers of public lands, he concluded, "to provide habitat and prey to support an animal that cannot be self-supporting given its limited space."<sup>79</sup>

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<sup>76</sup> Memorandum, Deborah Jansen to Ron Clark, February 19, 1996; BICY 16183 S2, SSA, SSS2, F29.

<sup>77</sup> Craig Pittman, "The Extreme Move that Save Florida Panthers from Extinction," published online at Literary Hub, January 28, 2020; <https://lithub.com/the-extreme-move-that-saved-florida-panthers-from-extinction/> (viewed August 23, 2023); "Genetic Rescue of Florida Panthers May Have Had Unintended Consequences," report by the University of Florida, August 22, 2022, available online at ScienceDaily: <https://www.sciencedaily.com/releases/2022/08/220822130300.htm> (viewed August 25, 2023). See also a summary of endangered species in Big Cypress National Preserve, unsigned and undated but apparently from GPRA summary for 1999; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>78</sup> Summary of Threatened and Endangered Species, part of GPRA Summary for 2000; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>79</sup> Briefing Statement, Florida Panther, Big Cypress National Preserve, March 4, 2009; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA. For earlier updates, see GPRA Update for 2001, and Annual Narrative FY2002, Resource Management Division, BICY 16183 100001/001.001.001-055 Folder 1 of 3.



As discussed in detail earlier in this chapter, preparation of the Addition Lands GMP was a long-delayed process due, in part, to questions over the suitability of the area for wilderness designation. Wilderness designation had implications for ORV use, which would be severely curtailed, but would not impact hunting and fishing so long as access was by non-motorized means. With hunting regulations in place for the original Preserve generating few controversies through the early 2000s and with the Addition Lands closed for nearly all public use including hunting, issues related to hunting and fishing were few while the GMP for the Addition Lands went through multiple reviews and revisions. Once the GMP was complete in 2010, however, the question of how to manage hunting in the Addition Lands, which the GMP allowed, needed to be addressed. As a result, in 2011, the Preserve began plans to prepare a Hunting Management Plan for the entire Preserve.

The development of a Hunting Management Plan, however, brought to the fore the long-standing relationship difficulties between the Preserve and FWCC. Despite the differing approaches to managing wildlife in the Big Cypress Swamp and the occasional personal antagonisms, the two agencies were required to work together since they both had responsibility for the region, and the Preserve's enabling legislation required NPS to consult with what was then FGFC. As discussed earlier in this chapter regarding ORV use, the various Superintendents for the Preserve adopted different emphases when it came to the ill-defined balance between preservation of the region's natural and cultural resources and recreational and consumptive uses of the Preserve. Superintendent Karen Gustin, who entered on duty in early 2005, and Pedro Ramos, her former deputy who succeeded her in 2009, sought to rebuild relationships with the community of sportsmen and recreational ORV users that had been more fraught under their predecessors. Franklin Adams, one of the early leading supporters of the Preserve in the early 1970s and a long-time leader in the Florida Wildlife Federation and other environmental interest organizations, was favorably impressed by both Gustin and Ramos. After Gustin left the Preserve, he recalled,

Pedro moved into the superintendent's position. I and the [Florida Wildlife] Federation—we lobbied for him because he listened. He—you could tell that he respected you personally, whether he agreed with you or not. And we made a great deal of progress with Pedro as superintendent of the Big Cypress.”<sup>80</sup>

This ability to mend and foster relationships put Ramos in a favorable position to negotiate a new agreement with FWCC. In 2011, the two agencies entered into a Cooperative Partnership Agreement. The purpose of the agreement was to clarify the roles of each agency and to assure a level of collaboration between them. The agreement explicitly recognized the role played by the State of Florida in supporting the creation of the Preserve as a financial contributor—the State had agreed to contribute \$40 million for land acquisition—and partner by donating 140,000 acres for the original Preserve. The agreement was a ringing endorsement of a kind of comity between the two agencies, who agreed to cooperate with each other on the enforcement of hunting regulations using their respective law enforcement staff, the development of regulations on traditional uses, conduct of environmental studies and creation of management plans, and the management of exotic and invasive species.<sup>81</sup>

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<sup>80</sup> Franklin Adams, oral history interview, September 14, 2020.

<sup>81</sup> An unsigned version of the agreement, dated December 1, 2010, can be found online: [https://www.nps.gov/bicy/learn/management/upload/NPSFWC\\_FINAL\\_PARTNERSHIP\\_AGREEMENT\\_032011](https://www.nps.gov/bicy/learn/management/upload/NPSFWC_FINAL_PARTNERSHIP_AGREEMENT_032011).

With this agreement in place between the two agencies responsible for overseeing hunting in the region, work on a Hunting Management Plan could begin. In the summer of 2011, the Preserve announced plans for a series of public meetings to be held in late August for the purpose of soliciting input on the scope of the proposed plan. At the outset, the Preserve announced three draft alternatives, prepared with the input of FWCC. A no-action alternative would extend the existing level of coordination on hunting in the Preserve to the Addition Lands, and a second alternative would maintain the existing hunting regulations and coordination between NPS and FWCC in the original Preserve but would prohibit hunting in the Addition Lands. Finally, a third alternative, drawing from the approach used in the 2000 ORV Management Plan, would use “an adaptive management strategy” based on the new Cooperative Partnership Agreement with a “clear decision-making and communications framework” between NPS and FWCC together with input from USFWS. This framework would allow the modification of hunting regulations with public input but without triggering the NEPA process.<sup>82</sup> More than 1,000 comments were submitted during the public scoping process from individuals, organizations, agencies, and Tribes with widely divergent responses regarding the allowance of hunting in the Addition Lands. Naturally, these opinions ranged from strong support to strong opposition.<sup>83</sup>

The Preserve conducted a Choosing By Advantages workshop in November 2011 and released a Preliminary Draft Hunting Management Plan and Environmental Assessment quickly on its heels in January 2012 and a formal draft plan in March 2012. The plan was the product of a collaboration among Preserve staff, the DSC, the Southeast Regional Office, USFWS, FWCC, and NPS contractors. The draft plan used the same three alternatives as announced in the scoping document and elaborated on them. In particular, the draft plan emphasized the use of a science-based approach to the adaptive management of hunting, “which permits the NPS and FWC, in consultation with the USFWS, flexibility to make changes to hunting protocol over time in response to changing ecological conditions, monitoring data, and/or public input.” The draft plan announced that Alternative 3, in which the original Preserve and the Addition Lands would both be open for hunting under the joint management of NPS and FWCC, in consultation with USFWS, was the preferred alternative as well as the environmentally preferred alternative. During the public comment phase, the same breadth of deeply-held opinion was again on view as it had been during the scoping phase in 2011. Most environmental groups recognized the need to provide for hunting as identified in the enabling legislation but felt that the plan and EA failed to provide sufficient baseline information regarding environmental impacts. The National Parks Conservation Association (NPCA), for example, wrote that

the Draft Hunting EA fails to address [environmental consequences under the different alternatives] except in vague terms that fail to meet the applicable legal and policy requirements... While the NPS’s preferred alternative relies on an adaptive management approach, that alternative is so lacking in parameters or specifics concerning the limits or controls that might be adopted or of the

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[pdf](#). (accessed August 26, 2023). An executed version of the agreement can be found in the *Draft Hunting Management Plan/Environmental Assessment*, March 2012, as Appendix B.

<sup>82</sup> Newsletter for Public Meetings, Hunting Management Plan, undated but approximately July 2011.

<sup>83</sup> “Hunting Management Plan/Environmental Assessment, Public Scoping Report,” Big Cypress National Preserve, October 2011.

environmental consequences of the range of options being considered that it is really nothing more than a plan to develop a plan in the future.

The Florida Wildlife Federation, which supported allowing hunting on the Preserve, felt that many of the statements in the EA reflected either ignorance of hunting practices or disdain for hunting and overstated the negative impacts. In addition, the Federation recounted the recent studies that suggested the loss of habitat as the major threat to the survival of the panther rather than the hunting of the panther's principal prey, the white-tailed deer.

In August, the Preserve released a *Revised Draft Hunting Management Plan/Environmental Assessment*. The revised plan responded to the comments on the first draft by giving increased emphasis to the protection of rare, threatened, and endangered species, providing additional details for how the process of adaptive management that formed the basis of the preferred alternative would operate, and providing additional data from wildlife and habitat studies that allowed comparisons between the existing management units and the Addition Lands. The NPCA, supported by other environmental organizations, continued to allege a lack of sufficient details in the adaptive management process, asserting that too much authority had been given to FWCC, and calling on NPS to prepare a full EIS rather than an Environmental Analysis. Following this second round of comments, the Preserve prepared a *Second Revised Draft Hunting Management Plan/Environmental Assessment* in December 2012.

Throughout 2013, NPS continued to work with USFWS and FWCC to revise the document, focusing on the adaptive management process with a principal concern for two issues: the success of the white-tailed deer population, and potential visitor use conflicts between hunting and non-hunting visitors. The USFWS prepared a Memorandum regarding an assessment of effects under the Endangered Species Act in April 2014, supporting the preferred alternative because the adaptive management strategy “offers the best use of science in decision-making and creates a cooperative atmosphere between NPS, the FWC, and the [USFWS].”<sup>84</sup> A month later, in May 2014, Southeast Regional Director Stan Austin released a Finding of No Significant Impact (FONSI) for the final Hunting Management Plan. The FONSI described the decision-making process for finalizing the plan's management recommendation, noting, in part, that:

The NPS is not proposing to take adaptive management actions related to other resources, such as other wildlife (including other game species), vegetation, or wilderness, because the management of these resources does not involve the same level of uncertainties as management of the white-tailed deer population and visitor use conflicts.

As described in the FONSI, the adaptive management process had two phases. The first phase sought to identify key components such as stakeholder involvement, management objectives and plans, and monitoring plans. The second was defined as an iterative phase “in which the components are linked together in a sequential decision process,” that included a constant feedback loop of monitoring, assessing impacts to resources against what was predicted, and adjusting the management practices.

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<sup>84</sup> Memorandum from USFWS dated April 23, 2014, quoted in “Hunting Management Plan/Environmental Assessment, Finding of No Significant Impact,” executed May 16, 2014 by Southeast Regional Director Stan Austin.

The final Hunting Management Plan presented a more complete explanation of the Preserve's adaptive management process, which was the key component of the preferred alternative. While acknowledging that the primary focus was on the Florida panther and its protection, the principal triggers for making adjustments to the hunting management strategies were identified as total hunter days and the number of deer harvested rather than the number of observed panthers. This approach was challenged by several environmental groups but remained in the final plan. The FONSI incorporated the justification for this approach defined in the final plan, noting that the distribution of the Florida panther "is not static, nor is it contained within any specific management unit or within the Preserve boundaries." The final plan went on to observe that "additional variables and stressors may cause changes in panther distribution, use, and occupancy of an area that may be unrelated to any potential effects of hunting activities." No studies to date had shown "a measurable effect of deer hunting on panthers. This not due to a lack of information on hunting and panthers; rather, it is due to the multitude of stressors that simply cannot be isolated to determine which stressor is the cause of a noted effect." Since white-tailed deer remain the principal prey for panthers, "factors relating to the deer population were determined to be the best indicator for decision-making regarding supplemental management actions for protection of the Florida panther population."<sup>85</sup>

The iterative approach to hunting as described in the final plan applied to the entire Preserve, including the Addition Lands, and relied on continuous monitoring by both NPS and FWCC and regular consultation with USFWS. The completion of the Hunting Management Plan in 2014 marked an important achievement in finding the balance between protection of natural resources and the continuation of traditional recreational and consumptive uses in Big Cypress National Preserve. Many issues remain for the management of the Preserve, most notably the Backcountry Access Plan which, as discussed in detail earlier in this chapter, involves the question of ORV use and remains incomplete as this Administrative History is being written. However, the Hunting Management Plan finally put the relationship between NPS and FWCC, which had been tempestuous for much of the Preserve's history since 1974, on a more stable footing. While hunting and provisions for ORV access have been among the most contentious issues the Preserve has confronted and have occupied significant amounts of staff time and attention since the late 1970s, Preserve staff have not had been able to focus on them solely. Big Cypress National Preserve is a vast area with irreplaceable and extraordinarily valuable natural and cultural resources, the management of which has required extensive and complicated attention, which is the focus of the next chapter.

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<sup>85</sup> *Final Hunting Management Plan/Environmental Assessment*, May 2014, page 48, which is attached to the FONSI as cited in the previous footnote.

## Chapter 8: Fire, Water, Oil, and More: Natural and Cultural Resources

Big Cypress National Preserve was established primarily to protect a range of resources, principally natural, while allowing for traditional recreational and consumptive uses and activities. The Preserve's enabling legislation, both the original 1974 law and the 1988 amendment that authorized the Preserve's boundary expansion, required a balance between these ostensibly competing requirements but provided few clues how that balance would be achieved. The previous three chapters discussed in some detail the creation of the Preserve's first General Management Plan in 1991 and the General Management Plan for the Addition Lands in 2010, development of a wilderness eligibility study, planning for recreational access from the extension of Interstate 75 from Tampa to Miami, and preparation of management plans for ORV use, hunting, and backcountry access, all attempts made by Preserve staff to find an appropriate balance between access and resource protection. Because of the complexity of these issues, the controversy that they generated, which highlighted substantial issues and changes in the Preserve's management, and the role of the Preserve in setting precedent for many of these issues as one of the first two national preserves in the National Park System, extended treatment was warranted. All planning efforts required vast amounts of staff time, which involved agency and public consultation, response to the steady stream of lawsuits from different directions, and preparation of multiple drafts of planning documents and the environmental assessments and environmental impact statements to support them.

In addition to supporting these planning efforts, the Preserve's Resource Management staff continued to work directly with the region's resources, including conducting research, consulting with agencies and tribes, and undertaking hand's-on activities in the field. Several sets of issues, including fire management, control of invasive vegetative species, protection of threatened and endangered animal species, planning for restoration of natural water flows and improvements to the Preserve's water quality, and coordinating the Preserve's oversight of oil and gas exploration and extraction, have remained at the core of the Preserve's resource management program. At the same time, there was a growing awareness of the importance of cultural resources to understanding of the Preserve's archeological and above-ground significance, which required regular management.

### *Resource Management Planning at the Preserve*

The fire management program at Big Cypress National Preserve is distinctive in the National Park System for the enormous scale of its operations and for its status as one of the first independent fire management divisions. It has been operated primarily as a component of the Preserve's overall natural resource management strategy and, at the time of this administrative history, reports to the Fire Management Officer of the South Florida Parks and Preserve. Chapter 3 included a discussion of the Preserve's resource baseline inventory completed in 1979 in anticipation of the first General Development Plan. As the baseline inventory was being developed under contract to Michael Duever and the Audubon Society in collaboration with the University of Florida's Center for Wetlands, the Preserve's new staff was beginning to plan for a resource management program. While focusing on fire management, invasive plant species, and

farmland reclamation, the Preserve's leadership also had to develop the program itself, including hiring and training staff, determining priorities for studies, developing an organization chart, and establishing appropriate boundaries between the Resource Management and Research Divisions.<sup>1</sup>

The challenges imposed by the Preserve's enabling legislation, to find a balance between recreational and consumptive uses and the protection of resources, an objective that was new within the National Park System, shaped the early direction and functions of the Preserve's new Resource Management Division. From the beginning, in the late 1970s and early 1980s, with pressure growing to allow expanded hunting opportunities in the Preserve, the Resource Management division initiated a long-term study of white-tailed deer, the primary prey for Florida panthers. According to the first annual report on the Preserve's new study on deer, "Very little information has been documented about the deer herd(s) in the Big Cypress Swamp or about hunting pressure/distribution, thus the information collected during the managed hunts this year (and future years) will be of extreme importance." Preserve staff collaborated with other state and federal wildlife officers to manage hunter check stations and to conduct surveillance on the ground and from helicopters as a way to understand hunting patterns, distribution, and success rates. The study also included biological data taken from deer brought to the check stations to create a database of information on the condition of the deer population in Big Cypress National Preserve.<sup>2</sup> Other early natural resource issues included identifying sensitive resource areas to provide a basis for future management decisions, coordinating with the State of Florida on the EMMD on the standards for evaluating Plans of Operation for proposed oil and gas activities, developing plans for the eradication of invasive plant species, and conducting research on fire management.

In late 1991, following completion of the Preserve's GMP, Resource Management Division Chief Buck Thackeray proposed a natural resources program that would shift from reliance on short-term project funding to a consolidated effort with a substantial increase in base funding. This proposal for an additional \$808,000 in the Preserve's operating budget also provided a snapshot of the Preserve's natural resource program, which consisted of seven full-time staff: Division Chief, Minerals Management Specialist, Resource Management Specialist, Wildlife Biologist, Vegetation Management Specialist, Computer Specialist, and Secretary. This staff oversaw seven major programs, including hydrology monitoring and restoration; exotic plant control; wildlife management, which was focused on monitoring and recovery programs and habitat improvement for endangered species, especially the Florida panther and the red-cockaded woodpecker; review and monitoring of oil and gas plans of operation; restoration of lands impacted by grazing, ORV use, logging, wetland drainage, and development; development of a robust GIS program; and fire management. These programs were supported by research programs including the impact of fire on vegetation, restoration of abandoned oil fields, invasive species control, and Florida panther recovery efforts.<sup>3</sup> There was no indication in the current

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<sup>1</sup> "Resource Management, Fiscal Year 1978," BICY-14661 s6 ssc f2. See also Memorandum, Acting Park Manager, Big Cypress National Preserve [Carroll Schell] to Chief, Natural Science and Research Division, Southeast Region, June 9, 1978; BICY 14661 S6, SSC, F2. Schell reported that a draft Resource Management Plan would be prepared in FY 1979; this plan, if prepared, was not located during the current research.

<sup>2</sup> "Annual Deer Season Report, 1978-1979: Big Cypress Wildlife Management Area," BICY 14661 S6, SSB, F8.

<sup>3</sup> "Action Plan: Base Funding Increase, Big Cypress National Preserve Natural Resource Management Program (Targets Parks Initiative FY 93)," undated but with attached handwritten memorandum from Thackeray to Superintendent Wallace Hibbard, December 4, 1991; BICY 26817, S3, SSA.

research that Thackeray's proposal was successful, but the Resource Management Division has remained vital to the fulfillment of the Preserve's mission.

### ***Fire Management***

For countless generations, fire has been a constant presence in south Florida, both from natural ignition in this section of the country with the highest incidence of lightning strikes, and from those fires caused by human action, whether intentional or accidental. The earliest inhabitants of south Florida, and Big Cypress Swamp in particular, had, for millennia, been aware of the advantages of fire as well as its dangers, as nature's way of sustaining long-term growth of various plant communities. Indigenous peoples and early land managers in the southeastern United States in the eighteenth and nineteenth centuries traditionally used fire to improve soil quality and boost crops, as fire replaced nitrogen and other nutrients into depleted soils. By the early twentieth century, however, the nation's leading foresters strongly opposed the idea of deliberately setting fires, seeing only the destructive power of fires and not their restorative capacity. Adopting the U.S. Army's approach to wildfires in the late nineteenth century, when it was responsible for the early Western parks, the U.S. Forest Service from the early twentieth century sought to suppress all fires. Having fought massive wildfires in the American West in the late nineteenth century, the U.S. Forest Service, in particular, sought always to minimize any opportunities for fires to ignite and to extinguish forest fires as quickly as possible.

In 1923, however, the U.S. Bureau of Biological Survey, predecessor agency to the USFWS, began a study of the decline of the bobwhite, a species of quail. The study quickly focused on the degradation of habitat as a major factor in the species' decline, which was soon attributed to a lack of fire in the forests where the bobwhite typically made their nests. The report, which was released in 1931, urged the inclusion of fire in forest management practices to preserve the natural habitat of a range of wildlife species. Initially opposed vigorously by the nation's foresters, the report and its findings gradually gained acceptance through the late 1930s and 1940s.<sup>4</sup>

Some foresters in the U.S. Forest Service began to accept the role of fire, both the allowance of wildfires and the use of controlled or prescribed burns, by the 1940s. The National Park Service, however, held to a strict fire suppression policy. Based originally in the vast parks of the west and with a strong conservationist impulse combined with an emphasis on attracting as many people as possible to the parks, early NPS leaders sought always to preserve the forests as they found them. Fires, in this view, destroyed the forests and the ability of visitors to enjoy them and, therefore, must be suppressed. This approach remained firmly in place well into the 1950s, while occasional studies in the early and mid-1950s began to show the positive potential

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<sup>4</sup> A. Sydney Johnson and Philip E. Hale, "The Historical Foundations of Prescribed Burning for Wildlife: A Southeastern Perspective," in W. Mark Ford et al., *Proceedings: The Role of Fire for Nongame Wildlife Management and Community Restoration: Traditional Uses and New Directions* (General Technical Report NE-288, U.S. Department of Agriculture, Northeastern Research Station, 2002), 11-23. See also the valuable historical overview of NPS' approach to fire management, Hal K. Rothman, *A Test of Adversity and Strength: Wildland Fire in the National Park System* (Washington, DC, National Park Service, 2005).

for fire in the maintenance of healthy ecosystems as well as the negative potential for making any wildfires that did occur dramatically worse.

South Florida was an important early center in the revision of this approach due to the annual presence of naturally occurring fires. In the early 1950s, Dr. Bill Robertson conducted the first studies of the value of managed fires in preserving the slash pine ecosystem in Everglades National Park, and, in 1958, the park became the first unit of the National Park System to use controlled, prescribed fires. The results of this initial managed fire strategy showed the benefits in maintaining the ecosystem and reducing the threat of uncontrolled fires by removing the accumulation of fuel in the form of dead and dying vegetation. In 1955, the McGee Fire near Sequoia and Kings Canyon National Parks in California burned approximately 13,000 acres and threatened the Grant Grove of giant sequoia trees. This fire and the scientific studies published in its wake that highlighted the role of accumulated underbrush in exacerbating the fire, led NPS officials to reevaluate the strict fire suppression policies then in place. In the early 1960s, NPS Science Advisor A. Starker Leopold chaired a committee focused on providing guidance for the management of wildlife in the National Park System. The Leopold Committee Report, which was released in 1963 and influenced a generation of NPS managers, placed great emphasis on the maintenance of wildlife habitats among other management policies. As the committee explained, “Of the various methods of manipulating vegetation, the controlled use of fire is the most ‘natural’ and much the cheapest and easiest to apply.” While admitting the challenges of implementing a controlled burn for the first time after fuel had accumulated from years of fire suppression, the committee, nonetheless, touted its value.<sup>5</sup>

Big Cypress National Preserve was established in 1974, just as NPS was beginning its shift toward allowing prescribed burns. The Preserve also benefited from its close association with Everglades National Park, the Service’s first center of research into the role of fire in wilderness management. For the first several years after the Preserve was established, however, NPS owned no land, and there was no need for fire management personnel. As the process of land acquisition accelerated through the late 1970s, however, the need became more apparent. The new staff at the Preserve, first led by Site Manager Irv Mortenson, coordinated with local and state agencies and, on October 24, 1978, agreed to take responsibility for fire protection for 350,000 acres of the Preserve. On January 1, 1980, the Preserve accepted responsibility for the remaining original 220,000 acres. From the beginning of the Preserve’s fire management program in the late 1970s, staff coordinated with the Florida Division of Forestry and the Ochopee Fire District on detection and suppression of fire, and, by 1979, fire management was the largest component of the Preserve’s Resource Management division. In 1979, only five years after the Preserve was created and well before all of the land had been acquired, the Superintendent’s Annual Report observed that “Big Cypress is considered by some to be one of the most fire impacted areas in the National Park System.”<sup>6</sup>

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<sup>5</sup> An online version of the Leopold Report can be found at [https://www.nps.gov/parkhistory/online\\_books/leopold/leopold.htm](https://www.nps.gov/parkhistory/online_books/leopold/leopold.htm). A discussion of controlled burns in Everglades National Park can be found on the park’s website at <https://www.nps.gov/ever/learn/management/prescribedfire.htm>. See also Bruce M. Kilgore, “Wildland Fire History: The History of National Park Service Fire Policy,” originally published in *Interpretation* (Spring 1986), available online at <https://www.nps.gov/articles/the-history-of-national-park-service-fire-policy.htm>.

<sup>6</sup> Excerpts pertaining to fire management from Superintendent’s Annual Reports between 1979 and 1985 can be found at BICY 14605 00002-004-002-020 Box 4.



Although the primary goal of the Preserve's fire program at that time was suppression, the imprint of the new way of thinking of fire was already evident. The 1979 General Development Plan, for example, included fire among its management objectives: "To utilize fire as a management tool ensuring that the influence of fire on the Big Cypress ecosystem maintains and perpetuates the dynamics of this system."<sup>7</sup> The Preserve began conducting experimental research burns in 1980 on 705 acres while the leaseholders who grazed cattle carried out prescribed burns on more than 6,000 acres, at a time when fire management was "the main topic of discussion concerning manpower utilization and resource impact." Experiments with prescribed burning took a back seat in 1981 when the Turner 10 fire erupted in May. This massive fire, which burned more than 160,000 acres in the Preserve, was, at that time, the largest fire ever to impact a unit of the National Park System. In 1982, however, the Preserve resumed its research burns with a burn of 112 acres and was selected as a pilot site for a new fire management system, FIREPRO. The following year, Superintendent Fagergren observed in his annual report that "This is the first year we initiated more burns than our 'visitors.'" In that year, the Preserve conducted prescribed burns on nearly 10,000 acres, while only 1,325 acres were subjected to wildfires. By the mid-1980s, the Preserve was conducting research burns primarily to study the response of plant and animal species to fire while undertaking prescribed burns for protection and resource management of more than 10,000 acres per year. All these efforts were supported by the use of aircraft, starting with helicopters in the late 1970s, which aided both in detection of fires and in the deployment of personnel to combat them using a fixed-wing Cessna airplane by 1980. By 1982, the Preserve's helicopter was fitted with a water tank to aid in suppression.<sup>8</sup>

The use of aircraft from the beginning of the Preserve's fire management program was vital not just for their assistance in detecting fire over so great an area and deploying firefighters to the site. From the beginning, in the late 1970s and early 1980s, the Preserve's helicopter and airplane were also used to collect data on fire, compiling an extensive database of information on locations, timing, fuel type, and more. Preserve staff put the early results of these data collection efforts to use in 1982 in the preparation of the park's initial Fire Management Plan (FMP). This plan was the first discussion of the role that fire could play in the overall resource management program at the Preserve. As Environmental Assessment was prepared for the FMP, which stated in the introduction, "The relationship of fire, hydroperiod, weather, and exotic plants, and man's interaction with them have an important influence on resources of the preserve [sic]." As with all resources and activities at the Preserve, the concept of ecosystem, the dense network of connections between the individual components and the ability of changes in one activity to impact many others, is vital to understanding the Preserve's fire management program. The relationship between fire and the Preserve's water resource was particularly marked, as the diversion of water from the natural sheet flow using canals created drier, more fire-prone, conditions.<sup>9</sup>

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<sup>7</sup> "Environmental Assessment for Big Cypress General Development Plan and Shark Valley/Tamiami Development Concept Plan," Appendix B, 1979; BICY 14661 S2, SSA, F1.

<sup>8</sup> See excerpts from 1979 to 1985 Superintendent's Annual Reports between 1979 and 1985, BICY 14605 00002-004-002-020 Box 4. See William Evans, oral history interview, March 1, 2021, for additional insights regarding the use of aircraft for fire detection and suppression.

<sup>9</sup> "Environmental Assessment, Fire Management Plan, Big Cypress National Preserve," a component of the Preserve's Fire Management Plan, undated but cited in the 1991 General Management Plan as 1982; BICY 14661 S2, SSA, F1.

The Environmental Assessment which was incorporated into the final FMP considered four alternatives. Alternative A would put the Preserve's focus solely on fire suppression with no attempts at prescribed burning. Alternative B, which was the preferred alternative, would allow all fires to burn under predetermined conditions and to a predetermined extent while also using prescribed burns to meet the Preserve's management objectives. Alternative C would allow natural fires and prescribed burns in certain areas and times but suppress all human-caused fires, and Alternative D would allow all fires to burn at all times. The Environmental Assessment presented the results of a thorough and densely woven ecosystem-based analysis of the potential of fire to affect multiple resource areas including vegetation, wildlife, soils and water, air quality, esthetics, the socioeconomic environment, and cultural resources, all resting on the accumulation of data that had been gathered during the previous three years of observation. As defined in the final FMP, natural fire is "the preferred means of achieving management objectives in natural zones where past management activities and related external influences have not appreciably altered the resource." Prescribed burns, still being studied at the Preserve, "will eventually be used as a substitute for natural fire where natural fire cannot meet predetermined objectives," and, along with natural fires that would be allowed to burn under certain conditions, would be used to control exotic vegetation, reduce the hazardous accumulation of flammable materials around improvements and roadways, clear land during site reclamation, and clear and prepare agricultural ranges in that era when cattle grazing was still practiced on the Preserve. Fire suppression would be used only in specific conditions such as to protect human life, cultural resources, physical facilities, and threatened and endangered species, and to prevent uncontrolled spreading.<sup>10</sup>

The 1982 Fire Management Plan remained in effect throughout development of the GMP, which was completed in 1991. By that time, Preserve staff had begun using the fire program to more fully support natural resources goals, including protecting and enhancing habitat for endangered species. According to the GMP, prescribed burns were being used to maintain nesting habitat for the red-cockaded woodpecker and the Cape Sable Seaside Sparrow, though "much of the preserve's [sic] interior needs a broader application of prescribed fire for better management of natural communities. The absence of periodic fire has caused advanced plant succession, a shift in wildlife habitat, and the accumulation of hazardous fuel levels in some portions of the preserve." The use of prescribed burns was then incorporated into the preferred action, including special concern subzones of the proposed natural zone for the red-cockaded woodpecker and Cape Sable Seaside Sparrow to "be maintained principally by prescribed burning."<sup>11</sup> According to a proposed action plan for the Preserve's Resource Management Program later in 1991, however, the fire management efforts remained deficient in "evaluating the ecological effects of prescribed natural fire," and the use of prescribed burns "for the benefit of endangered Florida panther prey base forage and habitat for red-cockaded woodpecker is well below perceived needs."<sup>12</sup> In 1994, therefore, when a revised Fire Management Plan was completed as an action plan of the recently-completed Resource Management Plan, Preserve

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<sup>10</sup> Ibid., 4-5.

<sup>11</sup> *General Management Plan*, 1991, page 12 (first quote), page 26 (second quote).

<sup>12</sup> "Action Plan, Base Funding Increase, Big Cypress National Preserve Resource Management Program (Targeted Parks Initiative FY 93)," draft report, undated but with transmittal slip from Chief of Resource Management Buck Thackeray to Superintendent Wally Hibbard, dated December 4, 1991; BICY 26817, S3, SSA.

staff incorporated habitat restoration as well as control of exotic vegetation species into its research and operations programs with regard to fire. The very size of the Preserve, however, mitigated against the expansion of the use of fire for habitat restoration: “even with the current efforts, much of the Preserve’s interior areas need a broader application of ‘prescribed fire’ for better management of natural communities.”<sup>13</sup>

By 2001, Big Cypress National Preserve had “one of the most effective fire organizations in the park system.” The Preserve’s program included using prescribed fires on 40,000 to 50,000 acres per year, one result of which (in combination with effective enforcement measures) was to reduce dramatically the level of human-caused wildfire. By the late 1990s, the Preserve’s fire program had become a separate management division, the Fire and Aviation Division, which was, according to Superintendent Donahue, “we believe the first such division in the Park Service.”<sup>14</sup> Two years later, the Fire and Aviation Division conducted prescribed burns on 33,277 acres, which it considered “an average year for the fire program at Big Cypress.”<sup>15</sup> Subsequent iterations of the Preserve’s Fire Management Plan in 2005 and 2010 made slight modifications to the earlier plans, but all of them retained the implementation of sufficient prescribed burning to support ecosystem needs and protection despite limited funding and staff, and provided for the special requirements of increasing numbers of threatened and endangered species. In 2014, Preserve staff coordinated with the adjoining Florida Panther National Wildlife Refuge on a joint Fire Management Plan that drew upon recent research into seasonal needs of burning to support habitats for threatened and endangered species. In the Environmental Analysis for the proposed joint Fire Management Plan, completed in July 2016, Preserve and National Wildlife Refuge staff developed two alternatives, a no-action alternative that continued the existing practices and an Alternative B that allowed the use of mechanical treatments for reducing hazardous fuel levels, protecting buildings and structures, incorporating plans for cultural resources and landscapes, and using more current research to define boundaries for areas to be burned. In addition, both alternatives in the proposed Fire Management Plan would incorporate the areas that had recently been proposed for wilderness designation during the Backcountry Access Plan that was then being considered.<sup>16</sup>

This proposal for a joint Fire Management Plan for the Preserve and the Florida Panther National Wildlife Refuge was not implemented. In late 2016, NPS Director John Jarvis issued “Director’s Order No. 100, Resource Stewardship for the 21<sup>st</sup> Century,” which was based on a recent update to the 1963 Leopold Report on the management of wilderness in the National Park System and included references to strategies that would allow NPS to adjust to new conditions resulting from climate change along with other factors. Although rescinded the following summer, Director’s Order No. 100 informed an Environmental Analysis for a new Fire Management Plan for the Preserve in 2017 that incorporated most of the changes in the proposed joint Fire Management Plan of the previous year, including the use of mechanical and chemical

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<sup>13</sup> “Big Cypress National Preserve Fire Management Plan,” December 1994, page 5; BICY 16183 S2, SSA, SSS2, F17.

<sup>14</sup> GPRA Summary, Big Cypress National Preserve-Fire Management,” March 22, 2001; BICY 26817, S3, SSA.

<sup>15</sup> Annual Narrative Report, Big Cypress National Preserve, 2003; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>16</sup> “Big Cypress National Preserve and Florida Panther National Wildlife Refuge, Fire Management Plans, Environmental Assessment,” July 2016; see also “Public Scoping for Fire Management Plans for Big Cypress National Preserve and Florida Panther National Wildlife Refuge,” January 8, 2015.

means to reduce the accumulation of plant materials. The resulting Fire Management Plan for the Preserve, which was completed in October 2019, also required for the use of the Minimum Impact Strategies and Tactics approach to fire management that had been developed by wildlife managers throughout the nation since the 1990s. The plan relied on awareness of the specific hydrological conditions at the Preserve and included decision-making processes for managing wildfires. The Preserve's Fire Management Plan was approved in February 2020, and remains in force.

### *Invasive Species*

Perhaps the most intractable challenge faced by the Preserve's resource management staff was the eradication of invasive plant species. Three species were of principal concern: Brazilian pepper, Australian Pine, and melaleuca. Of these, the control and eradication of melaleuca was a particularly elusive goal. *Melaleuca quinquenervia* was brought to south Florida from Australia in the early twentieth century as a decorative tree and a windbreak for farms and was first planted in Big Cypress in the 1940s. It has been extraordinarily successful at the expense of native plants, colonizing vast areas of the Preserve by the 1970s. A study proposal in 1990 succinctly explained the success of melaleuca in the particular ecosystem of the Preserve:

Melaleuca is unparalleled in its fire adaptability. The inner bark holds moisture and insulates the tree from heat while the outer bark burns readily helping to carry the fire to the crown. In hot fires the green leaves will burn due to their high content of volatile oils. The thin poorly insulated branches will burn resulting in the opening of the [seed] capsules several days later. The seeds are then released on a perfect, competition free, nutrient-enriched seedbed.<sup>17</sup>

Preserve staff began efforts to control melaleuca in 1978, conducting experiments into various methods with only limited success for several years. Initial strategies included felling each tree with a chainsaw and then treating the stump with herbicides, particularly 2, 4-D. By the early summer of 1983, fifty sites had been treated in this way "with very little success." Different approaches were tried through the mid-1980s, including pulling seedlings and partially stripping the bark of established trees and injecting herbicides. Later in the 1980s, the Preserve hired a contractor to eradicate melaleuca on 870 acres primarily using stump treatments but also employing several different herbicides in varying concentrations. In 1989, Preserve staff also tried aerial spraying, with minimal results. In 1990, the Preserve proposed to collaborate with the Nature Conservancy, which received a grant from the FGFC to study the use of fire in combination with various herbicides to control and eradicate melaleuca.<sup>18</sup> Despite these efforts, the plant continued to spread and, by early 1992, was estimated to occupy approximately six percent of the Preserve's total area. At that time, the concern was growing that melaleuca, together with Brazilian pepper and Australian pine, "could modify the region's water table, create abnormal ecological instability within the Preserve and hasten the extinction of many native species."<sup>19</sup> This, in turn, could negatively impact critical habitat for endangered species

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<sup>17</sup> "Melaleuca Control Program, Big Cypress National Preserve, Fiscal Year 1990," BICY 26817, S3, SSA.

<sup>18</sup> Ibid.

<sup>19</sup> Briefing Statement, Exotic Vegetation Management, February 1992; BICY 26817, S3, SSA.

such as the Florida panther and the Cape Sable Seaside Sparrow. By 1994, melaleuca covered more than 186 square miles.<sup>20</sup>

An important program in the early 1990s offered some promise in the battle against melaleuca. In the early 1990s, the Preserve and Dade County entered into a partnership with Dade County as a result of the proposed expansion of the Krome Detention Facility that had a substantial wetlands impact. The Krome Detention Facility was built in 1965 as a missile launch and radar site in the wake of the Cuban missile crisis of 1962 and transitioned to a military base in the 1970s. The facility was renovated in the early 1980s to house refugees following the Mariel boat lift. Dade County began planning for a major overhaul in the early 1990s to add six dormitories to house up to 300 new detainees.<sup>21</sup> A major component of the mitigation agreement between the Preserve and Dade County provided for the treatment of melaleuca on 21,498 acres near Monroe Station and the proposed facility, using \$1.5 million provided by Dade County. The Preserve used a three-phased approach: initial treatment of all melaleuca trees and seedlings using the direct application of herbicide, retreatment of any seedlings or re-sprouts a year later including prescribed burning, followed by long-term surveillance and inspection. The Preserve contracted with Applied Aquatic Management, Inc. in 1995 to conduct the work, and the first phase was completed in early 1997. The herbicide treatment followed by prescribed burning was successful in the short term, producing few signs of seedlings after the second treatment.<sup>22</sup>

Progress against melaleuca was slow throughout the late 1990s, particularly as the Addition Lands, where the invasive plant had never been contested, were acquired. Preserve staff, often contracting with private firms, continued to work on melaleuca infestations throughout the entire area. As a result of this steady effort from the mid-1980s through the late 1990s, however, there were signs of promise by the early 2000s. In early 2003, NPS Director Fran Mainella visited the Preserve to take part in a “Symbolic Last Melaleuca Removal” event which “marked the completion of initial treatments of melaleuca trees for the entire Preserve.”<sup>23</sup> The melaleuca removal program was one component of the overall habitat restoration program, a principal focus of the Preserve from the 1990s, which was furthered by the release of the ORV Management Plan in 2001. As discussed in Chapter 6, the ORV Management Plan provided protection for critical habitat by gradually replacing dispersed ORV traffic with designated trails; this allowed for the restoration of large areas of the Preserve. In 2005, two successive hurricanes—Rita and Wilma—set back the restoration program as the disturbed soils that remained from uprooted trees provided favorable areas for a reestablishment of melaleuca and other invasive species. By early 2006, however, the Preserve reported that more than fifteen million melaleuca trees had been removed, and all known locations of Australian pine and Old World climbing fern had been found and targeted for treatment, leaving primarily the Brazilian pepper without any controls.<sup>24</sup>

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<sup>20</sup> Antonio J. Pernas, “Monroe Station: Melaleuca Control Project, Progress Report, Completion of Phase I,” March 1997; BICY 16183 S1, SSC, SSS1, F3.

<sup>21</sup> “A Look Inside Krome: From Cold War Base to Immigrant Detention Facility,” *Miami Herald*, October 11, 2015.

<sup>22</sup> See also Briefing Statement, Invasive Exotic Plants, February 23, 1998; BICY 26817, S3, SSA.

<sup>23</sup> Annual Narrative Report, Big Cypress National Preserve, 2003; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>24</sup> Briefing Statement, Natural Landscape Restoration, January 11, 2006; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

In the late 2000s, scientists from Florida Gulf Coast University, the Florida Fish and Wildlife Research Institute, the University of Florida, and Big Cypress National Preserve began work on a study of changes to the plant community at the Preserve in response to the program of melaleuca removal. Using a series of detailed land use maps and GIS, the team studied changes in vegetative cover throughout the Preserve from 1990 to 2004. The study verified the success of the melaleuca eradication program, reporting that more than forty percent of the Preserve had transitioned from coverage by melaleuca to wetland forest, and nearly thirteen percent of the Preserve had transitioned from melaleuca to prairie lands.<sup>25</sup> By 2012, the Preserve reported that more than sixteen million melaleuca trees had been removed, leaving only the Old World climbing fern and the Brazilian pepper requiring continued eradication. While under control by the 2010s, however, all the invasive species have required constant maintenance treatments to prevent reinfestation.

By this time, in 2012, the Preserve's treatments for invasive species were being guided by the *Exotic Plant Management Plan and Environmental Impact Statement*, published by the South Florida and Caribbean Network (SFCN) and finalized in August 2010. This plan was the result of a collaborative effort begun in the early 2000s among nine units of the National Park System: Big Cypress National Preserve, Biscayne National Park, Canaveral National Seashore, Dry Tortugas National Park, Everglades National Park, Buck Island Reef National Monument, Christiansted National Historic Site, Salt River Bay National Historic Park and Ecological Preserve, and Virgin Islands National Park. The SFCN is a component of the NPS Natural Resource Inventory and Monitoring Program created by Congress in 1998. Originally consisting of six units of the National Park System with significant natural resources, it is now one of thirty-two such networks in the nation and provides support for research and inventory of biological resources at each of the member parks. The SFCN began work on the exotic plant management plan in approximately 2004 and, in September 2006, released a draft plan for public and agency review. The draft plan, which was approved in 2010 with only minimal revisions, contained three alternatives, including a no-action alternative in which each park "would continue to treat infestations of exotic plants on an ad hoc basis using a variety of physical, mechanical, chemical, and biological methods and through currently available funding." The two action alternatives called for an adaptive management strategy that would draw upon the resources of the entire network for inventory, treatment, mitigation, and monitoring. The preferred alternative added to this systematic approach "an active restoration program to enhance the return of native species to treated areas in selected high-priority areas."<sup>26</sup> This plan remains in place to guide the Preserve's ongoing work to control invasive species.

### ***Hydrology and Water Quality***

As discussed in previous chapters, the earliest discussions of protecting the Big Cypress Swamp revolved around water and the role that the area played as a vital source of fresh water

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<sup>25</sup> Paul Julian, Edwin Everham III, Anne Hartley, Martin Main, and Jim Burch, "Plant Community Changes in Big Cypress National Reserve in Response to Melaleuca Removal," conference paper, January 2010; available at [https://www.researchgate.net/publication/267027477\\_Plant\\_Community\\_Changes\\_in\\_Big\\_Cypress\\_National\\_Preserve\\_in\\_Response\\_to\\_Melaleuca\\_Removal](https://www.researchgate.net/publication/267027477_Plant_Community_Changes_in_Big_Cypress_National_Preserve_in_Response_to_Melaleuca_Removal) (accessed September 7, 2023).

<sup>26</sup> *South Florida and Caribbean Parks Exotic Plant Management Plan and Environmental Impact Statement, Abbreviated Final*, August 2010. The draft plan is dated September 2006.

for the adjoining Everglades. The Preserve's earliest planning documents identified water as the principal resource, and, in the 1980s, the DSC contracted with William J. Schneider, an independent hydrologist, to conduct the first hydrologic assessment of Big Cypress. Schneider's work informed the development of the GMP, which included a hydrologic monitoring plan that called for the continued use of the Preserve's water monitoring stations to provide the baseline information that would allow the proposed action: "to maintain and restore, to the extent feasible, natural water flows and water quality in the disturbed areas and to avoid further hydrological disturbance to the Big Cypress watershed." The monitoring stations, according to the GMP, would be used to "identify and quantify existing problems and future threats to water resources," in combination with the rehabilitation of existing water flow disturbances and the development of new regulatory actions to prevent further intrusions.<sup>27</sup> With regard to the Preserve's hydrologic restoration program, the GMP included continued work on Turner River and Deep Lake Strand to mitigate the adverse effects of the Turner River and Birdon Canals built in the late 1960s and early 1970s, including the use of plugs to block water from some sections of the canals and culverts to restore sheet flows. The preferred alternative also included the mitigation of the Loop Road, portions of which impounded water on the north side, and Bear Island Road, a former logging tram road upgraded to an access road for oil developments. In addition, the GMP included provisions for restoring more than 150 acquired tracts of land, containing abandoned buildings and oil pads, by removing structures and altering roads on those tracts to allow more natural sheet flow.<sup>28</sup>

In 1990, while the GMP was being finalized and after Congress authorized the expansion of the Preserve's boundary, Schneider was contracted again to conduct a hydrologic assessment of the Addition Lands. Schneider's study, however, was based primarily on existing map resources and extrapolation from adjacent water sources, as there was no existing data on the hydrology of either the Western or Northeastern Addition Lands.<sup>29</sup> By 1992, as portions of the Addition Lands were acquired by NPS, three new water monitoring stations had been installed. These new stations began generating data useful for preparation of the Preserve's first Water Resource Management Plan, which the DSC's Water Resources Division funded in 1991. The plan emerged from a workshop in 1993 in which twenty-seven participants from the Preserve, other NPS sites, and federal and state officials, identified research needs and objectives for a water management program at the Preserve. William Schneider was again contracted to prepare this plan along with co-authors, Big Cypress Hydrologist Don Weeks and DSC Hydrologist David Sharrow. A draft plan was completed in July 1995, and the final plan was released in May 1996.<sup>30</sup>

The final Water Resources Management Plan provided a concise overview of the Preserve's hydrologic system, including drainage patterns, flow characteristics, precipitation, and ground water aquifers. In the process of defining the objectives for water resource management in the Preserve, the plan observed that, in addition to the challenges resulting from the need to

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<sup>27</sup> *General Management Plan, Final Environmental Impact Statement, Big Cypress National Preserve*, 1991, 52.

<sup>28</sup> *Ibid.*, iv, 54-57.

<sup>29</sup> William J. Schneider, "Hydrologic Assessment of the Big Cypress National Preserve: A Water Resource Analysis for the Additions," May 1990; BICY-25.

<sup>30</sup> William J. Schneider, Don P. Weeks, and David L. Sharrow, *Water Resources Management Plan: Big Cypress National Preserve*, May 1996.

balance the preservation of resources with recreational and consumptive uses, the Preserve is also just one component in the attempt to manage and restore the natural hydrologic system of south Florida, from Lake Okeechobee south to the Everglades and from coast to coast. The final plan provided a brief summary of the inability to separate the water resources of the various agencies:

Hydrologic interdependence exists between the Preserve and both Water Conservation Area 3A [managed by the South Florida Water Management District] and Everglades National Park to its east and south. The southeastward flow through Mullet Slough, in the northeastern Additions of the Preserve, flows directly into Conservation Area 3A. Water releases from this Conservation Area enters the Preserve and Everglades National Park, with the majority of this recharge flowing through Everglades National Park and then across the southeastern corner of the Preserve and into the estuarine environment of the Park. Releases from Conservation 3A also flow across Tamiami Canal at the water control structures, with water free to flow westward in the canal to the Preserve.<sup>31</sup>

Working collaboratively with other state and federal agencies, therefore, the Preserve had to manage the permitted uses, such as oil and gas exploration and extraction and ORV use, with regard to impacts on water flow and quality and conduct extensive inventory and monitoring programs. By 1996, when the plan was finalized, the Preserve used fourteen monitoring stations, with support from the South Florida Water Management District under a Cooperative Agreement, to provide baseline data as well as ongoing monitoring of water quality and quantity.

In line with recommendations from attendees at the 1993 workshop on water resource management, the plan identified long-term programmatic issues and specific recommendations. The programmatic issues included the continuation of long-term monitoring, the gathering of baseline information from the several state and federal agencies operating in south Florida, and coordination among the several agencies with responsibility for water management in the region. Specific issues at the Preserve with the potential to affect water resources included the encroachment of agricultural uses on adjacent lands, land use on the Miccosukee and Seminole Reservations that abut the Preserve on the northeast corner and uses by indigenous peoples within the Preserve, the changing relationship between salt and fresh water resulting from the earlier development of canals and drainages, oil and gas practices, wetland restoration programs, ORV use, non-federal land uses within the Preserve, mercury pollution, the few remaining grazing leaseholders, sources of groundwater pollution from historic industries, and NPS uses of water. In order to address these several programmatic and specific issues, the Water Resources Management Plan recommended an adaptive approach focused on monitoring, data management and the development of specific restoration programs in collaboration with other state and federal agencies. The plan proposed an ambitious program of expanded research as well as specific projects which, combined, would require additional staff in accordance with a proposed organizational structure for a Water Resources Division. As the plan concluded, the proposed management program “represents an ambitious effort to establish a firm, hydrologically-sound basis for competent, rational management of the water resources of the Preserve through detailed

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<sup>31</sup> Ibid., page 30.



understanding of its hydrology, knowledge of major influences on it, and a strong database to support decision-making.”<sup>32</sup>

The Preserve gained support to follow through on many of the ambitious goals of the Water Resources Management Plan, which a briefing statement two years later noted was “proving to be an excellent management tool in the dynamic hydrological and political environment of south Florida.” By that time in early 1998, Preserve staff had already begun collaborating with the U.S. Geological Survey on a study of the aquifer system in south Florida and was cooperating with the U.S. Army Corps of Engineers in the restoration of the natural hydrology in the eastern portion of the Preserve surrounding the L-28 Canal.<sup>33</sup> In 2000, the Preserve entered into a five-year Cooperative Agreement with the South Florida Water Management District to conduct a helicopter-based water quality monitoring program, prepared a draft Turner River Management Plan and initiated a two-year restoration project there, and continued to develop new and expand existing hydrologic databases.<sup>34</sup>

Through the early 2000s, Preserve staff continued its extensive water quality and flow monitoring program, which was expanded with the acquisition of the Addition Lands in the mid- and late 1990s. The growing hydrologic databases for the Addition Lands were incorporated into the Addition Lands GMP, which was completed in 2010. Unlike the original Preserve boundaries, where it was believed that rainfall accounts for nearly all water with only a small percentage flowing into it from surrounding regions, the Northeastern Addition, in particular, receives a more substantial amount of water from the adjoining uplands. Also unlike the original Preserve, the Northeast Addition lies within a larger freshwater system extending from Lake Okeechobee to the Everglades and flowing in a generally southeasterly direction. The 2010 GMP provided a summary of recent research into the hydrology of the Addition Lands, much of it by Preserve staff, that allowed understanding of the potential effects resulting from actions proposed for the Addition. As discussed in Chapter 7, the question of ORV use in the Addition Lands was a point of contention in the development of the GMP, and much of the discussion of water resources focused on the impact of ORVs on surface water flows, which can be affected substantially by ruts caused by repeated ORV use, and on water quality, on which ORV use was found to have a negligible impact.

The environmental impact statement that accompanied the 2010 GMP for the Addition Lands evaluated the potential environmental consequences of the preferred alternative, including recreational uses, oil and gas activities, and surface flow restoration projects. The surface water flow in the Addition Lands would be impacted primarily by the development of new facilities, restoration activities, recreational developments, and new ORV trails, though the GMP included plans to mitigate these impacts in the design and construction phases so that “the impact of these activities on sheet water flow would be long term, moderate, adverse, and mostly localized in the Addition compared to the no-action alternative.” In particular, provisions in the ORV Management Plan for new trail development “would minimize the impacts of off-road vehicles on surface water flow into the portion of the Addition that abuts the original Preserve at localized

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<sup>32</sup> Ibid., 45.

<sup>33</sup> Briefing Statement prepared for the Appropriations Subcommittee, Big Cypress National Preserve, Hydrology, February 23, 1998; BICY 26817, S3, SSA.

<sup>34</sup> GPRA Goals summary, undated but c. 2000; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

sites because best management practices and mitigation would maintain or improve hydrologic flow.” Similarly, impacts resulting from oil and gas activities in the Addition Lands “would be reduced because NPS approval of the operations plan would require mitigative measures.” The principal south Florida ecosystem restoration activity in the Addition Lands was the proposed removal of the L-28 interceptor canal and modifications to the L-28 Tie Back canal, together with the decompartmentalization of Water Conservation Area 3. The hydrologic impact of these actions, the GMP concluded, “is expected to be long term, major, and beneficial.”<sup>35</sup>

From its origins through the mid-1980s, the Preserve’s staff did not include a hydrologist. Although water was recognized as the Preserve’s primary natural resource, all of the early monitoring efforts were led by Resource Management Division staff, with support from the United States Geological Service, the USACE, the FCD, and Southeast Regional staff. Finally in 1988, Superintendent Fagergren hired Don Weeks to serve as the Preserve’s first Hydrologist within the Resource Management Division; he had previously served as the Hydrological Technician for Buffalo National River, Arkansas. Weeks remained on staff for only a year, taking a position as Hydrogeologist with Woodward-Clyde Consultants in 1989, where he continued to interact with issues pertaining to the Preserve. Weeks then returned to the Preserve in 1995, helping to prepare the Water Resources Management Plan which was completed in 1996. In 1997, Weeks accepted a transfer to serve as Hydrologist with the NPS Water Resources Division in Fort Collins, Colorado. Superintendent Hibbard then hired Robert Sobczak as Hydrologist, who entered on duty in August 1998. Sobczak expanded on the Preserve’s water management program, developing a helicopter-based monitoring program through a Cooperative Agreement with the South Florida Water Management District in 2000 that allowed for the inclusion of six new sites, and expanding on the Turner River restoration program by developing strategies to manage the river on a more holistic pattern than had previously been done.<sup>36</sup>

Sobczak recalled that through the 2000s, his attention began to turn from the study of the Preserve’s water flow toward a larger restoration program of the entire Preserve. This enlarged program, beginning in the early 2010s, started with an understanding that the Preserve’s water flow had been more impacted by human activities than had been assumed through the 1980s and 1990s: “we’ve kind of re-drawn that history to understand that the Preserve is a lot more hydrologically impacted than we thought.” He started with a pilot project to re-engage and expand the Turner River restoration program, what he termed “a major overhaul of the ‘plumbing system’ within the greater Turner River watershed.” This program, dubbed the Ochopee Restoration Pilot Project, used the knowledge of the hydrologic system of the southwestern portion of the Preserve to reestablish a more natural sheet flow to the Turner River drainage.<sup>37</sup>

This pilot project was followed in 2019 by the release of a major study that revised the long-term understanding of the Preserve’s watershed, first proposed by William Schneider in his 1985 hydrologic assessment, as being largely self-contained. In light of the Preserve’s ongoing

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<sup>35</sup> *Big Cypress National Preserve—Addition, Final General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan/Environmental Impact Statement*, 2010, pages 336-337.

<sup>36</sup> Big Cypress National Preserve Annual Accomplishments Report, Fiscal Year 2000; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>37</sup> Robert Sobczak, oral history interview, September 18, 2020.

monitoring efforts and changes to the landscape since 1985, the 2019 report argued that the Preserve is hydrologically connected to adjacent watersheds and that canals and levees continue to alter the natural hydrologic regime. This study, combined with the Ochopee Restoration pilot program, served as the basis for a Hydrologic Restoration Management Plan. As Sobczak recalled, “Every time we would do an element of that pilot project, the reviewing agencies and other external reviewers would say, ‘Well, what are you doing next?’” The various attempts at hydrological restoration, he observed, are “something that we’ve been doing for decades in the Preserve but never really in an organized fashion that’s really informed by a plan.” Sobczak and the Resource Management Division began an internal planning process in 2018, but the process was put on hold during 2021 following the arrival of Superintendent Tom Forsyth and the easing of restrictions due to the COVID-19 pandemic. The Preserve then held public scoping process in the summer of 2021, and in October released the final Hydrologic Restoration Management Plan and Environmental Analysis.

The goal of the plan was to “provide an overall framework for making drainage infrastructure in the Preserve ‘sheet flow neutral,’ allowing the natural topography—not canals or levees—to dictate natural water flow.” The EA presented three alternatives: the No-Action alternative in which existing infrastructure would continue to be maintained and modified on an ad-hoc basis; an alternative that would rely on passive water management techniques such as culverts for elevated road beds and filling canals to wetland grade, which would then continue to operate without further intervention; and an alternative that incorporates the passive management of the first action alternative and adds the removal of a limited number of roads and the construction of bridges at certain major flow-ways. This last alternative, which was the preferred alternative, identified nine potential bridge projects throughout the Preserve.<sup>38</sup>

The restoration goals identified in the Hydrologic Restoration Management Plan will be of benefit not just to the Preserve but also as part of the larger Everglades watershed given the influence that the Preserve’s sheet flow has on the region’s hydrologic regime. By the 1970s and 1980s both environmental and political leaders were coming to realize the devastating effects of the Everglades drainage and water control program that was completed following Congressional approval in 1949 of the USACE’s plan. In addition to the impacts on the flora and fauna of the Everglades, including many threatened and endangered species, the availability of ground water for the rapidly growing cities on Florida’s Atlantic coast began to rapidly diminish. The South Florida Water Management District began coordinating with the USACE, Everglades National Park, and the Preserve to monitor the region’s hydrology in the early 1990s, and in September 1993 the Departments of Interior, Agriculture, Commerce, Army, Justice, and the EPA signed an interagency agreement that created the South Florida Ecosystem Restoration Task Force to develop methods and plans for a region-wide ecosystem restoration effort.<sup>39</sup> In 1996, Congress passed the Water Resources Development Act (WRDA) that, among many other things, expanded the Task Force to include state, local, and tribal governments, and served as a forum for all of the agencies that were involved in restoring the Everglades watershed. All four units of

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<sup>38</sup> *Hydrologic Restoration Management Plan and Environmental Analysis, Big Cypress National Preserve, Florida*, October 2021; quotation on page 3.

<sup>39</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, re: FY 94 Accomplishments, August 9, 1994; BICY 26817, S3, SSA.

the National Park System in south Florida are represented on the Task Force, with the Superintendent of Everglades National Park serving as the official NPS representative.

Staff from Big Cypress National Preserve worked with the Task Force, and with other regional programs aimed at the restoration of south Florida's ecosystem, through the late 1990s including the Governor's Commission for the Everglades and the Big Cypress Basin Project Coordination Team.<sup>40</sup> All of this coordination led to the establishment by Congress of the Comprehensive Everglades Restoration Plan (CERP), a component of the Water Resources Development Act of 2000. The CERP, enacted by President William Jefferson Clinton on December 11, 2000, is an on-going, wide-ranging ecosystem restoration program involving many federal and state agencies and impacting natural resources across the entirety of south Florida. The program initially called for sixty projects that included the creation of above-ground and below-ground reservoirs that would reduce a reliance on Lake Okeechobee and water conservation areas for municipal water, the creation of 35,000 acres of marches to serve as natural water filters, and the promulgation of regulations that required federal and state water management agencies to take into consideration the impacts of projects on water quality and quantity and on threatened and endangered species. A raft of studies was planned to guide these multiple projects, including detailed investigations and monitoring efforts of watersheds and distinct marine environments throughout the region. The program was designed to take more than three decades and many billions of dollars to implement; by the early 2020s, the timeline had been extended to at least 2050.

### ***Oil and Gas Activities***

The Preserve was noted for its exceptionally high water quality, and its protection was one of the top priorities for evaluating oil and gas exploration and extraction projects. As discussed in Chapter 4, the Preserve, in coordination with USFWS, also identified potential impacts to endangered species, specifically the loss of trees that served as habitat for the endangered red-cockaded woodpecker and from construction of access roads that could facilitate ORV access. Drawing on the promulgation of regulations for oil and gas activities throughout the National Park System by the NPS Minerals Management Program in 1978, and in consultation with the Big Cypress Advisory Committee, the Preserve implemented review procedures for proposed oil and gas exploration and extraction projects in which the oil company submitted a plan of operation for review by NPS, the USACE, and the Florida DNR. These procedures were incorporated into the Preserve's GMP in 1991, which included the provision that no more than ten percent of the Preserve's surface area could be used for oil and gas projects at any one time. As part of the GMP process, the Preserve identified Important Resource Areas, defined as having significant resources that could be threatened by consumptive uses. No oil or gas activities could take place within them, although seismic testing and directional drilling could both be conducted underneath these areas under defined conditions. The Preserve's regulations regarding oil and gas activities and the requirement to submit a plan of operation did not apply to those facilities that were in operation prior to 1979 or to those who could access their non-federal oil and gas sites without crossing federal lands.

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<sup>40</sup> Update for Annual Report, February 22, 2000; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

In early 1992, shortly after the GMP was made final, there were two active oil fields within the Preserve, both being operated by Exxon under leases from Collier Resources, the owner of the mineral rights: at Bear Island in the northwestern corner of the Preserve with fifteen producing wells, and at Raccoon Point in the southeast with seventeen producing wells. Both fields were discovered in the 1970s. Of those thirty-two wells, twenty-nine were operating under approved plans of operation. In addition, there were forty-eight shut-in wells where production had been reduced and twenty-nine abandoned wells.<sup>41</sup> In March 1993, Exxon transferred all its mineral leases in the Preserve to Calumet Florida, Inc., and, by early 1995, Calumet was operating three fields, though with only twenty-six wells, and had proposed to drill sixteen new wells.<sup>42</sup>

### *Collier Resources Company's Plans of Operation*

By 1997, Collier Resources, who owned the mineral rights under the Preserve, including under the Addition Lands, was coordinating directly with NPS regarding plans of operation for oil and gas activities under the agreement incorporated into the legislation that expanded the Preserve's boundary. In a meeting in September, Collier's representatives outlined a long-term plan that included more than thirty wells and twenty-five areas for seismic surveys.<sup>43</sup> By the summer of 1998, Collier Resources had submitted eleven plans of operation, none of which had yet been approved. In late June, Collier Resources delivered a nineteen-page letter to Superintendent Hibbard in response to an NPS request for additional information for a proposed plan of operations in Fifty Mile Bend. In the letter, Collier Resources claimed that, while agreeing with the need to conduct oil and gas activities in an environmentally responsible way, the stipulations in the Preserve's Minerals Management Plan "so increase the restrictiveness on exploration and production activities that there is a serious question whether new resources and the search required to find them can be accomplished at all or in a cost effective manner." In support of their point, Collier Resources cited advances in oil exploration and extraction technology that greatly reduce environmental impacts. Throughout the summer of 1998, however, the Preserve repeatedly replied to proposed plans of operation by requesting additional information in compliance with the Minerals Management Plan that was a part of the GMP.<sup>44</sup> In particular, the Preserve's most frequently requested information was summarized in a supportive memorandum from the Chief of the Mineral Operation Branch of the DSC, James C. Woods, regarding a proposed plan of operation for Monroe Station. Woods observed that Collier Resources had yet to "establish its right to operate in any of the proposed areas. Demonstration of the right to operate is a fundamental information requirement to assure that a project proponent has bona fide property rights with respect to a mineral interest and to prevent wrongful park resource damage." A particular point of concern was seismic testing in areas where Collier Resources did not own the mineral rights and

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<sup>41</sup> Briefing Statement, Oil and Gas Operations, February 1992; BICY 26817, S3, SSA.

<sup>42</sup> Briefing Statement for Appropriations Subcommittee, February 16, 1995; BICY 16183 S2, SSA, SSS2, F5. See also notification of Exxon's transfer of mineral leases to Calumet Florida, Inc. in Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, August 4, 1993; BICY 14661 S5, F40.

<sup>43</sup> Memorandum, Resource Management Specialist to Superintendent, September 23, 1997; BICY 26817, S3, SSA.

<sup>44</sup> Robert D. Duncan, Jr. to Wallace Hibbard, June 30, 1998; BICY-313 Box 1. This letter from Collier Resources is part of an extensive correspondence between the Preserve and Collier Resources throughout the summer of 1998 in BICY 26817, S3, SSA.

whether third party mineral owners consent is necessary for undertaking 3-D seismic activities across NPS surface in order to evaluate Collier owned minerals only...To clarify, the NPS requires written consent of the third party mineral owner. Absent that consent, there is no demonstrated right to operate, and the NPS as the surface management agency, is under no obligation to allow access.<sup>45</sup>

Collier Resources encountered even more substantial opposition to its proposed plans of operation in the Addition Lands from the State of Florida. In early 2000, the Florida Department of Community Affairs provided comments on a proposed plan of operation for the Landing Strips site with regard to the state's Coastal Zone Management Act and the Florida Coastal Management Program (FCMP). In addition to observing that Collier Resource's application was premature because not all paperwork had been submitted, the Department of Community Affairs reported that "Significant concerns were raised by the Department [of Community Affairs], the Department of Environmental Protection (DEP), the South Florida Water Management District (SFWMD), and the Fish and Wildlife Conservation Commission regarding the compliance of the proposed action with FCMP." After providing background on the State of Florida's long history of strictly regulating oil and gas activities, the Department of Community Affairs argued that Collier Resources "should also have taken into consideration the cumulative impacts of the approximately 30 similar plans under sufficiency review by the National Park Service which have not yet been submitted to the state." In addition, the Department of Community Affairs cited the lack of consultation under Section 7 of the Endangered Species Act, evaluation of the protective measures used in seismic testing, and methods for handling abandoned wells. Finally, the Department of Community Affairs argued that, given the large number of projects that Collier Resources was proposing concurrently, "it is inappropriate for the Park Service to assess the initial CRC [Collier Resources] proposal individually instead of considering all the drilling proposals and their impacts as a whole." In light of the extensive program that Collier Resources had proposed, the State argued that an Environmental Impact Statement would be required.<sup>46</sup>

The Preserve did not take up the State's recommendation to require an EIS but did hold firm throughout 2000 and into 2001 that Collier Resources provide documentation that it had an ownership interest in the mineral rights to the areas they planned to survey and also to require Collier Resources to address substantive issues with the plans of operation.<sup>47</sup> Finally on September 10, 2001, Collier Resources submitted revised plans of operation for eleven of the sites, with mineral ownership information, to the Preserve, which allowed NPS to conduct its review and environmental assessment.<sup>48</sup>

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<sup>45</sup> Memorandum, James C. Woods to Superintendent, Big Cypress National Preserve, January 28, 1999; BICY 26817, S3, SSA. See also Superintendent Hibbard's follow-up letter to Collier Resources Attorney Robert Duncan, July 1, 1999, in the same file, in which he reaffirmed the need for third-party owners' consent for seismic testing: "In addition, our discussions have caused the NPS to reflect on the adequacy of the map you provided that depicts the location of CRC [Collier Resources Company] mineral interests. The map is helpful but does not adequately satisfy NPS regulatory requirements regarding ownership documentation (e.g. copy of deeds, leases, assignment of rights, etc.)."

<sup>46</sup> Steven M. Seibert to Wallace Hibbard and Robert Duncan, March 3, 2000; BICY 26817, S3, SSA.

<sup>47</sup> John Donahue to Robert Duncan, August 31, 2000; BICY 26817, S3, SSA. See also multiple letters throughout late 2000 from Collier Resources to the Preserve requesting clarification and disputing arguments that it needed to provide ownership information in advance of an approved plan of operation.

<sup>48</sup> GPRA Goals for 2001; BICY 16183 100001/001.001.001-055 Folder 1 of 3. The eleven sites were: Baxter Island South, Monroe Station SE, Baxter Island NE, Baxter Island SE, Bamboo Barrens, Airplane Prairie, Horseshoe Head,

At the same time that the Preserve was working with Collier Resources on the individual plans of operation, NPS staff were also working on a new minerals management plan for the entire Preserve. In early 1999, Superintendent Hibbard proposed the development of a new plan that would amend the existing 1991 Minerals Management Plan by taking into account the recently-acquired Addition Lands and the rapidly-changing technologies for oil and gas exploration and extraction. This plan would include preparation of an Environmental Impact Statement. The technology for conducting seismic surveys had changed significantly with the advent of 3-D seismic surveys that were “conducted over a smaller area in an intense grid pattern of perpendicular sources and receiver lines,” with the sound waves created by detonations interpreted by computer software “so that geologists can predict the likelihood of the presence of oil-bearing formations.”<sup>49</sup> By 2000, the Preserve had contracted with URS Corporation, to begin work on the new project which, in early 2001, was identified as an Oil and Gas Management Plan and Environmental Impact Statement intended to cover the entire Preserve. The Preserve released its first newsletter for the plan in June 2001, soliciting public input and identifying four preliminary alternatives. The first, the no-action alternative, would retain the existing Minerals Management Plan that was part of the 1991 GMP for the original boundary and the new review process that was incorporated in the 1988 legislation for the Addition Lands, and maintain the existing requirement that no more than ten percent of the Preserve’s lands be occupied by oil and gas activities at any one time. A second alternative would create Special Management Areas and Special Management Concerns, which were similar to the Important Resources Areas identified in the 1991 GMP that imposed resource-specific limitations on oil and gas activities but continuing the existing requirements for all other areas. The third alternative would prohibit direct impacts to the surface, such as roads and drilling pads, in the Special Management Areas, but would allow directional drilling to subsurface areas in some cases. The final alternative proposed that the federal government acquire all mineral rights in the Preserve.<sup>50</sup> The Preserve hosted two public meetings in July 2001, in Miami and Naples to garner responses to these management proposals. Within a month of the release of the Oil and Gas Management Plan’s newsletter, multiple state and national environmental organizations submitted comment letters, all of them recommending a strict curtailing of oil and gas activities at the Preserve.<sup>51</sup>

#### *Acquisition of Collier Mineral Rights and Office of Inspector General Investigation*

Preserve staff, working with the DSC, began work on a draft management plan in the fall of 2001. This work was put on hold, however, when a proposal emerged in early 2002 for the federal government to acquire all of Collier Resources’ mineral interests in the Preserve. This proposal was the latest component in a long-running discussion beginning in 1995, when Collier Resources made a similar offer to exchange its mineral rights for the obsolete Homestead Air Force Base outside of Miami. The Department of the Interior and the Department of Defense were unable to come to an agreement at that time, and the issue lay dormant while Collier

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Gator Hook, Monroe Station NE, Taylor Mound, and Pine Hammock; John Donahue to Robert Duncan, February 13, 2001, BICY 26817, S3, SSA.

<sup>49</sup> Project Statement, Minerals Management Plan, April 1999; BICY 16183 S2, SSB, SSS1, F4.

<sup>50</sup> “Big Cypress National Preserve, Public Scoping Newsletter, Oil and Gas Management Plan/Environmental Impact Statement,” June 2001; BICY 16183 S2, SSB, SSS1, F4.

<sup>51</sup> These organizations included the National Parks Conservation Association, the Sierra Club, the Florida Biodiversity Project, WildLaw (a Florida-based non-profit environmental law firm), Defenders of Wildlife, and the Conservancy of Southwest Florida, all in BICY 16183 S2, SSB, SSS1, F4.

Resources pursued its plans of operation, which some argued was simply a way to apply pressure on NPS to approve the transfer of mineral rights. In 2001, the issue became moot when the U.S. Air Force announced plans to dispose of Homestead Air Force Base for mixed-use development and transferred the property to Miami-Dade County.<sup>52</sup>

By the spring of 2002, however, the Department of the Interior had reached an agreement in principle with Collier Resources “that set into motion preliminary groundwork for the acquisition of CRC mineral rights in Big Cypress and other federally managed lands in southwest Florida,” including the Florida Panther National Wildlife Refuge and the Ten Thousand Islands National Wildlife Refuge. Rather than another land swap, however, the new plan was to acquire the interests outright. The most controversial component of this plan was to appraise the value of these interests, which would be provided to Congress in support of a final decision about acquiring the mineral interests. In August 2002, the draft Oil and Gas Management Plan and EIS was nearly complete, but “was purposely delayed when news was received that the oil and gas rights in Big Cypress would be purchased by the government.” The preliminary agreement between Collier Resources and the Department of the Interior would allow the continuation of existing drilling operations but would eliminate future oil and gas operations.<sup>53</sup>

The plan received enthusiastic support from environmental organizations, including the Sierra Club and the National Parks Conservation Association, as negotiations continued into 2003. As early as the fall of 2002, however, there were signs of unease about the transaction. By that time, the price for the Colliers’ mineral rights in Big Cypress was estimated at \$120 million, and the preliminary agreement expected Congress to provide \$40 million as a down payment. A lengthy article in the *Miami New Times* in October 2002 delved deeply into the proposal and raised questions about the valuation of the mineral rights, citing Department of the Interior staff estimates of between \$5 and \$20 million. The article also observed that the Collier family was close with President George W. Bush and his brother, John E. (Jeb) Bush, then Governor of Florida. The article cited anonymous NPS sources who were opposed to the deal, saying that the level of scrutiny that all plans of operation underwent made them very safe, and argued that Collier Resources’ extensive proposals for oil and gas exploration and extraction in the late 1990s, as described earlier, was a bluff intended to build support for the sale.<sup>54</sup>

Questions regarding the proposed valuation of the property remained throughout 2003, leading to an inquiry by the Department of the Interior Office of the Inspector General (OIG) in the fall.<sup>55</sup> The OIG investigation was spurred by a confidential complaint in September 2003 alleging that Collier Resources “took advantage of the politically charged situation surrounding drilling in the Florida Everglades and ‘bluffed’ the Department of the Interior...into an agreement by which the Department would purchase CRC’s mineral interests in the Big Cypress

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<sup>52</sup> Briefing Statement, Oil and Gas, Big Cypress National Preserve, February 21, 2003; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>53</sup> Annual Narrative for FY 2002, Resource Management Division; BICY 16183 100001/001.001.001-055 Folder 1 of 3. See also Briefing Statement, Oil and Gas, Big Cypress National Preserve, February 21, 2003.

<sup>54</sup> “The Big Cypress Deal,” *Miami New Times*, October 10, 2002, computer printout, BICY 26817, S3, SSA.

<sup>55</sup> Email, Carol Clark to Special Agent Joe Schwartz, November 8, 2003; BICY 26817, S3, SSA.



National Preserve...for \$120 million.”<sup>56</sup> The focus of the OIG investigation was the lengthy and convoluted appraisal process, and the resulting report provided a detailed timeline. In the early 1990s, Collier Resources’ consulting geologist reported that the company’s mineral interests in the Preserve were approximately \$470 million. In the mid-1990s, as discussions regarding the possible acquisition of Collier Resources’ mineral rights were becoming more active, the Bureau of Land Management requested that the Minerals Management Service coordinate with NPS on an appraisal of the Collier Resources’ mineral rights. Based on data provided by Collier Resources, the Minerals Management Services, in 1996, placed the estimate at approximately \$155 million. This figure was challenged by Collier Resources as being too low and by NPS as being too high and based on an inappropriate appraisal method. As a result, negotiations collapsed. The Minerals Management Service was asked in 2000 to update its appraisal; the re-appraisal effort was led by a different geologist, who provided a valuation of \$68 million. At the same time, NPS requested the U.S. Geological Survey to prepare an estimate of the size of undiscovered oil and gas resources within the Preserve. This data led to an estimated market value of between \$5 million and \$20 million.<sup>57</sup>

In early 2001, the Department of the Interior was tasked with conducting the negotiations with Collier Resources. Later that year, the Department asked the Minerals Management Service to provide yet another appraisal; this again resulted in a valuation of \$68 million in early 2002. Finally, at the request of the Office of the Solicitor, a subsequent study by a private company identified the possible range of values around the Minerals Management Service’s final valuation (\$68 million) to be between \$31 million and \$140 million. Based on this range, the Department of the Interior made its offer of \$120 million to Collier Resources.<sup>58</sup>

In its summary of the acquisition process, the final OIG report concluded that Collier Resources

had received extraordinary treatment by the Department, spanning two separate administrations—both Democrat and Republican. Due, in part, to its sheer tenacity, as well as a very well orchestrated campaign that include instilling fear into the environmental community and into the Department itself with its purported intent to drill in the Preserve, CRC successfully captured the attention, the power, and the will of the very highest political officials at the Department to grant its monetary wishes. With the assistance of the two SOL [Office of the Solicitor] lawyers who creatively navigated around the human, legal, and financial impediments that plagued the transaction, CRC came precariously close to accomplishing its objective.<sup>59</sup>

The OIG report went beyond the question of appraisals of the mineral rights in the Preserve. Investigators with the OIG went back to the acquisition of the Addition Lands, discovering that the appraised price for the land took mineral rights into account in determining the fair market value. As a result, according to the OIG report, “the federal government, in the land exchange

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<sup>56</sup> U.S. Department of the Interior, Office of the Inspector General, *Special Report on the Agreement for the Acquisition and Donation of the Mineral Estate Between the United States of America and the Collier Family*, undated but with a transmittal memorandum Earl E. Devaney, Inspector to the Secretary, June 2, 2005, page 5.

<sup>57</sup> *Ibid.*, 6-9.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, 11.

agreement, allowed CRC to retain the mineral rights. To now pay CRC for any mineral rights that were considered in the 1988 acquisition transactions would result, in practical terms, in dual compensation.”<sup>60</sup>

In its final summation, the OIG report laid blame on the Department of the Interior, which failed to conduct its due diligence in 1988 when agreeing on an appraisal process for the Addition Lands and in the early 2000s with the proposed acquisition of Collier Resources’ mineral rights:

if the Department’s legal advisors had spent the same level of effort on a thorough, comprehensive analysis as they seemingly did to obscure and secrete the issue of value, this long, sophisticated charade, which has consumed incalculable hours of time and money on both sides, might have been avoided altogether.<sup>61</sup>

*Resuming Oil and Gas Plans of Operation and Oil and Gas Management Plan*

In light of the ongoing OIG inquiry, Congress declined to provide the \$40 million down payment, and, in January 2005, the company officially informed NPS Director Fran Mainella of its intent to cease any attempts to complete the transaction. In July, the company announced its request to withdraw almost all of the twenty-six plans of operation that had been submitted in previous years, leaving only the proposed Landing Strips development.<sup>62</sup> These formal announcements, however, came nearly a year after the company, in February 2004, had effectively changed course.<sup>63</sup> Collier Resources had first proposed development at the Landing Strips site in the eastern portion of the Preserve in March 1998, which included both exploratory drilling and 3-D seismic testing. Unlike many of the other proposed projects, the company owned the majority, though not all, of the mineral rights in that area. As a result, NPS went ahead with an environmental assessment based on the company’s plan of operation while awaiting documentation of the company’s complete ownership status. The EA was completed in December 1999 and released for public comment. The EA generated strong reactions from environmental organizations, which cited an inadequate assessment of effects on natural and cultural resources, and, in August 2000, the Preserve announced it could not proceed with approving the plan of operation for the Landing Strips project until completion of the Oil and Gas Management Plan/EIS.<sup>64</sup>

The issue lay dormant while the proposed federal acquisition of mineral rights was being resolved, but, with hopes for the deal’s consummation rapidly diminishing, negotiations were resumed in early 2004 with a meeting between Preserve and Collier Resources staff. Preserve staff again informed Collier Resources that its proposed plan of operation for the Landing Strip site was insufficient, partly due to the company’s stated intent to conduct reconnaissance surveys only after NPS approval of the plan of operation. In a letter summarizing the decision, Southeast

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid., 12.

<sup>62</sup> Robert Duncan to Fran Mainella, January 24, 2005; BICY 378, Box 5. See also Robert Duncan to Karen Gustin, July 7, 2005; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>63</sup> Briefing Statement, Oil and Gas, Big Cypress National Preserve, March 18, 2004; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>64</sup> Donahue to Duncan, August 21, 2000.

Regional Director Patricia Hooks provided an extensive set of recommendations to Collier Resources for improving the Landing Strip plan of operation, including the surveys that would need to be conducted before it was approved.<sup>65</sup> Collier Resources hired Lampl/Herbert Consultants to conduct the necessary surveys, including a biological assessment and archeological survey, beginning in the summer of 2004. At the same time, Lampl/Herbert sought approval to test new seismic drilling equipment and to conduct aerial surveys.<sup>66</sup> On the basis of these surveys, Collier Resources prepared a new plan of operations and environmental analysis and made it available for public review. According to a status update in August 2007, the plan and its environmental analysis faced “an overwhelming negative reaction.”<sup>67</sup>

With the mineral rights acquisition process no longer an issue, Preserve staff also made plans to re-start the Oil and Gas Management Plan/EIS process that had been put on hold. An initial meeting in April 2006 reported that the consultant for the project, URS, had completed drafts of the first six chapters by 2004.<sup>68</sup> Funding for the plan was lost in August 2006, but was restored in 2007, which allowed the new Oil and Gas Management Plan team to begin its meetings. By that time, the Preserve still had only two fields, Bear Island and Raccoon Point, with a total of eight operating wells. Two other oil fields in the Preserve, Pepper Hammock and Baxter Island, were no longer active and had been plugged. In August 2007, the planning team, now working with Louis Berger Associates as a consultant, met to discuss proposed alternatives for the plan. Perhaps the most significant change was to eliminate the provision that no more than ten percent of the Preserve’s surface area could be impacted by oil and gas activities at any one time. This provision, which was included in the 1991 GMP, had not been based on scientific evidence, and the initial oil and gas management planning team in 2001 had considered eliminating the requirement. Without evidentiary backing for the provision, they felt it might not be able to withstand a legal challenge. Instead, the team focused on the establishment of significant management areas together with threatened and endangered species restrictions and cumulative impacts assessments “that can be used to justify sequencing of oil and gas operations.”<sup>69</sup>

The other major change to the potential alternatives was to eliminate the single alternative that suggested federal acquisition of all mineral rights and, instead, include the different possibilities for acquisition as two separate alternatives. Alternative A remained the no-action alternative. The two action alternatives sought to protect specific resource areas and values. Alternative B would regulate oil and gas activities by means of significant management areas, and Alternative C would accomplish the same goal by using the review measures in the original Minerals Management Plan that accompanied the 1991 GMP but applied to the entire Preserve. The planning team decided that it was important to include the possibility of acquiring mineral rights, however, and added provisions for acquisition from willing sellers only in all the alternatives.<sup>70</sup>

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<sup>65</sup> Patricia Hooks to Robert Duncan, September 13, 2004; Superintendent Office Records Box 1 of 3.

<sup>66</sup> Thomas A. Herbert to Karen Gustin, June 30, 2005; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>67</sup> Big Cypress National Preserve Oil and Gas Management Plan Alternatives Generation Meeting Summary, August 8-9, 2007, draft meeting minutes with edits in Track Changes; BICY 16183 S2, SSB, SSS1, F4.

<sup>68</sup> Oil and Gas Management Plan Meeting outline, April 5, 2006; Superintendent Office Records Box 1 of 3.

<sup>69</sup> Big Cypress National Preserve Oil and Gas Management Plan Alternatives Generation Meeting Summary, August 8-9, 2007.

<sup>70</sup> Ibid.

In subsequent discussions, this list of alternatives was amended further, and five alternatives were included in the preliminary draft plan for internal review in the summer of 2008. The no-action alternative remained the same, and Alternative B proposed resource-specific protection measures for special management areas, with two variations: one that retained the restriction of oil and gas areas within these special management areas to ten percent of the Preserve, and one that eliminated this restriction. For both, areas of the Preserve not within special management areas would be subject to the existing regulations. Under Alternative C, all oil and gas activities would be prohibited within the special management areas. Alternative D allowed acquisition of all mineral rights in the Preserve, and Alternative E provided for the acquisition of only the mineral rights owned by Collier Resources.<sup>71</sup>

After producing the preliminary review draft in 2008, however, and with immense challenges facing the Preserve staff with the Addition Lands GMP and the wilderness study, the oil and gas management plan was again put on hold. The next year, using the existing regulations, Breitburn LLC, the latest operator of all wells in the Preserve under license from Collier Resources, secured NPS approval to drill up to nine wells. These wells were to be drilled from existing oil pads that would not require any new surface disturbance, thus significantly reducing the potential for environmental impacts. Drilling operations began in January 2010, and five were completed by October 2011.<sup>72</sup> In early 2012, with the Addition Lands GMP completed, Preserve staff reconvened the oil and gas management planning team, but it was again put on hold when NPS announced plans to revise its Service-wide Minerals Management Plan. Although the new NPS Service-wide plan was completed and released in 2016, the Preserve's oil and gas management plan remains on hold as of the writing of this Administrative History (2023). Instead, the Preserve continues to manage oil and gas activities in accordance with the new NPS regulations.

During this period of hiatus, Burnett Oil Company, based in Texas, submitted a plan of operation to conduct seismic testing in the Preserve in January 2014. Rather than using detonations to generate sound waves as in earlier iterations of seismic testing, however, Bennett proposed a new technology that used specialized heavy-duty vehicles, weighing 67,000 pounds and measuring eleven feet wide, that could hydraulically raise and lower a seven-inch-thick steel plate, placing it on the ground to create intense vibrations that passed through the underlying rock formations and could then be received and interpreted by seismographs. Burnett Oil's proposal was for a four-year project operating during the dry seasons from December to May and ultimately covering approximately 360 square miles. This was the largest 3-D seismic survey ever proposed in Florida, and it immediately raised concerns from environmental groups who feared extensive expansion of drilling in Big Cypress.<sup>73</sup> Preserve staff worked with Burnett Oil Company on its proposal, preparing an environmental analysis that was released for public comment and included consultations with state and tribal officials. In May 2016, the Preserve

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<sup>71</sup> Draft Oil and Gas Management Plan, internal review copy with notes for preparers; undated, but identified in document file as being revised on June 24, 2008; BICY 16183 S2, SSB, SSS1, F4.

<sup>72</sup> Briefing Statement, Oil and Gas Operations, Big Cypress National Preserve, October 2011; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

<sup>73</sup> Briefing Statement, Vibroseis Seismic Exploration Project, Big Cypress National Preserve, June 6, 2014; BICY-378, Box 5 to be cataloged into BICY 26817, S3, SSA.

approved the plan for the first year of work, which included seismic vibration testing on 70,000 acres on both sides of Interstate 75 in the Northeast Addition. The proposed survey, according to a press release, “would pose no significant environmental impacts.” The approval included environmental protection requirements consisting of inspections prior to any work commencing, avoidance of sensitive habitats, and the use of existing roads and trails to the extent possible.<sup>74</sup>

The response from environmental organizations was swift. In late July 2016, six organizations filed a lawsuit in the U.S. District Court for the Middle District of Florida, alleging that NPS failed to adhere to NEPA when it approved Burnett Oil’s plan of operation for the seismic testing without adequately considering the environmental impacts.<sup>75</sup> The lawsuit remained in the court system throughout 2016. During that time, Burnett Oil began its preliminary inspections in March 2017, and began the seismic testing in April after a federal court judge denied a request for an injunction while the lawsuit was pending. In April 2017, the U.S. District Court ruled against the environmental organizations, citing the protections put in place by NPS as a condition for the work to proceed.<sup>76</sup>

As a part of the NPS approval for work to proceed, Burnett Oil agreed to mitigate any loss of wetlands caused by their vehicles by restoring an equivalent length of former ORV trails in the Preserve. In a press release, the Preserve acknowledged that 111 miles of wetlands had been impacted but, since many of the former ORV trails were already seeing the recovery of vegetation, opined that access to the areas for restoration might cause more damage. Instead, the Preserve proposed to modify Burnett Oil’s permit by requiring restoration of approximately 272 acres of former agricultural fields “by regrading dikes, ditches, and swales; removing invasive and nuisance plants; and planting native trees.”<sup>77</sup> Although this restoration work clearly benefited the Preserve, environmental organizations highlighted the need for the work in the first place by pointing to the damage that triggered the need for mitigation. In 2018, the extent of the damage to wetlands became public when images and videos were published in several media outlets. In June 2018, for example the *Miami New Times* published its article, “Videos Show Texas-Based Burnett Oil Co. Steamrolling Big Cypress,” with photographs of the wide and deep muddy paths created by the wide, heavy trucks used in the seismic testing. The online version also included links to videos posted on YouTube.com that had been taken from the trucks as they drove through and over cypress trees, leaving deep ruts in the damp soil.<sup>78</sup> According to Burnett

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<sup>74</sup> Finding of No Significant Impact for Environmental Assessment, Burnett Oil Company, Inc., Oil and Gas Plan of Operations, Nobles Grade 3-D Seismic Survey, Big Cypress National Preserve, Florida, approved by Big Cypress Superintendent Tammy Whittington and Southeast Regional Director Stan Austin, May 6, 2016. See also “Oil Exploration in Big Cypress Wins Approval,” *Sun Sentinel* (Fort Lauderdale, FL), May 6, 2016.

<sup>75</sup> Press Release, Center for Biological Diversity, July 27, 2016. The six organizations that joined the lawsuit were Natural Resources Defense Council, Center for Biological Diversity, National Parks Conservation Association, Conservancy of Southwest Florida, Earthworks, and South Florida Wildlands Association.

<sup>76</sup> “Federal Court Rules in Favor of Oil & Gas Exploration in Big Cypress,” April 25, 2017; WUSF website: <https://wusfnews.wusf.usf.edu/2017-04-25/federal-court-rules-in-favor-of-oil-gas-exploration-in-big-cypress> (viewed September 11, 2023).

<sup>77</sup> Press release published on NPS website, undated by c. 2018: <https://parkplanning.nps.gov/projectHome.cfm?projectID=100967> (viewed September 11, 2023).

<sup>78</sup> “Videos Show Texas-Based Burnett Oil Co. Steamrolling Big Cypress,” *Miami New Times*, <https://www.miaminewtimes.com/news/burnett-oil-company-is-steamrolling-big-cypress-preserve-10423694> (viewed September 11, 2023).

Oil, remediation work was delayed by rains caused by Hurricane Irma in early September 2017, but would begin when conditions were dryer.<sup>79</sup>

Despite the adverse public attention, and with the return of dry ground, the Preserve approved a second year of seismic testing in early 2018. Preliminary inspections began in early April, and the seismic survey began in early May. For the 2018 season, however, the Florida Department of Environmental Protection required the use of smaller, lighter trucks.<sup>80</sup> The wet weather returned, and Burnett Oil ceased operations in early June. By early 2020, environmentalists hoping to end oil and gas activities in Big Cypress saw signs of hope when Governor Ron DeSantis announced that the State of Florida would purchase 20,000 acres in Broward County that had been proposed for an oil drilling project. This led to calls from environmental groups for the State to similarly purchase mineral rights in the Preserve to eliminate the possibility of oil and gas drilling; the DeSantis administration declined to comment on the suggestion.<sup>81</sup>

In the summer of 2020, Burnett Oil began work on an application for a permit for proposed drilling and production operations in two areas of the Preserve where it had earlier conducted seismic testing: the Nobles Grade Prospect along the south side of Interstate 75 in the Northeast Addition and the Tamiami Prospect in the Raccoon Point area in the southeastern portion of the original Preserve. Both projects would be conventional oil drilling operations, rather than hydraulic fracturing, known as fracking, using crushed limestone pads at the sites of the wells and accessed by single-lane limestone roads. Each site would have a single pad with a directionally drilled well. Neither the roads nor the wells would be permanent structures, and the wells would be located below ground. The pads, wells, and drills would be removed once all drilling and production operations were completed. The project overall would impact thirty-three acres of wetlands.<sup>82</sup>

Burnett Oil's original permit application in the summer of 2020 fueled no visible public outrage, perhaps partly due to the broader concern at the time for the COVID-19 pandemic which significantly impacted most of the country beginning in March 2020. The political landscape surrounding oil and gas in Florida shifted substantially in late 2020, however, when the outgoing administration of President Donald Trump approved a request from the State of Florida to assume responsibility for the approval of permits under Section 404 of the Clean Water Act, a responsibility that had been held by the USACE for decades. Earlier that year, in early March 2020, the Jacksonville District of the USACE issued a letter to Burnett Oil claiming that the company had impacted wetlands and sensitive areas during its seismic testing and alleging that "the oil and gas exploration activity that was conducted equates to mechanized land clearing, ditching and channelization." A month later, the USACE, following meetings with Preserve staff, rescinded its charges with a new letter, "and asserts no further action is being

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<sup>79</sup> "Oil Company to Restart Testing in Big Cypress," *Naples Daily News*, March 31, 2018, page 1.

<sup>80</sup> *Ibid.*

<sup>81</sup> "DeSantis Called on to Block Drilling," *Sun Sentinel*, January 27, 2020, page B1.

<sup>82</sup> Burnett Oil Company, Operations Permit Application for Drilling and Production at the Nobles Grade and Tamiami Prospects, Big Cypress National Preserve, August 14, 2020. The document that is available on the NPS website also includes revision dates of December 3, 2021 and January 2022, though these were not submittal dates. See: <https://parkplanning.nps.gov/documentsList.cfm?parkID=352&projectID=106223>.

taken by the Jacksonville District or required of Burnett for its completed seismic survey.”<sup>83</sup> On January 22, 2021, Burnett Oil filed its initial permit application for the project.<sup>84</sup> With news of the delegation of responsibility to the State of Florida for permits pertaining to the Clean Water Act, environmental groups quickly raised vocal opposition to the project based on the lack of public notice of the permit application as well as the potential environmental damage.<sup>85</sup> In May 2021, these environmental groups were joined by the Democratic members of Florida’s Congressional delegation, who jointly wrote to the Department of the Interior requesting that a full EIS be completed for the project. In addition, the representatives’ letter raised the possibility of acquisition, asserting that “the long-term resolution of the oil and gas threats facing Big Cypress National Preserve should be advanced through an acquisition process for the remnant subsurface rights in the Preserve.”<sup>86</sup>

In 2021, however, the political landscape shifted again. The administration of President Joseph R. Biden sought to place greater emphasis on environmental matters, including combatting climate change and decreasing reliance on fossil fuels. By October 2021, while deliberations over Burnett Oil’s permit application continued, environmental groups pinned their hopes on President Biden and his new Secretary of the Interior, Deb Haaland. At the state level, the Florida Department of Environmental Protection (DEP) in December 2021 rejected Burnett Oil’s initial permit application, citing a lack of information and planning, and recommended that the application be withdrawn until it adequately addressed the permitting criteria.<sup>87</sup> In February 2022, the Preserve announced that it would conduct an EIS for the proposed directional drilling permit requested by Burnett Oil. In reaction, Burnett Oil announced that it would withdraw its permit application rather than revise it in accordance with DEP requests.<sup>88</sup> As of early 2023, Burnett Oil had not submitted a new proposal, and no information pertaining to the EIS or future drilling proposals has been located for this report.

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<sup>83</sup> USACE letters quoted in “Army Corps Reverses Course,” *Fort Myers News-Press*, April 24, 2020, A1.

<sup>84</sup> “Burnett Oil Inching Towards Drilling at Big Cypress National Preserve,” *National Parks Traveler*, February 2, 2021, available online: <https://www.nationalparkstraveler.org/2021/02/burnett-oil-inching-towards-drilling-big-cypress-national-preserve>.

<sup>85</sup> Press Release, Center for Biological Diversity, February 3, 2021. See also “Texas-Based Oil Company Applies to Build Well Pads and Roads in the Everglades,” *Miami Herald*, February 6, 2021, A1.

<sup>86</sup> Letter from Debbie Wasserman Schultz, Ted Deutch, Lois Frankel, Charlie Crist, and Frederica Wilson to Department of the Interior Deputy Director of Operations Shawn Bengé and Assistant Secretary for Fish and Wildlife and Parks Shannon Estenoz, quoted in “Officials Call to End Drilling in Big Cypress,” *News-Press (Fort Myers, Florida)*, May 6, 2021, A3.

<sup>87</sup> “Everglades Oil Drilling Proposal Hits Roadblock,” *South Florida Sun Sentinel (Fort Lauderdale)*, December 24, 2021, A3.

<sup>88</sup> “NPS Swivels to In-Depth Environmental Analysis of Oil Drilling at Big Cypress,” *National Parks Traveler*, March 2, 2022, available online: <https://www.nationalparkstraveler.org/2022/03/nps-swivels-depth-environmental-analysis-oil-drilling-big-cypress>.

## *Cultural Resources*

### *Archeological Survey and the GMP*

Chapter 4 discussed the initial cultural resources surveys of the Preserve, a multi-year, archeological project beginning in 1977 that, by the early 1980s, had identified 395 prehistoric and historic sites in the original Preserve boundaries. These early studies identified several threats to archeological sites, including ORV use, invasive plant species such as Brazilian pepper and Australian pine, rooting by armadillos and feral hogs, and vandalism.<sup>89</sup> In the GMP, the Preserve acknowledged responsibility to protect those sites that had been determined eligible for or listed in the National Register of Historic Places (NRHP). The GMP made a distinction between those sites that are not eligible for the NRHP, which would be protected from human activities but otherwise left to nature in a form of passive management, and those that are eligible or listed. The NRHP eligible or listed sites would be actively protected from human activities and, to the extent possible, from damages from animal burrowing or rooting. Archeological data recovery would be a last resort for those sites that could not be protected. In addition, the GMP included two ceremonial indigenous sites that are of national significance—Corn Dance site 216 and Corn Dance Island 116—which Preserve staff would coordinate with Miccosukee and Seminole groups to protect.

Lands in the Northeast and Western Additions were gradually acquired through the 1990s, and planning for archeological surveys of these new acquisitions began in 1998. An initial round of funding was denied, but, in 1999, plans were in place for a four-year project to begin in 2000. In early March of that year, the Preserve completed a consultation process with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida regarding the survey, which resulted in a series of protocols, particularly for any cases that might involve human remains or funerary objects, while assuring confidentiality for any archeological sites found.<sup>90</sup> Once the consultation was concluded, work was conducted by the Regionwide Archeological Survey Program of the Southeast Archeological Center (SEAC) and drew upon a predictive model developed and tested by Regional Archeologist John Ehrenhard, later the Director of SEAC, during the 1978 survey of the original Preserve. According to this model, “mixed hardwood hammocks located next to deep sloughs or wet marshes are the most likely areas to contain archeological sites.”<sup>91</sup>

The first year’s work consisted of four weeks of survey by three core SEAC staff members with the goal of testing the accuracy and applicability of the Ehrenhard model in the Addition Lands. For the 2000 survey, SEAC drew upon the Preserve’s GIS capabilities to identify hammocks with mixed hardwood vegetation as potential sites for archeological survey; SEAC staff were then brought by helicopter to these locations. SEAC staff were joined occasionally by an archeologist with the Florida SHPO for the purpose of locating previously identified archeological sites on the State of Florida’s Archaeological Research Master Site File

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<sup>89</sup> Briefing Statement, Archeologic Resources, February 1992; BICY 26817, S3, SSA. See also Chapter 4 for a more in-depth discussion of archeological resources investigations.

<sup>90</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, April 17, 2000, with attached letters to Seminole and Miccosukee leaders dated March 17, 2000; BICY 16183 S1, SSA, SSS1, F7.

<sup>91</sup> Memorandum, Margo Schwadron to Director, Southeast Archeological Center, April 25, 2000; BICY 16183 S1, SSA, SSS1, F7.



and determining their conditions. The first year's preliminary survey of the Addition took place on thirty hammocks containing a total of 446 acres and resulted in the identification of forty new archeological sites that included thirty-eight prehistoric black earth middens, one prehistoric sand mound, and one Seminole period camp. An interim report of the first year's survey emphasized the value of the Ehrenhard predictive model when combined with GIS mapping and "recommended that archeological survey of the remaining portions of the new addition continue over the next several years using these methods, with later years of the project focusing on a few select sites for evaluation studies."<sup>92</sup>

The four-year project of archeological surveys of the Addition Lands concluded in 2003, when the focus of attention was selected portions of mangrove zones in the Western Addition. That year, SEAC archeologists identified what came to be known as the Black Hills site, a complex of black earth mounds and shell middens dating from AD 360 to AD 1450. As summarized in the Preserve's Annual Report for 2003, "It is relatively undisturbed and is a very significant site, one that has and will continue to generate significant scientific data on the prehistoric culture history and environment of Big Cypress."<sup>93</sup> By the time of its conclusion, the survey identified fifty-seven archeological sites in the Addition. These included ten prehistoric sites, twenty-three indigenous sites, twenty-two Glades Era sites, and five sites that included multiple historic eras with artifacts representing Seminole, Miccosukee, and other indigenous cultures. Most of these sites were earth middens, indicating the year-round intermittent presence of indigenous peoples who used the area for hunting and gathering on a transitory basis rather than for agriculture. Few relatively permanent settlements were identified.<sup>94</sup>

The Addition Lands GMP incorporated these results in the identification of sensitive resource areas, affirming that the Preserve would seek to avoid impacts to known significant sites in planning for projects that might result in ground disturbances and would be guided by Section 106 of the National Historic Preservation Act of 1966 (as amended) and the Native American Graves Protection and Repatriation Act of 1990. The GMP also identified potential adverse impacts on archeological resources resulting from visitor use, including vandalism and unintentional disturbances. To limit this damage, the Addition Lands GMP recommended management strategies that included visitor education and enforcement of regulations combined with closure of vulnerable areas, if needed. In addition, the GMP proposed the compilation of field data from ongoing archeological surveys "to develop a more accurate predictive model of prehistoric site distribution and address related research questions."<sup>95</sup> Finally, given the accuracy of the Ehrenhard predictive model, the GMP recognized the need to protect hardwood hammocks when planning for ORV trails and other means of visitor access to protect potential sites of archeological resources.

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<sup>92</sup> "Archeological Survey of the New Addition Lands, Big Cypress National Preserve, FL, Interim Report: Season 1," December 2000; BICY-378, Box 9 to be cataloged into BICY 26817, S3, SSA. A complete report of the first field season in 2000 was released by SEAC in 2002, authored by Margo Schwadron; BICY 16183 S1, SSA, SSS1, F7.

<sup>93</sup> Annual Narrative Report, Big Cypress National Preserve, 2003; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>94</sup> *Big Cypress National Preserve-Addition, General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan/Environmental Impact Statement*, October 2010.

<sup>95</sup> *Ibid.*, 21.

The Addition Lands GMP also proposed future research goals, especially regarding more precise determinations of chronological periods. In particular, the Deep Lake Unit was not included in the archeological surveys from 2000 through 2003, and “the potential for scientific archeological resources within the watery environs of the lake is great.” Only four other sinkholes are located in south Florida, “and two of these are exceptionally significant archeological sites,” likely serving “as watering holes during much of the Paleo-Indian and Archaic periods.”<sup>96</sup>

#### *Above-Ground Resources: Monroe Station*

Given the remote nature of Big Cypress Swamp and its limited development, the Preserve has few above-ground cultural resources to manage. Questions arose in the years leading up to the 1991 GMP, however, regarding the former Monroe Station. In April 1987, the Preserve acquired this property located at the intersection of U.S. Route 41 and Loop Road from the Collier family. At the time, it was subject to a lease that would expire in 1992 and was being used as a small café and gas station. The building was one of six “way stations” built by the Collier family during construction of the Tamiami Trail in the early 1920s, and one of only three that remained in the late 1980s. Superintendent Fred Fagergren faced two issues related to the building: was it eligible for the NRHP, and, if so, what responsibility did NPS have regarding its maintenance and protection, considering the existence of the lease and the disinclination of the lease holder to maintain the property. Superintendent Fagergren requested support from the Southeast Regional Office in May 1987 to assess the building and provide guidance in its management; as Fagergren concluded in his memorandum to the Southeast Regional Office, “BICY never lacks for issues or controversy and this situation will no doubt raise additional challenges for management.”<sup>97</sup>

In the summer of 1987, Southeast Regional Historian Len Brown visited the site and reported that it was in deteriorating condition, had a severe termite infestation, and had been altered significantly from its historical configuration. As Brown reported, “Monroe Station has been so modified and changed over the last 30 years that it has lost all architectural integrity, windows have been closed off, additions made to the building, original sash removed and replaced with aluminum, original siding replaced with modern materials.”<sup>98</sup> Despite the loss of architectural integrity, however, Brown observed that the building had historical significance because of its association with the construction of the Tamiami Trail. In February 1988, Southeast Regional Deputy Associate Director Paul Hartwig initiated consultation with the Florida State Historic Preservation Office (SHPO) requesting input on the potential NRHP eligibility of Monroe Station.<sup>99</sup> George Percy, the Florida SHPO, agreed with the NPS recommendation that Monroe Station is not eligible for the NRHP but also recommended against NRHP eligibility for the Tamiami Trail due to alterations over the years. Instead, Percy recommended that “the placement of markers and/or interpretive information at the visitor

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<sup>96</sup> Ibid., 207.

<sup>97</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, May 23, 1987; BICY 26817, S3, SSA.

<sup>98</sup> Len Brown, “Report on Monroe Station and Tamiami Trail,” undated but July 1987, attachment to Paul Hartwig (SERO) to George W. Percy (SHPO), February 10, 1988; BICY 26817, S3, SSA.

<sup>99</sup> Ibid.

centers and wayside parks would be a more appropriate and effective means of recognizing and publicizing the significance of the Trail.”<sup>100</sup>

The issues of how to manage and whether to restore and interpret Monroe Station was moot until 1992, when the existing lease expired. In the summer of 1992, a civil engineer examined the building for soundness and concluded that portions of the original building were present and could be rebuilt. Six months later, in early 1993, the Preserve developed a series of alternatives for the building that included complete demolition, demolishing parts of the building and re-building others, restoration of the façade only, and constructing a new building on the site; the latter three recommendations were all in support of either an interpretive facility or staff housing.<sup>101</sup> The Preserve selected the option of demolishing the existing building and replacing it with a new building that closely followed the architectural style of the original. The plan was that the new building would be used as a transportation museum on the first floor. Administrative offices, primarily to manage ORV use, and, possibly, an apartment for a Ranger, would be on the second floor. Later in 1993, Preserve staff prepared and submitted an application for funding the project through the Intermodal Surface Transportation Enhancement Act (ISTEA) under the Scenic or Historic Highway Programs. The project was not awarded funding, largely due to being neither determined eligible for the NRHP nor a designated scenic highway.<sup>102</sup>

In the face of this setback, Southeast Regional Historian Jennifer Brown Leynes prepared a successful NRHP nomination for the building based on its historical association with the Tamiami Trail. In contrast to the 1987 assessment, the nomination reported that the building had integrity of materials, workmanship, feeling, and association, though its integrity of location, setting, and design had been diminished. As a result, the nomination asserted that “the structure retains sufficient overall integrity for listing on the National Register,” and it was, therefore, listed in May 2000.<sup>103</sup> Three years later, in late 2003, the Florida Department of Transportation designated the Tamiami Trail, also identified as the Windows to the Gulf Coast Waters Scenic Highway of Florida. With these two designations, the Preserve re-initiated plans for demolition of Monroe Station and replacement with a replica using historic plans and photographs. It was planned to be used primarily for visitor services, with a small convenience store and gas station together with interpretive materials related to the Tamiami Trail and information for those visiting the Preserve.<sup>104</sup> The Preserve soon revised the project to retain the original portion of the building and rehabilitate it and to demolish the modern additions, and sought matching grant funds from the Florida Department of Transportation in June 2004. In November, the Preserve learned that it had received a grant for the project of \$480,000 for FY 2007 and 2008.<sup>105</sup> Initial

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<sup>100</sup> George Percy to Paul Hartwig, March 9, 1988; BICY 26817, S3, SSA.

<sup>101</sup> “Concept Paper, Monroe Station, Big Cypress National Preserve, Florida,” draft, February 10, 1993; BICY 26817, S3, SSA.

<sup>102</sup> Memorandum, Superintendent, Big Cypress National Preserve to Associate Regional Director, Operations, June 30 1993; BICY 14661 S2, SSA, F13. See also multiple letters between Superintendent Fred Fagergren and the Florida Department of Transportation, March 1993 to August 1994, BICY 14661 S2, SSA, F13.

<sup>103</sup> Jennifer Brown Leynes, National Register of Historic Places Registration Form, Monroe Station, approved by Keeper of the National Register, May 11, 2000.

<sup>104</sup> Big Cypress Grant Proposal, Rehabilitate the Historic Structure at Monroe Station, undated but indicated in files as 2004; BICY-378, Box 8 to be cataloged into BICY 26817, S3, SSA.

<sup>105</sup> Carolyn H. Ismart to Patricia Hooks, November 3, 2004; BICY-378, Box 8 to be cataloged into BICY 26817, S3, SSA.

planning work began in September 2005. A month later, Hurricane Wilma hit south Florida as a Category 3 storm, destroying many of the later additions but leaving much of the original core of the building intact.<sup>106</sup> Although staff from the NPS Heritage Documentation Program visited the site in early 2007 to create detailed measured drawings of the building and prepare a historic narrative, the building was then mothballed and the project put on hold.<sup>107</sup> Despite an attempt to restart the project in early 2008, the building remained sealed and unused until April 2016, when a group of three photographers, without NPS authorization, attempted a long-exposure night-time photograph of the building using a piece of burning steel wool to create circles of light. The steel wool created sparks which suddenly ignited the building and destroyed it; one man later turned himself in to police.<sup>108</sup> The remains of the building were demolished and removed, and Monroe Station was delisted from the NRHP in May 2019.

### ***Ethnography and Indigenous Relations***

Ethnographic resources were defined in the Addition Lands GMP as “a site, structure, object, landscape, or natural resource feature assigned traditional legendary, religious, subsistence, or other significance in the cultural system of a group traditionally associated with it.”<sup>109</sup> The GMP acknowledged the need to protect ethnographic resources “by such means as identifying and maintaining access for recognized and affiliated groups to traditional, spiritual/ceremonial, resource gathering, and other activity areas. As practical, new developments would be screened from these areas, and conflicting uses would be relocated or timed to minimize disruptions.”<sup>110</sup> Provisions for ethnographic resources, which were incorporated within the broader category of cultural resources requiring protections from proposed and unintended actions, have particular resonance in the Preserve due to the specific legislative provisions for the Seminole and Miccosukee tribes as “traditionally associated groups.”

Chapter 2 discussed the role of the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida in the Preserve’s legislative history. Representatives from both federally-recognized tribes expressed concerns during the congressional deliberations in the early 1970s over their loss of rights regarding their traditional uses of Big Cypress Swamp and the businesses they had established to take advantage of the tourist trade. Congress heard these concerns, and the resulting legislation offered protections for them. The Seminole and Miccosukee tribes, according to the Preserve’s enabling legislation, “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, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonies.” In

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<sup>106</sup> “For a Roadside Relic, Wilma Hastens a Revival,” November 27, 2005, computer print; BICY-378, Box 8 to be cataloged into BICY 26817, S3, SSA.

<sup>107</sup> The HABS documentation package for Monroe Station is available online: <https://www.loc.gov/pictures/collection/hh/item/fl0659/>.

<sup>108</sup> “Monroe Station,” information on Abandoned Florida website: <https://www.abandonedfl.com/monroe-station/>. See also “Historic Monroe Station on Tamiami Trail in Big Cypress Burns,” *The News-Press (Fort Myers, Florida)*, April 11, 2016, available online: <https://www.news-press.com/story/news/2016/04/10/historic-monroe-station-tamiami-trail-big-cypress-burns/82863122/>.

<sup>109</sup> Addition Lands GMP, page 207.

<sup>110</sup> *Ibid.*, 127.

addition, members of the Seminole and Miccosukee tribes would have first right of refusal when the Preserve sought vendors to provide revenue-producing visitor services. As with the requirement for a balance between resource protection and access for recreational and consumptive uses, the legislation did not define what constituted “usual and customary use and occupancy” by the two tribes.

Although related historically, the two tribes are distinct entities. Both are descended from different groups that belonged to the Creek Confederacy, who were forced from their traditional homelands in southern Georgia and Alabama in the eighteenth century and migrated first to what is now northern Florida. The various groups, parts of the larger Muscogee linguistic group, coalesced into the Seminole Tribe, taking its name from a Spanish descriptive term meaning wild or untamed. The Miccosukee remained part of the larger Seminole nation into the early and mid-twentieth century, when lingering cultural differences led to their separation. The Seminole Tribe of Florida was formally recognized by the federal government in 1957; the Miccosukee Tribe of Indians of Florida were first recognized by the State of Florida in 1957 and gained federal recognition in 1962. Disagreements between the two tribes continued through the 1950s and 1960s as negotiations with the federal government regarding claims over the loss of land dragged on; the Miccosukee were less inclined to reach a settlement with the United States government than the Seminole. The land claim was finally settled in 1977, however, and the Florida Seminole and Miccosukee tribes shared the \$16,000,000 settlement with the Seminole Nation of Oklahoma.

The Miccosukee and the Seminole tribes of Florida each own reservation lands bordering the Preserve and Everglades National Park (Figure 13). In addition, between 100 and 150 Indigenous residents live on the Preserve, including those who are affiliated with one of the two tribes and other Indigenous groups of Seminole descent who are unaffiliated with either. Those who live on the Preserve reside primarily in camps consisting of six to ten buildings or in small villages, principally located along U.S. Route 41. By 1980, four of these camps were open to the tourist trade, featuring small souvenir shops and self-guided walking tours of the buildings. The principal buildings in the camps were traditional *chickees*, which are open-sided shelters built of cypress poles with a thatched palm frond roof. By the late 1970s, chickees had become popular decorative shelters used outside of Big Cypress, and several Indigenous families relied on income from primarily commercial chickee construction throughout south Florida. The chickee-building business required harvesting small cypress trees for poles; approximately forty poles, each consisting of a single small tree, were required for each chickee. These building materials were usually harvested from within Big Cypress Swamp. Additionally, Miccosukee and Seminole tribal members both used the Preserve for religious purposes, formally at the two Corn Dance ceremonial sites but also informally as a source of plants and animals with religious uses.<sup>111</sup>

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<sup>111</sup> Summary of customary uses attached to cover letter for draft regulations, Regional Director, Southeast Region to Lawton Chiles, August 28, 1980; Lawton Chiles Papers.

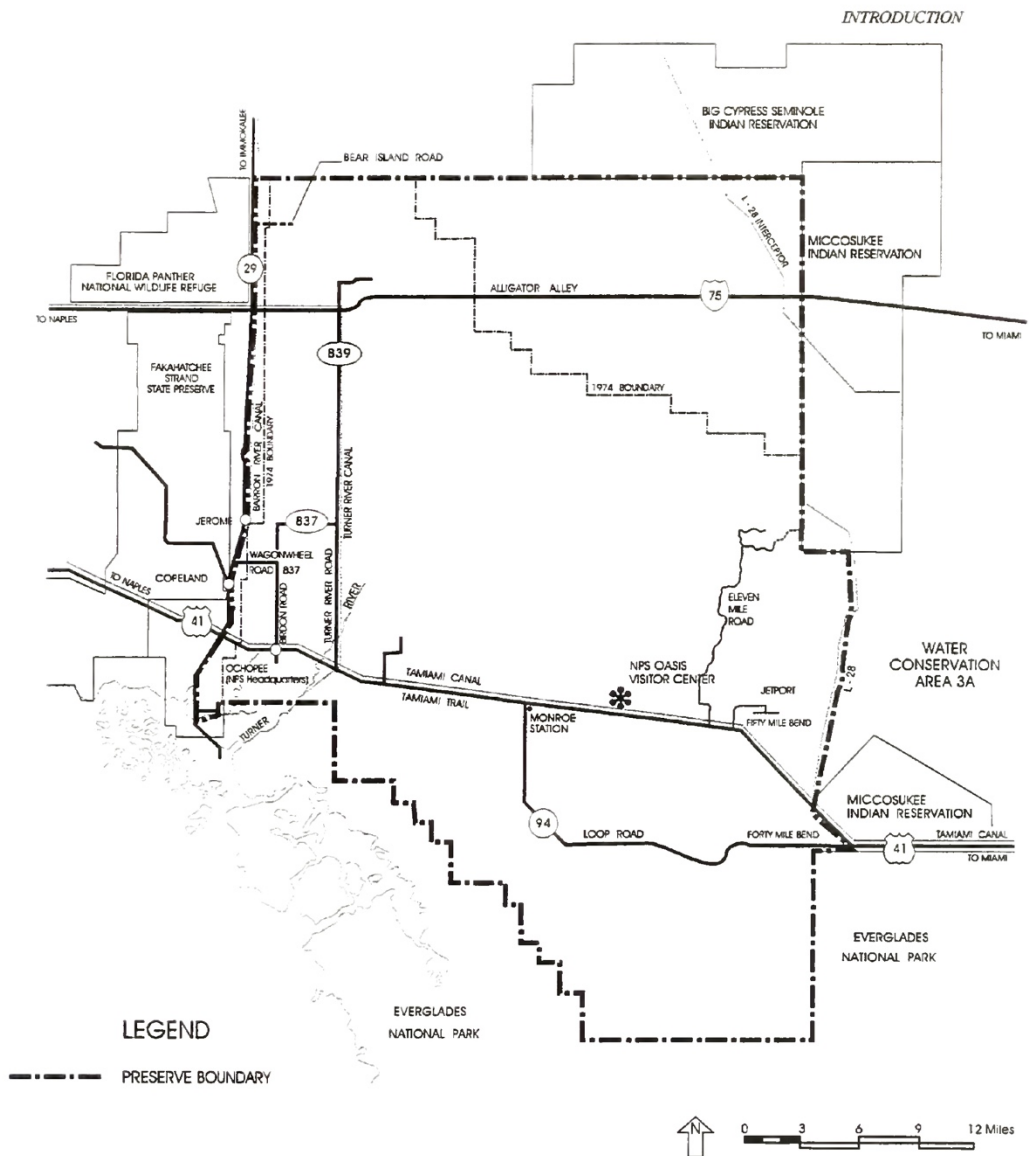


Figure 13. Map of Big Cypress National Preserve showing Seminole and Miccosukee reservations on east side.

Representatives from the Miccosukee and Seminole tribes met with NPS staff throughout the late 1970s to discuss those activities that constituted usual and customary uses and how to determine the status of their commercial enterprises.<sup>112</sup> Staff from the Preserve and the Regional Office began writing draft regulations in late 1979 to govern the tribes' use and occupancy of the Preserve, seeking a balance between customary uses and environmental protection. Draft regulations were available for review by the spring of 1980. The Preserve received comments from the Miccosukee Tribe and from the Indian Law Center representing unaffiliated Seminole members; the Seminole Tribe of Indians did not reply with comments. The draft regulations were revised and reissued in the late summer of 1980. As revised, the regulations allowed continuation of existing activities by members of the Miccosukee and Seminole tribes and those individuals who would qualify for membership in one of those two tribes. Several of these activities were already governed by State of Florida regulations, such as commercial fishing and frogging, and would remain in force. New limitations, restrictions, or federal oversight included NPS review of new structures to ensure zoning compatibility and limit environmental impacts, elimination of refuse disposal within the Preserve, a requirement for tribal members to carry identification when hunting to prevent non-tribal members from illegally claiming rights to hunt, and a requirement for tribe members to obey hunt quotas when providing guiding services to non-tribal members. The draft regulations also included a proscription on hunting of threatened or endangered species and restrictions on the types of advertising signs that tribal members could use for commercial services they were providing. The National Park Service also agreed to protect access to and confidentiality of ceremonial religious sites, to advise the tribes on planning and development activities, and to allow tribal members the right of first refusal on NPS-planned new commercial activities.<sup>113</sup>

The draft regulations underwent further revisions before they were published in the Federal Register in November 1981 with a solicitation for public comments. Representatives for the Miccosukee and Seminole tribes and unaffiliated Indigenous groups responded quickly with complaints about the revised regulations being overly restrictive on traditional uses. At the same time, the Florida Wildlife Federation submitted comments suggesting preferential treatment was being given to the Seminole and Miccosukee tribes regarding taking plants and animals from Big Cypress Swamp and suggested that the proposed regulations would treat the Preserve as a reservation. The swift and negative reaction from multiple sources led NPS to reconsider the regulations, and the Preserve reviewed the entire issue of tribal rights in Big Cypress Swamp. This work continued through 1982 and 1983. One of the major changes during this period of revision included regulation of harvesting of cypress for commercial use. In late 1982, while revisions to the regulations overall were still under consideration, the Preserve prepared a briefing statement that recommended a two-year phase-out of commercial cypress harvesting and a limit on the number of trees cut annually during the phase-out period. In November 1984, an Environmental Assessment of this proposal was released which considered three alternatives: a continuation of the unregulated harvesting of cypress trees, a permit system for the limited

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<sup>112</sup> A letter from Department of the Interior Regional Solicitor Raymond C. Coulter to S. Bobo Dean, an attorney with Fried, Frank, Harris, Shrive and Kampelman representing the Miccosukee Tribe, August 20, 1979, discusses the ongoing meetings between NPS and the tribes; BICY-313, Box 2 to be cataloged into BICY 26817, S9.

<sup>113</sup> Indian Use and Occupancy Special Regulations, Big Cypress National Preserve, Florida, with handwritten notation identifying "most last draft, 10/2/80," with cover memorandum for revised draft, James G. Becker to Regional Director, SERO, July 28, 1980; BICY 14661 S5 G F5.

commercial harvesting of cypress trees, and a prohibition on commercial harvesting while allowing limited subsistence harvesting of cypress trees through the issuance of permits. The EA designated the prohibition on commercial harvesting while issuing permits for limited subsistence harvesting as its preferred option.<sup>114</sup>

With the completion of this EA, Superintendent Fagergren submitted new draft regulations in December 1984. The new regulations included several minor revisions to the earlier version: making ownership of lands and improved properties by Miccosukee and Seminole tribal members be consistent with other inholders on the Preserve, limiting the re-occupation of abandoned camps to four sites, requiring subsistence agricultural to be non-mechanized, and making tribal hunting by unaffiliated members of either tribe subject to certain restrictions while also limiting harvesting of cypress and palm fronds to subsistence uses only and making such harvesting subject to permitting.<sup>115</sup> This draft of the regulations, however, lay on the shelf and was not released for review for more than two years, in the summer of 1987. In July 1988, the Preserve summarized the fourteen comments received from attorneys representing the Miccosukee and Seminole tribes, from the Indian Law Center representing the unaffiliated traditional Seminoles, from the Bureau of Indian Affairs (BIA), and from individuals. Comments from the attorneys and the BIA were generally negative, contending that the Preserve failed to negotiate properly with the tribes, that the regulations were overly restrictive, particularly regarding the prohibition of commercial harvesting of cypress, and that the two ceremonial religious sites should be closed to the public year-round rather than only during ceremonies. The Preserve held firm on all points, citing opinions from Department of the Interior Solicitors, the consultation process, and the need to protect the Preserve's natural resources for its stance. However, the tribes' attorneys also argued for the need for an Environmental Assessment to determine the effects of the proposed regulations. On this point, the Preserve agreed and began plans to complete the EA.<sup>116</sup>

By this time, the Preserve was also deeply involved in completing the GMP, and the proposed Indian use regulations were again tabled. In 1992, however, the Preserve announced that it would restart the process based on an ethnographic study then in process.<sup>117</sup> This study was first discussed in June 1989, when the Southeast Regional Office proposed to contract "for an ethnography of Miccosukee and Seminole resource uses at Big Cypress." The development of an ethnographic study, while valuable on its own as a way of protecting important resources associated with Big Cypress, would also allow NPS to more clearly define what constituted the tribes' "usual and customary use and occupancy" of the Preserve as the foundation for new regulations. Anthropologists at the Southeast Regional and the Washington Offices expressed

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<sup>114</sup> Briefing Statement, Indian Commercial Use, attached to Memorandum, Superintendent, Big Cypress National Preserve to Superintendent, Everglades National Park, December 3, 1982, BICY 26817, S3, SSA; Environmental Assessment for Special Regulation 36 CFR Part 7 Defining Indian Use and Occupancy Rights, Big Cypress National Preserve, November 1984, BICY 26817, S3, SSA.

<sup>115</sup> Department of the Interior, National Preserve, 36 CFR Part 7, Big Cypress National Preserve, Florida, Indian use and Occupancy Regulations, attached to Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, November 27, 1984; BICY 26817, S3, SSA.

<sup>116</sup> Analysis of Public Comments, Proposed Regulations on Indian Use and Occupancy, undated but files indicate date of July 1988; BICY 26817, S3, SSA.

<sup>117</sup> Briefing Statement, Native American Use and Occupancy, February 1992; BICY 26817, S3, SSA.



great interest in the project and sought to provide guidance.<sup>118</sup> Southeast Archeological Center Archeologist John Ehrenhard, who had led the initial surveys at Big Cypress from 1978 to 1981, developed a scope of work for the study in 1989 with the intent of hiring a contractor to conduct the work. Muriel “Miki” Crespi, who founded the NPS Cultural Anthropology program in 1981 and who led the creation of the Service’s first Native American relations policy in 1987, provided extensive comments on the draft scope of work. Crespi lauded “The importance of the study to the Service and the several involved Native American groups,” and urged a spirit of collaboration and non-confrontation between NPS and the Indigenous groups and individuals.<sup>119</sup> Comments on the scope of work for the proposed ethnographic study continued through 1989, but the project was not funded and put on hold.

The long-delayed project finally got under way in early 1992 when Ehrenhard, by then Chief of Interagency Archeological Services for the Southeast Region, and Deputy Associate for Cultural Programs Paul Hartwig invited Dr. James Goss, Professor of Sociology, Anthropology, and Social Work at Texas Tech University in Lubbock, to consult on the project. The purpose was to develop “an objective research report concerning the customary and traditional lifeways of the Miccosukee and Seminole peoples and how they have traditionally occupied and utilized the resources of the lands” that were now Big Cypress National Preserve. The Southeast Regional Office entered into a Cooperative Agreement with Texas Tech University to conduct the work in April 1992, and accepted Goss’ proposal in September. After several months of background research, Goss conducted fieldwork in late 1992 and early 1993, meeting with Miccosukee and Seminole members as well as Preserve staff in advance of preparing a research design which was reviewed by the tribes and NPS and approved by NPS in late February 1993. Goss then conducted additional field work in the summer of 1993 and the spring and summer of 1994, traveling throughout south Florida to meet with Miccosukee and Seminole tribe members and leaders and to conduct additional historical research. Goss prepared a preliminary draft report in August 1994 for review by NPS and tribal members and a final draft report in June 1995.

By the time of Goss’ report, approximately 2,600 Seminole and Miccosukee, tribal members and unaffiliated individuals, lived in south Florida, spread through six different reservations and on public and private lands. The predominant language among the Seminole and Miccosukee was Miccosukee. Others spoke Muskogee, and English served as a common language among all. In his report, Goss provided detailed discussions of ceremonial practices, clan organization, the relationships between the tribes and the unaffiliated residents, and social networks and leadership. He then discussed the current environmental conditions of the Preserve and provided a summary of the prehistoric cultures of the region, particularly the Glades culture and the succeeding Calusa society that was present when Europeans first arrived in what would become Florida, followed by the arrival and development of the Miccosukee and Seminole peoples and their changing relationships with Americans and the United States government. All this background served as the basis for a discussion of the long-standing traditional uses of the region by the Miccosukee and Seminole tribes following the end of the Third Seminole War in

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<sup>118</sup> Memorandum, Associate Director, Cultural Resources to Regional Director, Southeast Region, June 6, 1989; BICY 14605 00002-004-003-003 Box 4.

<sup>119</sup> Memorandum, WASO Senior Anthropologist to SERO Deputy Assistant Regional Director, Cultural Resources, August 1, 1989; BICY 14605 00002-004-003-003 Box 4.

the late 1850s. By the 1990s, all the American villages had been relocated from the backcountry to U.S. Route 41, the Tamiami Trail. Goss provided an evocative description of the current residential setting:

With the population shift, the people have traded their cypress canoes for Ford pickup trucks. They have traded their canoe landings on stands and sloughs for short driveways and bridges across the borrow canal to the highway. They have traded their subsistence economy for a “cash” economy. Instead of gardening, fishing, and hunting, most of the subsistence is gleaned from the Publix supermarket 40 miles down the Trail at the Tamiami Shopping Center in West Miami.<sup>120</sup>

Goss wrote eloquently about the declining traditional uses by the Miccosukee and Seminole residents in Big Cypress, that fewer gardens were being grown, that fewer native plants were harvested for sustenance, that there was less hunting, and fishing was primarily in the canals and borrow pits, and that fewer cypress canoes were being built. Traditional uses that remained in practice included collection of plants for medicinal and sacred uses, commercial activity along the Tamiami Trail, and the taking of cypress, pine, palm, and pop ash for the production of tourist items. Goss then broached the controversial topic of harvesting cypress for commercial purposes, which NPS argued ran counter to the need to protect the natural resources of the Preserve. Goss explained that Miccosukee and Seminole tribal members could make a strong argument that such work constituted subsistence, since providing materials and building chickees for non-Indian markets supported families. Goss recommended the exploration of a joint planning venture between NPS and tribal members, who were both interested in the continued survival of cypress trees. He observed that many of the tribal chickee builders had already turned to pressure-treated lumber for the poles used in construction, as being more uniform and easier to work on a commercial basis.<sup>121</sup>

James Goss’ ethnographic study provided an excellent basis for understanding the traditional uses of Big Cypress Swamp by the Miccosukee and Seminole tribes since the mid-nineteenth century and was occasionally cited by representatives of the tribes in discussions regarding traditional uses. Its purpose was to serve as the factual basis from which regulations could be prepared, so that Preserve staff would not have to make decisions regarding these uses on a case-by-case basis. Despite this solid foundation, however, the Preserve made no more attempts to develop a set of regulations. In the GMP for the Addition Lands in 2010, the Preserve reinforced its legislative obligation to permit traditional and customary uses by the Seminole and Miccosukee tribes and independent Seminole and Miccosukee members, to consult tribal governments with regard to proposed actions, and to protect the Big Cypress ecosystem but did not commit to developing any new regulations.

#### *Airboat Concessions*

Relations between the Miccosukee and Seminole Tribes and NPS were generally good, with occasional collaborations and few points of controversy. Throughout its history, the

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<sup>120</sup> James A. Goss, “Usual and Customary Use and Occupancy by the Miccosukee and Seminole Indians in Big Cypress National Preserve, Florida,” submitted to the Southeast Regional Office, draft report, June 1, 1995, page 121; BICY 14661 S5 G F5.

<sup>121</sup> *Ibid.*, 132.

Preserve's staff recognized the legislative requirement to work with the tribes and, more often than not, complied with it. In the early 1990s, however, an issue arose between the Miccosukee Tribe and Preserve staff regarding concessions. One of the key points in the 1974 enabling legislation and in the 1988 law that expanded the Preserve's boundaries was to allow members of the Miccosukee and Seminole tribes a first right of refusal with regard to concessions contracts, honoring the longstanding custom of tribal members operating small business providing goods and services to tourists. In the Preserve's enabling legislation, this right of first refusal pertained to those members of the Seminole and Miccosukee Tribes who were providing visitor services on January 1, 1972, to continue to provide those existing visitor services. For new visitor services, the legislation provided for a right of first refusal for members of the Seminole and Miccosukee Tribes, upon submittal of a proposal within ninety days of NPS announcing the services. The issue in the mid-1990s centered on concessions for airboats.

Airboats are one of the several types of ORVs that are allowed in the Preserve. Chapters 6 and 7 included extensive discussions regarding ORV use and plans for their management from the early 1990s through the completion of the ORV Management Plan in 2001 to the provisions for trails in the Addition Lands as determined in the 2010 GMP. The use of ORVs in the Preserve was an intensely contested topic which involved two lawsuits and had implications for other resource issues including recreational hunting, hydrology, and protection of endangered species. Much of the contention regarding ORV use was centered on those areas accessed by Interstate 75, primarily by wheeled vehicles, especially swamp buggies. The southern portion of the Preserve, however, particularly in the central and western areas of the Stairsteps and the Western Addition, were typically wetter than the northern areas. In these areas, airboats, designed with an above-board fan and a nearly flat bottom that allowed them to skim over shallow water, were vital for access and were important components of traditional recreational use of the Preserve, including by Miccosukee and Seminole tribal members. Areas appropriate for airboats, though, were relatively small relative to the entire Preserve and by comparison to those areas impacted by wheeled ORVs, and the traces that airboats left tended to be less visible to other recreational users of the Preserve. As a result, they were rarely discussed in regard to the overall management of ORVs in the Preserve. They were, however, useful for providing visitors with access to portions of the Preserve that would not be possible to access otherwise. Big Cypress National Preserve began issuing one or two commercial use licenses per year for airboat tours in 1985.

A staff member with the Florida Department of Natural Resources compiled a summary of existing information regarding airboat usage and potential impacts in 1992, concluding that, while airboats had the potential to adversely affect certain nesting animals and could, over time, create channels through wetland vegetation, their use should, in most cases, be managed rather than eliminated given the access that they provided to otherwise inaccessible areas.<sup>122</sup> By 1994, however, Preserve staff were reporting rapidly increasing numbers of airboats, particularly in the Ochopee Prairie area and the Stairsteps unit of the Preserve's southwestern area. This increase in use was the result of more typical rainfall patterns returning after several dry years coinciding with the growing popularity of airboat tours among tourists. Greater commercial airboat tours was also accompanied by a rise in private recreational use. According to a report prepared by

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<sup>122</sup> Memorandum, Leo Minasian to Jim Stevenson, FL Department of Natural Resources, February 14, 1992; BICY 16183 S1, SSA, SSS1, F6.

Preserve staff, the Ochopee Prairie and Stairsteps areas were “exhibiting changes to the ecosystem that may permanently alter the natural function that Congress envisioned protecting.” The GMP, completed three years before, had identified the Ochopee Prairie area, which encompasses approximately 10,000 acres, as an Important Resource Area, with Cape Sable Seaside Sparrow habitat, a marsh, a mangrove forest, a bald eagle nest, and hardwood hammocks. Airboats had been seen having an impact on the bald eagle nest, wading birds, Cape Sable Seaside Sparrows, and other animal species, due to inadvertent contact and vandalism. In addition, a study conducted by the U.S. Department of Agriculture from 1990 to early 1994 found that the creation of a principal airboat trail in the Preserve had caused a significant loss in soil depth and the elimination of some vegetation. With only a few studies of the Ochopee Prairie’s ecosystem, however, it was difficult to assess the exact impacts. As a result, the May 1994 report recommended eliminating airboat activity for several years to develop an understanding of the ecosystem’s seasonal variations: “Once this baseline has been established, airboat activity in this area should be evaluated on an incremental basis” in coordination with an environmental review to determine that there would be no negative impacts.<sup>123</sup>

As a result of the deteriorating conditions outlined in the report, Superintendent Hibbard announced that all seven commercial airboat tour companies would no longer have access to the Ochopee Prairie as of June 5, 1994. In August, Hibbard announced that those who wished to offer commercial airboat tours must submit a detailed plan of operations. Five operators responded, and plans were subjected to environmental review in early 1995. Hibbard allowed four commercial operators to conduct airboat tours beginning in 1996, over the objections of Resource Management staff who pointed out that the potential environmental impacts had not yet been studied. According to a news report on the controversy between Hibbard and his Resource Management Staff regarding the commercial airboat tours, “Hibbard ignored their warnings because he feared shutting the tour businesses out of the preserve would shut them down, devastating the economy of tiny Everglades City.”<sup>124</sup> Following the acquisition in December 1996 of the Western Addition, which extends south to the marshes near Everglades City, Hibbard allowed the commercial airboat companies to offer tours there as well.

As news about the airboat ban was breaking in early June 1994, Miccosukee Tribal Chairman Billy Cypress wrote to Superintendent Hibbard. Cypress was concerned that, in closing the Ochopee Prairie to airboat use, Hibbard may have misled commercial airboat operators regarding the availability of Water Conservation Area 3A, where the Miccosukee Tribe had an exclusive lease on commercial airboat tours as granted in the Florida Indian Land Claims Settlement Act of 1982. In addition, Cypress observed that “The Tribe understands that you may have offered concessions in the past, specifically airboat ride concessions without offering the Tribe our first right of refusal. We would appreciate your comments on this matter.”<sup>125</sup> In his reply, Hibbard sought to make a distinction between concessions, contracts, and licenses, stating that the Preserve “has never offered a concessions operation for any type of activity,” but that the Preserve does “issue commercial use licenses for some activities, which includes airboat rides. These are available to all persons that can meet the criteria (insurance, trained in CPR, etc.)”

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<sup>123</sup> “Big Cypress National Preserve, Ochopee Prairie Airboat Impact Briefing Paper, May, 1994;” BICY-378, Box 7 to be cataloged into BICY 26817, S3, SSA.

<sup>124</sup> “In the Wake of Airboats,” *Tampa Bay Times*, January 9, 2000, page 19.

<sup>125</sup> Billy Cypress to Wallace Hibbard, June 7, 1994; BICY-378, Box 10 to be cataloged into BICY 26817, S3, SSA.

Concessions operations, Hibbard stated, “are contractual agreements,” and are subject to a first right of refusal by the Miccosukee and Seminole tribes.<sup>126</sup> Cypress countered by alleging a deterioration in relations, saying Preserve staff were observed making dismissive comments regarding the Miccosukee and Seminole tribes:

Your response concerning the airboat concession issue openly proves to us that this attitude is prevalent among your staff. Instead of advertising for a concession with strict controls, commercial use licenses were issued. The Preserve made no attempt to inform the Tribe of the availability of these commercial use licenses. Instead, the Preserve issued the licenses to local people in the surrounding community, which ultimately led to the closing of the Ochopee Prairie to all commercial airboat ride activity. It is apparent that the Preserve found a legal way to side step right of first refusal for the Tribe.<sup>127</sup>

Hibbard maintained his position that the issuance of a license for commercial airboat tours did not constitute a concession and persisted in allowing four airboat tour guides to operate in the Preserve so long as they held to environmental standards, but he did not move forward with an EA. Finally, in early 1998, the Miccosukee Tribe filed a lawsuit against the Preserve in the United States District Court for the Southern District of Florida on two grounds: failing to comply with the NEPA by not conducting either an EA or EIS despite knowing of the potential for environmental damage resulting from airboat use and failing to follow the Preserve’s enabling legislation regarding concessions. In preparation for the lawsuit, attorneys for the Miccosukee Tribe deposed two Preserve staff members, Resource Management Specialist Patrick Kenney and Vegetation Management Specialist Tony Pernas, who confirmed that Hibbard disregarded their advice regarding the need for studies of the environmental impacts of commercial airboat use and discounted the testimony of outside experts. Attorneys for the Preserve countered that, in granting licenses to the four commercial airboat tour guides subject to environmental conditions, staff were reinstating existing licenses to operate rather than starting a new program. The resumption of commercial airboat tours, therefore, did not qualify as a “major federal action” that would “significantly affect the quality of the human environment,” which is the condition that triggers NEPA. As the Preserve argued, “When the federal government received the Addition lands in December 1996, the airboat tours were part of the environmental status quo. When the NPS allowed the tours to continue, it did not change that status quo: airboats were already traversing the mangrove creeks near Everglades City.”<sup>128</sup>

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<sup>126</sup> Wallace Hibbard to Billy Cypress, June 9, 1994; BICY-378, Box 10 to be cataloged into BICY 26817, S3, SSA. In NPS parlance, concessions contracts are longer-term vehicles, typically from ten to twenty years, designed to provide commercial visitor services within a park through a third party and under which the rates charged by the concessioner are subject to approval by NPS. In addition, concessions contracts pertain to those commercial services that are assigned land and/or facilities. Commercial use authorizations, by contrast, are granted to private businesses to permit small-scale commercial activities that take place within the park, but which begin and end outside the park; these authorizations are issued after a review by the park for appropriateness, minimal impact on resources, and consistency with the purpose for which the park was established.

<sup>127</sup> Billy Cypress to Wallace Hibbard, June 16, 1994; BICY-378, Box 10 to be cataloged into BICY 26817, S3, SSA.

<sup>128</sup> Miccosukee Tribe of Indians of Florida v. United States of America; National Park Service; Wally Hibbard in his capacity as Superintendent of Big Cypress National Preserve, Miccosukee Tribe’s Supplemental Motion for Partial Summary Judgment and Incorporated Memorandum of Law, delivered to counsel for plaintiff, March 25, 1999; BICY-313, Box 1 to be cataloged into BICY 26817, S9.

After the lawsuit was filed, Hibbard permitted Preserve staff to begin work on an Environmental Assessment, which was in draft form by March 1999.<sup>129</sup> Settlement talks between the Miccosukee Tribe and the Department of Justice began in 1998 and continued throughout 2000. The District Court granted partial summary judgment to the Miccosukee Tribe in August 2000 regarding violations of NEPA and ordered that all airboat tours in Big Cypress be discontinued.<sup>130</sup> While the court continued to deliberate the issue of alleged violations of the Preserve's enabling act concerning concessions, the two sides had roughed out a draft settlement agreement by late June 2001. In this draft settlement, on the charge regarding commercial airboat tours, NPS agreed to conduct an EIS into their impact in the Western Addition. The remaining points of the settlement pertained to the right of first refusal for concessions which the original legislation and the 1988 amendment granted to the Miccosukee and Seminole tribes. The proposed settlement decreed that, if NPS determined that airboat tours were appropriate, it would authorize the tours as concessions contracts with the Miccosukee and Seminole tribes offered the right of first refusal. The settlement also included references to the proposed redevelopment of Monroe Station on the Tamiami Trail. If the redevelopment plans include establishing a convenience store with gasoline sales, the Miccosukee and Seminole tribes would be offered the right of first refusal, and the tribes agreed to pay for the environmental documentation of the building if they accepted the concession. The settlement also included that any proposed revenue-generating project expected to generate annual gross receipts of at least \$100,000 would be designated a concession, and similar rights would, therefore, be offered to the tribes. Finally, the tribes and NPS agreed to meet at least three times per year to improve communications between them.<sup>131</sup>

Before this settlement was executed, however, in December 2001, the District Court issued its final ruling regarding the question of concessions and ruled in favor of NPS, which thereafter contended that the question of concessions was moot. The court, NPS argued, could not order NPS to offer right of first refusal for commercial airboat tour concessions because the court had also ordered NPS to conduct an EIS regarding the effects of airboat tours, the result of which might be to eliminate all such tours. In the view of NPS, if NPS were to approve commercial airboat tours, and if, upon doing so, NPS failed to offer a right of first refusal to the Miccosukee and Seminole tribes, the tribes could file a motion to reopen the lawsuit.<sup>132</sup> Research for the current Administrative History did not locate an Environmental Impact Statement for airboat usage in the Addition Lands. Airboat usage was, however, incorporated in the 2010 GMP for the Addition Lands. Although little or no analysis was provided in the Addition Lands GMP regarding the environmental impacts of airboats, and no studies were cited in the bibliography,

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<sup>129</sup> Wallace Hibbard to Edward T. Mitchell, March 30, 1995, BICY 14661 S5; Memorandum, Resource Management Specialist to Resource Management Team Leader, April 9, 1997, BICY-378, Box 7 to be cataloged into BICY 26817, S3, SSA; "Draft Environmental Assessment, Operation of Airboat Tours from Everglades City, Florida Within the Southwest Addition Area of Big Cypress National Preserve, March 1999, BICY 26817, S3, SSA.

<sup>130</sup> "Federal Judge Bans Airboats in Big Cypress," *The Miami Herald*, August 25, 2000, page 33.

<sup>131</sup> Draft Settlement for Discussion Purposes Only, June 27, 2001; BICY-313, Box 1 to be cataloged into BICY 26817, S9.

<sup>132</sup> *Miccosukee Tribe of Indians of Florida v. United States of America, National Park Service, and John J. Donahue* in his official capacity as Superintendent of Big Cypress National Preserve, Order Granting Motion for Clarification, Order Continuing Injunction and Retaining Jurisdiction, Order Dismissing Counts II and II as Not Ripe and Closing Case, December 18, 2001; BICY-313, Box 1 to be cataloged into BICY 26817, S9.

the GMP prohibited all private recreational airboat use in the Addition Lands. This ban remains in force.

With more than 750,000 acres of land that is nearly entirely undeveloped, much of it inaccessible to most visitors, natural resources necessarily require the majority of the Preserve's management efforts. Big Cypress National Preserve oversees one of the largest fire and aviation management programs in the National Park System and is a vital component in the multi-billion-dollar program to restore the wetland ecosystem of the greater Everglades region. Moreover, as one of the first two National Preserves in the National Park System, the staff at Big Cypress National Preserve have spent a huge amount of time and energy seeking to provide for a range of recreational and consumptive uses, including hunting, fishing, ORV use, and oil and gas extraction, while protecting the Preserve's invaluable natural resources. As a unit of the National Park System, however, and as a neighbor to Everglades National Park in this highly developed area of Florida, it is a magnet for tourists of all interests. Preserve staff needed also to plan for provision of services to visitors who were not interested in backcountry access or ORV use. A discussion of the Preserve's interpretive program is the topic of the following chapter.

## Chapter 9: Interpretation and Visitor Services

Big Cypress National Preserve, like many other units of the National Park System, was created primarily to protect a range of resources, most notably the natural, distinctive flow of water through the region and the several threatened and endangered plant and animal species that the environment supports, as well as the region's cultural resources. At the same time, the Preserve allowed many traditional uses that, on the surface, appear contradictory to the goal of preserving natural and cultural resources. The requirements made by the Preserve's enabling legislation were a tall order which NPS worked diligently to fulfill in the early decades. Early discussions of the Preserve, however, both before its establishment in 1974 and after, lacked one of the most common aspects of National Park Service units: interpretation. During the Preserve's earliest years, interpretation was a minor topic. Initial planning for the Preserve's Development Concept Plan in the fall of 1977 included the possibility of a facility to house visitor services as well as operational requirements, but this was considered too early in the process because land acquisition was still underway, and there were no plans for what would be interpreted.<sup>1</sup> Six months later, Park Manager Irvin Mortenson responded to a request from the Southeast Regional Office to all units regarding the status of interpretation by observing that "The legislative history for Big Cypress apparently does not support any interpretive facilities or services being offered."<sup>2</sup>

Big Cypress National Preserve was then under the management of Everglades National Park, and the Preserve relied on its neighboring park for its limited interpretation offerings as it did for all other functions. In 1977, Everglades Ranger Sandy Dayhoff, who lived on the Loop Road with her husband, Preserve Ranger Fred Dayhoff, received permission from Everglades National Park Superintendent John Good to establish an environmental education center on the site of a former church camp next to their house. Sandy and Fred Dayhoff did much of the work themselves, often working with neighbors and friends, clearing the dilapidated older buildings and laying out a network of trails through the variety of environments including sawgrass prairie, pineland, and cypress swamp. At the Dayhoff's request, reservists from the 915<sup>th</sup> Civil Engineering Squadron at nearby Homestead Air Force Base constructed permanent tent platforms where students with visiting school groups could camp out. The Loop Road Environmental Education Center, located within Big Cypress National Preserve but operated largely by volunteers under the administration of Everglades National Park, was the only source of interpretation in the early years and remains one component of the Preserve's interpretive program.<sup>3</sup>

This lack of interpretive programming at the Preserve in the early years troubled Mortenson's successor, Superintendent Fred Fagergren. In April 1982, Fagergren addressed a

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<sup>1</sup> Development/Study Package Proposal, Construct Initial Visitor and Operations Facilities, attached to Memorandum, Superintendent, Everglades to Regional Director, October 14, 1977; BICY 14661 S2, SSA, F1.

<sup>2</sup> Memorandum, Park Manager, Big Cypress National Preserve to Regional Director, Southeast Region, May 18, 1978; BICY 14661 S4, SSA, F9.

<sup>3</sup> Blythe, *Wilderness on the Edge*, page 553. See also Susana Perez, "Sandy Dayhoff Oral History," available on American Conservation Experience website: <https://www.usaconservation.org/crdip-sandy-dayhoff-oral-history/> (accessed September 19, 2023).



pointed memorandum in response to a request from the Regional Director regarding the status of interpretation. Fagergren observed that, although an initial Interpretive Prospectus had been scheduled for Fiscal Year (FY) 1981, and despite the offer of Regional Chief of Biological Resources John Reed to prepare the prospectus in FY 1982, the Regional Office had taken no action. Fagergren reported also that the Preserve's budget included no funds for interpretation. As he described it:

The present condition of interpretation at [Big Cypress National Preserve] is nonexistent [sic] but desperately needed. [We have] an excellent interpretive film but no location to show it to the public. The Tamiami Trail, which cuts through the preserve [sic] and connects Naples and Miami, is a major crossroad for extensive tourist travel. Those tourists now enter and leave the preserve and no doubt note the signs telling them that they have entered or left the preserve. Other than those signs tourists traveling on U.S. 41 (Tamiami Trail) have no information as to what it is they have passed through.<sup>4</sup>

Finally, in 1984, two years after Fagergren expressed his frustration, interpretive staff from NPS Harpers Ferry Center (HFC) traveled to Big Cypress to initiate planning and design for a visitor contact station at the Oasis ranger station to include exhibits, a film, and other interpretive media, and to prepare the Preserve's Interpretive Prospectus, completed in August 1984.

The Interpretive Prospectus completed in August 1984 opened with a clear defense of an interpretive program: "The preserve [sic] is not simply a watershed for the Everglades, but an area possessing a number of unique values. The purpose of this Interpretive Prospectus is to address ways and means to make the preserve understandable to visitors."<sup>5</sup> The Preserve's interpretive program was then in its infancy, with no programs or facilities and no visitor use statistics yet available. By this time, however, "an excellent film [had] been produced," and the Preserve had an informational brochure.<sup>6</sup> The Interpretive Prospectus identified the key objectives for interpretation, including basic information about the Preserve and what it is, what makes the Preserve a unique natural area, how humans have impacted the Preserve, and its relationship to the Everglades. It was assumed that the Oasis ranger station, once renovated, would serve as the primary interpretive center, housing an auditorium to show the twenty-minute film, "The Living Waters," as well as exhibits and general visitor information and would direct visitors to a short hiking trail with interpretive panels. With the uncertainty of how long it would take to develop such a facility, however, the Interpretive Prospectus also recommended other short-term approaches, including the use of a Traveler's Information System broadcast using a low-intensity radio signal to which visitors driving on U.S. Route 41, the Tamiami Trail, could tune as they passed through the Preserve. In addition, the Interpretive Prospectus discussed the existing roadside parks managed by the Florida Department of Transportation on the Tamiami Trail—H.P. Williams Roadside Park at Turner River Road in the western portion of the Preserve and the Kirby Storter Roadside Park approximately four miles to the east—which were potential sites for interpretive panels. Finally, the Interpretive Prospectus acknowledged the need to

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<sup>4</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, April 16, 1982; BICY 14661 S4, SSA, F1.

<sup>5</sup> "Big Cypress National Preserve: Interpretive Prospectus," approved by Southeast Regional Director Robert M. Baker, Jr., August 21, 1984, page 1; BICY 14605 Coll 00002-004-001-001 Box 3.

<sup>6</sup> Ibid. No information on the Preserve's initial film or the initial brochure was located during the current research.

develop programs and facilities for those with disabilities, prepared a brief list of topics for future brochures which included the Miccosukee and Seminole Indians, the flora and fauna of Big Cypress National Preserve, a history of the Tamiami Trail, and an overview of the ecology and history of development in south Florida.<sup>7</sup>

Preparation of the Interpretive Prospectus was led by planners from HFC and supported by Big Cypress National Preserve Chief Ranger Howard Dimont. While this team was developing the Interpretive Prospectus, HFC was quickly moving forward with renovating the Oasis ranger station for additional use as a visitor contact facility. Superintendent Fred Fagergren received authorization from USFWS to display an exhibit of migratory birds obtained as road kills and prepared by a taxidermist as part of interpretation at the visitor facility which opened in September 1984 (Figure 14). The birds included a Great Horned Owl, a Barred Owl, a Pileated Woodpecker, and two Red-Shouldered Hawks.<sup>8</sup> Over the following year, HFC arranged for audio-visual equipment to show the orientation film in an auditorium in the Oasis Visitor Contact Station, which formally opened in January 1986.<sup>9</sup> In the spring of 1985, following renovations to the building for use as a visitor center, the Oasis facility was described as “an attractive two-story cement-block building containing 2,800 sq. ft. on each floor,” with an attached airplane hangar then being used for vehicle storage. The first floor of the building featured a lobby, exhibit area, and audio-visual room, and the second floor contained offices for the Visitor Protection and Resource Division (Figure 15). Oasis had been built as a small airport, and the landing strip remained in use for the airplanes which the Preserve used for patrol and fire protection.<sup>10</sup>

Beginning in 1985, with the Oasis Visitor Contact Station opening to the public, the Preserve also gained the support of a Cooperating Association, the Florida National Parks and Monuments Association (FNPMA). The non-profit organization had its foundation as the Everglades National History Association established at Everglades National Park in 1951. The FNPMA expanded in 1985 to serve Biscayne National Park and Dry Tortugas National Park as well as the Preserve, operating educational bookstores at each park. By 1992, FNPMA employed a sales clerk at the Oasis Visitor Contact Station who worked full-time for twenty-three weeks and part-time for the other twenty-nine weeks of the year. Like Cooperating Associations at other National Park System units around the country, the FNPMA donated a portion of the sales revenue back to the Preserve to fund publications and other interpretive material and services including exhibit display cabinets, brochures for hunting and fishing regulations, and reference library materials.<sup>11</sup>

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<sup>7</sup> Ibid.

<sup>8</sup> Dan M. Searcy [USFWS] to Fred J. Fagergren, September 17, 1984; BICY 14661 S4, SSA, F6. See also Fred Fagergren to Special Agent in Charge regarding authorization to display these birds, September 12, 1984; BICY 14661 S4, SSA, F9.

<sup>9</sup> Memorandum, Supply Technician, HFC to Superintendent, BICY, November 14, 1985; Memorandum, Chief Park Ranger to BICY Personnel, January 17, 1986; BICY 14661 S4 SSA, F6.

<sup>10</sup> “Existing NPS Development and Use,” excerpt from draft GMP, April 12, 1985; BICY 14605 00002/004.004-009 Box 5. See also budget request for repairs to the existing roof at the Oasis Ranger Station, approved April 23, 1984, BICY 14661 S2, SSB, F6; the roof had recently been replaced, but quickly developed bubbles and cracks, and if not repaired “will cause immediate damage to the new interior offices.”

<sup>11</sup> “Big Cypress National Preserve, Statement for Interpretation,” revised December 17, 1993, BICY 14661 S4, SSA, F10; Florida National Parks and Monuments Association, Inc., Budget FY 1989/1990, BICY 14661 S4.



Figure 14. Oasis Visitor Center exhibit, c. 1990.



Figure 15. Oasis Visitor Center, looking northeast, 2019. Photograph by the author.

This basic interpretive program at what soon came to be known as the Oasis Visitor Center—a small exhibit showing wildlife at the Preserve, an interpretive film, and a brochure—remained the principal visitor contact for the Preserve into the early 1990s. In July 1989, the Preserve also opened a small visitor contact station at the new headquarters facility in Ochopee.<sup>12</sup> Shortly after developing and implementing this preliminary interpretation program, the Preserve prepared a Statement for Interpretation. The majority of the brief document provided background information on the Preserve and its natural resources and observed that “The Interpretive operations at Big Cypress are limited since there is no designated interpretive staff and interpretive associated facilities are of a minimal nature.” The Preserve’s interpretive program at that point was limited primarily to the Oasis Visitor Center, the self-guided Loop Road Trail, occasional outreach programs to local organizations, and coordination with the Loop Road Environmental Center operated by Everglades National Park as discussed earlier in this chapter. Rather than proposing significant interpretive programming in this era with limited staff, therefore, the Statement for Interpretation identified several initiatives that would allow the visiting public to become involved in the Preserve’s operations, including a clean-up and site restoration project, exotic plant removal, assisting with Everglades National Park’s Loop Road Interpretive Center, and assisting with youth programs. These opportunities for public participation took place primarily in the winter and spring, when the Preserve saw most of its visitors, and were supplemented by a Volunteers in Parks (VIP) program that provided up to twenty-eight hours per week of visitor information contact service. Little else could be offered as interpretive programming due to staff and facility limitations but also because the Preserve staff knew very little about the demographics of their visitors. The Preserve was not keeping track of visitor figures aside from attempts to count those who used the Oasis Visitor Center. As Superintendent Fagergren observed in his transmittal memorandum for the Statement for Interpretation to the Southeast Regional Director, “Given the absence of interpretive staff we have done the best we can.”<sup>13</sup>

Superintendent Fagergren and his successor, Superintendent Wallace Hibbard, clearly regretted the inability to provide additional interpretive services. The Preserve was able to hire one full-time equivalent (FTE) staff position, Interpretive Specialist Elizabeth Dupree, in FY 1991, and, in preparing for the FY 1992 budget, Hibbard requested an expanded interpretive program including a budget of \$152,000 and staffing of four FTE positions. This request was initially denied. Hibbard expressed his disappointment to the Southeast Regional Director in person and in a follow-up memorandum in which he observed that, in the decade from 1981 to 1991, visitors to the Oasis Visitor Center had increased from 6,000 to more than 110,000 per year. In addition, an estimated 1.5 million people drove along the Tamiami Trail each year “for the explicit purpose of experiencing the unique roadside resource viewing opportunities.” Preserve staff capabilities, he continued, “fall far short of being able to provide the visitor with the kind of basic information that will make their visit enjoyable and educational.”<sup>14</sup> By the end of the fiscal year, however, the Preserve gained only one additional staff member, a full-time

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<sup>12</sup> Annual Superintendent’s Narrative Report, 1989; BICY 26817, S3, SSA.

<sup>13</sup> “Statement for Interpretation, Big Cypress National Preserve, 1990,” with Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Regional Office, February 10, 1990; BICY 14661 S4, SSA, F10.

<sup>14</sup> Memorandum, Superintendent, Big Cypress National Preserve to Regional Director, Southeast Region, May 15, 1992; BICY 14661 S4, SSA, F10.

Interpretive Clerk Typist position who also handled ORV permit sales in the Oasis Visitor Center.<sup>15</sup> In 1992, with the addition of two interpretation staff members, the visitor center in the Oasis ranger station was finally open for a full eight hours per day throughout the year.<sup>16</sup>

With the natural environment serving as the principal draw for most visitors, much of the Preserve's interpretation program was closely coordinated with recreation planning, often in collaboration with Everglades National Park. By the late 1990s, these included bird watching hikes, evening campfire programs, and guided hikes focused on different aspects of the Preserve's birds, wildlife, and plants, all of which complemented illustrated talks at the Oasis Visitor Center.<sup>17</sup> Preserve staff also developed an extensive outreach program, providing programs in schools and for summer library groups and creating exhibits for festivals and conferences and, in 1996, began taking part in regional ecotourism organizations. In 1999, Preserve staff inaugurated the Swamp Water and Me Program (SWAMP), a successful and ongoing annual program conducted in collaboration with Collier County for sixth-grade students. The SWAMP includes a teacher workshop, pre-field trip visit to the school by a Preserve ranger, and a field trip to Big Cypress National Preserve, with a curriculum designed to complement the state's educational standards. By 2000, the Preserve was serving more than 130,000 visitors per year in the Oasis Visitor Center, and staff provided nearly 180 interpretive programs, guided tours, hikes, and canoe trips. That same year, the Preserve kicked off its environmental education program, providing more than 3,600 students with swamp ecology programs conducted in the schools and at the Preserve.<sup>18</sup>

As the Preserve's interpretive program began to take shape in the 1990s, two gaps soon appeared: an understanding of visitation patterns and visitor experiences, and a Long-Range Interpretive Plan (LRIP). In the spring of 1998, the Preserve received funding from the NPS Visitor Services Project for a visitor study, and, in May, staff began developing the questions and concerns that they wanted the survey to address. The University of Idaho Cooperative Park Studies Unit was contracted to conduct the survey, and work began in early January 1999. The survey team distributed questionnaire cards and conducted visitor interviews at nine sites throughout the Preserve including the two Florida DOT roadside stops on the Tamiami Trail. The team distributed 857 questionnaires and received 582 that had been completed, for a response rate of 68%. The results indicated that most visitors came in family groups, and the vast majority stayed in the Preserve for only one day. The most common activities were sightseeing, bird watching, and visiting the Oasis Visitor Center. Overall, the Preserve received good or very good ratings from 86% of the respondents.<sup>19</sup>

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<sup>15</sup> Big Cypress National Preserve Superintendent's Annual Narrative Report, Calendar Year 1991; BICY 16183 100001/001.001.001-055 Folder 3 of 3.

<sup>16</sup> Big Cypress National Preserve, 1992 Superintendent's Annual Narrative Report; BICY 16183 100001/001.001.001-055 Folder 3 of 3.

<sup>17</sup> Big Cypress National Preserve Monthly Activity Schedules for 1994; BICY 14661 S4, SSA, F4.

<sup>18</sup> Big Cypress National Preserve Annual Accomplishments Report, Fiscal Year 2000; BICY 16183 100001/001.001.001-055 Folder 1 of 3.

<sup>19</sup> "Big Cypress National Preserve Visitor Study, Winter 99," Visitor Services Project Report no. 109, University of Idaho Cooperative Park Studies Unit, December 1999; BICY 224. See also correspondence between Preserve and University of Utah staff to coordinate the project from May 21, 1998 to December 14, 1998, found in BICY 14661 S4, SSA, F14.

With these results from the visitor survey for guidance, the Preserve began work on its first LRIP in 2000. The Harpers Ferry Center was contracted to prepare the document in collaboration with Preserve staff and completed the project in 2002. The LRIP identified the Preserve's key interpretive themes as water, biological diversity, human culture, and recreation/multi-use before laying out objectives for visitors' experiences that included an understanding of the need for, and the means of, protecting this important ecosystem, learning how various cultures have used the region, and taking part in a range of interpretive offerings such as personal contact and media interaction. The LRIP identified the few opportunities for visitor use and access to the Preserve, including at MMs 70 and 63 on Interstate 75, a visitor information center built and managed by the Everglades Area Chamber of Commerce on State Highway 29 at the Tamiami Trail, the Oasis Visitor Center, and two roadside parks on Tamiami Trail. It listed the opportunities for recreational activities in the Preserve, including hiking, camping, canoeing, hunting and fishing, bird watching, and ORV use, all of which offered opportunities for the Preserve to provide interpretive materials.<sup>20</sup>

After acknowledging the limited attractions that then existed, the LRIP offered a vision for a visitor experience that would begin before arriving at the Preserve, with a new internet website to provide information about the Preserve and what options were available and making the interpretive film in the Oasis Visitor Center available in video format for broadcast in regional tourist offices, on cable television, and on close-circuit systems on the east and west coasts of Florida, where tourists could experience it. The LRIP recommended that the Preserve have additional highway signage installed and provide brochures at multiple rest areas to alert drivers on Interstate 75 and the Tamiami Trail to the region's recreational offerings, and suggested production of four Travelers Information System radio broadcasts along both routes. Once on the Preserve, visitors would have opportunities for many different types of experiences "appropriate for audiences with different levels of interest, understanding, and sophistication" that include in-depth educational opportunities, recreational activities, and self-guided driving tours through the Preserve. The LRIP recommended that wayside exhibits be placed at multiple locations in the Preserve to "play a significant role in informing visitors about resources and the management actions necessary to protect and perpetuate them for future generations," including the use of fire for managing a variety of resources.<sup>21</sup> The LRIP went on to advocate extensive personal contact from Rangers, both formally in tours, hikes, and outreach programs and informally by roving staff in several recreation areas such as trailheads and boat landings. This outreach would also include an expansion of the Preserve's onsite and offsite education programming and would require coordination with Florida's education system to develop appropriate curricula. Former Superintendent Donahue recalled that an improved education program was a primary goal of the LRIP: "it really is wonderful to see kids come out from the local towns and be able to make a plaster cast of a panther's paw."<sup>22</sup> In addition, with completion of the Alligator Alley portion of Interstate 75 only a decade before, the LRIP placed great emphasis on incorporating information about the Preserve along this corridor with signage at the eastern and western boundaries and at the two rest stops.

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<sup>20</sup> *Long-Range Interpretive Plan, Big Cypress National Preserve*, July 2002.

<sup>21</sup> *Ibid.*, 27-28.

<sup>22</sup> John Donahue, oral history interview, February 22, 2021.



As discussed in Chapter 8, the Tamiami Trail was designated a State Scenic Highway in 1999 and a National Scenic Byway in 2000. These designations allowed the Preserve to apply successfully for grants to improve the Monroe Station and gave the Preserve the ability to coordinate with the Florida DOT on a series of improvements to Highway 41. The goal of these highway improvements was to encourage more visits to the facilities that gave access to the Preserve and to reduce accidents and, especially, fatalities on the highway. Former Preserve Administrative Officer Ellen Hand recalled preparing the project approval form for these upgrades, which required input from both NPS and the Florida DOT. The project, which took several years to complete, included new wayside exhibits, pull-off lanes, canoe access sites, and boardwalks (Figure 16).<sup>23</sup> Former Preserve Chief of Interpretation Robert DeGross entered on duty in 2003, while the construction work was taking place. The improvements, he recalled, were “focused on, not the people who were going into the backcountry of the Preserve in whatever manner...but [were] really trying to capture opportunities for the casual tourist traveling across the state on U.S. 41. So, they implemented a wildlife viewing platform at the Kirby Storter area, and they implemented a boardwalk at one area.”<sup>24</sup> Figures 17 and 18 provides views of the facilities at Kirby Storter Park constructed as a result of the Highway 41 scenic highway improvement project.



Figure 16. Waysides on Tamiami Trail, 2019. Photographs by the author.

The LRIP team incorporated the new scenic highway designation into the Preserve’s interpretive planning with recommendations for a new visitor information center near the Preserve’s headquarters in Ochopee. This new visitor center, as discussed later in the chapter, was planned to serve as an introduction to the overall south Florida region as well as the Preserve and would include outdoor walking and picnicking amenities and interior interpretation and visitor orientation facilities. At the Oasis Visitor Center, the plan envisioned a new parking area to the east of the building with a new entry and exit from the Tamiami Trail, a reconstruction of

<sup>23</sup> Ellen Hand, oral history interview, February 26, 2001.

<sup>24</sup> Robert DeGross, oral history interview, January 13, 2021.





Figure 17. Kirby Storter Park boardwalk, 2019. Photograph by the author.



Figure 18. Kirby Storter Park interpretive panel, 2019. Photograph by the author.



the canal, new landscape elements, and a redesigned and expanded exhibit space for the building's interior, together with a new introductory video.

With the completion of the LRIP, the Preserve reorganized the interpretation functions in 2003, promoting them from being a component of the Visitor and Resources Protection Division to becoming a separate Division of Interpretation with a new staff arrangement. The new division was led by newly-hired Supervisory Park Ranger, Robert DeGross, who served as the Chief of Interpretation reporting directly to the Superintendent. He was supported by three permanent staff: Visitor Center Supervisor Isobel Kalafarski, Environmental Education and Outreach Coordinator Lisa Andrews, and an Interpretive Planner.<sup>25</sup> In addition, the new division included four seasonal park rangers, three for the winter season and one for the summer season. In 2003, the Preserve saw a total visitation of 400,900 people. This number included nearly 130,000 visitors at the Oasis Visitor Center, more than 22,000 of which viewed the introductory video. The environmental education and community outreach programs combined to reach nearly 8,000 students.<sup>26</sup>

DeGross recalled the state of the materials that were available for interpretation when he arrived at the Preserve and the changes his team made:

There was the Oasis Visitor Center that had some very rudimentary, catch-as-catch-can, made-in-house exhibits. And then there were a bunch of bulletin boards all around the Preserve that, basically, just had laminated, push-pin information put up on them. And so, we—working with the team in interpretation, we did a lot of development of products that carried on the NPS messaging format, which included waysides...rather than just having in-house-made bulletin boards, putting up panels in the bulletin boards so it had a uniform look.<sup>27</sup>

Upon taking on his new position as Chief of Interpretation, DeGross led the development of a new waysides program “for the amenities that were created or constructed along the U.S. 41 improvement project,” and instituted new unigrid brochures. These new facilities, waysides, and brochures, the results of the Highway 41 scenic highway improvement project, DeGross continued, were among the first at the Preserve to take advantage of the recently-developed, standardized NPS branding program for signs and brochures.<sup>28</sup>

Also in the wake of completing the LRIP, Preserve staff under Superintendent John Donahue began planning for two major projects: a Commercial Services Plan and a new visitor center. As discussed earlier in this chapter, the Preserve's recreational and interpretive functions are closely intertwined. The Preserve was not intended initially as a visitor destination, and the 1991 GMP made few provisions for visitor services. According to the Preserve's Commercial Services Plan in 2009, “The GMP did not anticipate the Preserve becoming a destination for the average visitor; rather, it specifically states that the primary visitors to Big Cypress are and are expected to be hunters, ORV users, and owners of improved properties.” With no interpretive staff, the Preserve relied on concessionaires to provide such limited visitors services as then

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<sup>25</sup> Annual Narrative Report, Big Cypress National Preserve, 2003; BICY 16183 100001/001.001.001-055 Folder 1 of 3. The name of the Interpretive Planner was not given.

<sup>26</sup> Ibid.

<sup>27</sup> Robert DeGross, oral history interview, January 13, 2021.

<sup>28</sup> Ibid.

existed. Through the 1980s as the GMP was being prepared, four private entities provided limited tours to portions of the Preserve by airboat or swamp buggies, only one of which operated more than two or three times per year.<sup>29</sup>

Throughout the 1990s, however, as the population of south Florida expanded rapidly, the Preserve became a destination for those seeking respite from the crowded coastal regions. In 1998, meanwhile, Congress passed the National Park Service Concessions Management Improvement Act (P.L. 105-391), requiring NPS to update its management of concessions for the first time since the Concessions Policy Act of 1965. As discussed briefly with regard to airboat concessions in Chapter 8, the current NPS regulations for commercial services makes a distinction between concessions contracts, under which concessionaires provide accommodations, facilities, or services within a park unit, and commercial use authorizations, which are permits to provide services such as hunting and fishing guides, motorcoach tours, and other recreational tours that have no facilities within the park unit. Although the regulations to implement the new law had not yet been issued, Preserve staff in the early 2000s, following the LRIP, began work on a plan that would serve as a guide for the increasing requests for permits to provide visitor services. At that time, the Preserve had no concessions contracts, and only two commercial use authorizations, both of which provide canoe and kayak rentals and livery services, guided canoe trips, and overnight canoe camping excursions.<sup>30</sup>

As planning began for the Commercial Services Plan, it was clear that the interpretive themes identified in the LRIP would serve as the foundation for commercial services, which had to be tied to one or more of the primary themes. At the same time, planning for an increase in commercial service offerings relied on analysis of the carrying capacity of the Preserve's management units, which is the number of visitors that could reasonably be accommodated without negatively impacting the Preserve's natural and cultural resources. Preserve staff began holding public meetings in 2005, proposing five alternatives that were made available for public comment. Two of these alternatives were removed following the public comment, leaving three principal alternatives. The no-action alternative would maintain the existing level of commercial services, including the two commercial operators providing limited services in Zones 1 and 2 of the Stairsteps Unit and the Turner River Unit. The second alternative would allow development of visitor services as envisioned in the GMP. This would entail seeking an entity to enter into a concessions contract "to provide on site visitor serves and facilities that would complement those provided by the NPS." These services would include interpretive tours, canoe rentals, back country shelter rentals, and back country guide and outfitter services for both hunters and non-hunters. This alternative proposed two locations for the concessions: the former Monroe Station as the principal site, and Sea Grape Drive near the Preserve headquarters office as a satellite.

The preferred alternative proposed the widest range of visitor services, based at the Monroe Station and Sea Grape Drive. This alternative featured a concessions plan that included hunting and fishing guides, with individual commercial use agreements for additional services, swamp buggy tours, hiking tours, canoe and kayak rentals, van tours, and guided hikes for birding and wildlife viewing. These proposed activities, according to the Commercial Services

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<sup>29</sup> *Big Cypress National Preserve Commercial Services Plan and Environmental Assessment*, June 2009; quotation on page 9.

<sup>30</sup> *Ibid.*, 28.

Plan, “would provide a range of visitor experience opportunities, while concentrating facilities to frontcountry locations, reducing impacts to visitor experience and natural resources in the backcountry.” The preferred alternative also proposed a backcountry camping complex at the existing Wiggins cabins in the northern portion of the Turner River Unit and incorporated the existing ORV trails for backcountry access.<sup>31</sup>

The Commercial Services Plan was released in 2009 and applied only to the original boundaries of the Preserve, since the GMP for the Addition Lands had not yet been finalized. The Preserve’s Foundation Document, released in late 2016, still retained the recommendation that an addendum to the Commercial Services Plan be prepared for the Addition Lands. By that time, however, the Preserve had issued eighteen commercial use authorizations for a variety of visitor services. As of the time of this Administrative History, fourteen firms were operating under commercial use authorization permits, providing primarily tours using a variety of means including swamp buggies, canoes and kayaks, vans and jeeps, and on foot, in addition to one vendor providing photography workshops.

While the Preserve was developing plans for commercial services, NPS staff under Superintendent John Donahue initiated plans for construction of a new visitor center. During the planning process, the Southeast Regional Office selected a lot on Tamiami Trail already owned by NPS and approximately two miles east of the intersection of State Road 29, where the Everglades Area Chamber of Commerce had a small welcome center. Donahue recalled of the early site selection process that:

The Regional Office wanted me to evict them [Everglades Area Chamber of Commerce] to put the Visitor Center there. And I declined to do that. You know, I was brand new...I think I told them “I may have come from the turnip truck, but it wasn’t yesterday.” And so, I offered the Chamber of Commerce the opportunity to share the new facilities with us, and, when they declined, they picked another location.<sup>32</sup>

By the time Donahue transferred from the Preserve in late 2004, much of the planning was completed and the funding largely in place. The plans underwent additional revisions before construction on the facility began in 2008. The Big Cypress Swamp Welcome Center was completed in late 2009, and the Grand Opening was held in February 2010. In July 2018, following the death of Nathaniel P. Reed, the new visitor center was renamed the Nathaniel P. Reed Welcome Center. Reed was a former senior environmental advisor to Florida Governor Reubin Askew during the creation of Big Cypress National Preserve and co-author of the Endangered Species Act of 1973, who later served as Assistant Secretary of Fish, Wildlife and Parks in the Department of the Interior, died at the age of eighty-four. Among the renaming of the Preserve’s new visitor center was one of several posthumous awards conferred on Reed, who was highly influential in the creation of Big Cypress National Preserve.

The new visitor center is a one-story, hipped roof building on the south side of U.S. 41. The exterior features a series of wayside exhibits surrounding the parking area in front of the building, and the interior includes exhibits on the natural history of Big Cypress Swamp, an auditorium, and office space (Figures 19, 20). DeGross, who assisted in the design of the facility

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<sup>31</sup> Ibid., 39.

<sup>32</sup> John Donahue, oral history interview, February 22, 2021.



Figure 19. Nathaniel P. Reed Visitor Center exterior, 2019. Photograph by the author.



Figure 20. Nathaniel P. Reed Visitor center interior, 2019. Photograph by the author.

in his role as Chief of Interpretation, recalled that “We had a heavy emphasis on exterior exhibits, recognizing that the building wouldn’t be open all the time, and the exterior spaces would be used to orient people to the site.” (Figure 21) Given the challenges of electric and internet service that were often unreliable in this remote area, with frequent lightning strikes, DeGross stressed the need for exhibits that did not rely on technology. As he recalled, “one of the things that we kept in mind was ‘We can’t have all the bells and whistles here. We need to have it as low-tech as possible, because, we’re not going to have the infrastructure to maintain it and we’re not going to have the technical expertise to keep things running.’” DeGross also emphasized the role of partnerships in the completion of the building and its exhibits, as well as for the ongoing interpretive programs. The South Florida National Parks Trust assisted in raising \$500,000 “to pay for the design, fabrication, and installation of many of those exhibits,” and he also worked “with the Big Cypress Gallery and Clyde and Nikki Butcher, and Elam Stolfus on the development of the orientation film for the Visitor Centers at Big Cypress.” For ongoing interpretive programs, DeGross recalled an extensive list of community and regional partners:

Myself, the other interp [sic] staff at the south Florida National Park areas, and the South Florida National Parks Trust, were involved with the South Florida Community Partners. The Community Partners were made up of different community leaders in communities that are typically underserved by national parks, people of African American background, and Latino communities, and urban communities within Dade and Broward Counties. Each year, we would host a major Get Out in the Park Picnic event. I think, one year, we had close to four or five hundred families that participated.<sup>33</sup>

DeGross and his staff were instrumental in creating the Big Cypress Swamp Heritage Festival, an annual event begun in 2010.<sup>34</sup> This one-day event featured speakers, displays, and demonstrations highlighting the history and culture of Big Cypress. Franklin Adams, one of the early supporters of the Preserve, commented on the importance of the Swamp Heritage Festival for easing the relationships between NPS staff and local sportsmen:

And the people like myself and people who were involved with establishing the Preserve, and the Crackers, and the gladesmen, and the guys and ladies would come in at the Preserve and do programs and shows—with photographs—and talk about...their ancestors and families, and it was very humanizing for the local people and the Park Service.<sup>35</sup>

Particularly in the early decades of the Preserve, relationships with many of the neighbors and traditional users of the region were shaky and easily disturbed. The two requirements of the Preserve’s enabling legislation, to protect the remarkable natural resources and to allow existing recreational and consumptive uses, required a difficult balance of interests that frequently resulted in distrust, resentment, and the occasional lawsuit from proponents of either of these requirements. As former Chief of Interpretation Robert DeGross observed, “everything about Big Cypress National Preserve [is] an exercise in compromise.” During the early years of the Preserve’s history, from the 1970s into the early 2000s, the major focus was on planning as NPS

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<sup>33</sup> Robert DeGross, oral history interview, January 13, 2021.

<sup>34</sup> Ibid.

<sup>35</sup> Franklin Adams, oral history interview, September 14, 2020.





Figure 21. Nathaniel P. Reed Visitor Center, outside exhibit, 2022. Photograph by the author.

staff worked to identify how access for the several legislated activities would be managed while protecting significant natural and cultural resources. Communication among the various participants and stakeholders, therefore, tended to be on programmatic terms, leading to decisions regarding access that benefited one group at the expense of another, which often reinforced the boundaries between individuals and groups. During this period, however, the Preserve also began placing more focus on interpretation, which was oriented toward the natural history of Big Cypress Swamp and how it had been used for millennia. As the Preserve's new interpretation staff grew, and particularly with the designation of interpretation as a separate management function with a new Chief of Interpretation in 2003, new programs were developed that reached a wide range of audiences. These programs helped to spread an appreciation for the region's distinct ecosystem and its heritage that cut across interest groups which, in turn, promoted greater communication among people from varying backgrounds and interests.

DeGross recalled that his predecessors at the Preserve tended to avoid the question of balancing competing uses and how the Preserve is different from other units of the National Park System. In redeveloping the Preserve's brochures and in creating the new wayside exhibits, he and the Interpretation Division sought to bring those differences to the fore and allow visitors to understand the Preserve's complete story. This approach to formal and informal education, and the development of a growing number of public programs involving a wide range of participants has been an important part of bringing advocates for multiple uses together for the greater benefit of the Preserve and its protection.

## Chapter 10: Management Summary

At the time of its establishment by Congress with the enactment of P.L. 93-440 on October 11, 1974, Big Cypress was part of a novel approach to the management of lands by the National Park Service. National Preserves were a new type of designation for NPS land, with Big Thicket National Preserve, Texas being established on the same day. The new designation required a new approach to collaboration with local, state, and regional entities for uses of the land in which the protection of vital natural and cultural resources would be balanced with traditional uses of the land that included various types of recreational and consumptive activities. As discussed throughout this Administrative History, Congress provided few clues as to how that balance would be achieved, and much of this document has been concerned with the various attempts spanning decades to achieve the proper balance between resource protection and access in multiple arenas. This has been a gargantuan task given the origins of the Preserve in the early swirl of environmental politics in south Florida, the intense passion for Big Cypress showed by local sportsmen and recreational users, the relationship between Big Cypress and the multi-decade and multi-billion-dollar restoration program of the larger Everglades and south Florida ecosystem, and the high-stakes legal negotiations over oil and gas rights. Detailing the various attempts to find a balance between protecting the unique and nationally significant resources of the Big Cypress Swamp and the uses which Congress specifically allowed is a complicated story and one that has rightly occupied much of this work, even if in summary fashion.

It is important to bear in mind, however, that, in the Preserve's earliest years, the attainment of this balance, as important as it is, was overwhelmed in significance by the requirement to acquire the enormous amount of land involved. The original boundary of the Preserve encompassed nearly 900 square miles, a large portion of which consisted of small lots owned by tens of thousands of individual owners, many of whom were absentee owners or investors. The legislation allowed the retention of private inholdings of improved properties within the Preserve, which added to the complications of the process. It was one of the largest land acquisition programs NPS had ever undertaken at the time and generated innumerable controversies as a result of the appraisal of the many properties, among other issues discussed in Chapter 3. The question of balancing access and resource protection, as complicated as it was, and while always present, was clearly in the background throughout the Preserve's earliest years.

The effort to comply with the Preserve's enabling legislation, which allowed continuation of such traditional activities as hunting, fishing, off-road vehicle access, customary uses by the Seminole and Miccosukee Tribes, and oil and gas exploration and extraction, while also protecting vitally important natural resources and the region's sheet flow of water, has been constant from the earliest years to the present. Various constituencies criticized what they considered to be the Preserve's failure to achieve the proper balance as either too permissive or too restrictive, frequently turning to lawsuits to force NPS to redress a perceived imbalance. In many cases, the settlement of these lawsuits prompted additional studies and management documents, a process that occupied significant portions of the Preserve staff's time and energy. Because these legal challenges and the plans that resulted from them helped to define how this, one of the National Park Service's two initial National Preserves, would operate, a close look at the necessary planning efforts revealed the range of options available to the Preserve's leadership

and how the current approach to the legislatively required balance was achieved. This analysis has, therefore, been at the heart of this administrative history.

One of the most important concepts for understanding the Big Cypress Swamp, emerging from the new environmental awareness of the 1960s, was that of an ecosystem, which revealed interconnections among multiple environmental factors. This concept applied also to the development and implementation of management planning documents for the many issues with potential to impact natural and cultural resources within the Preserve. Each recreational or extractive activity that had to be managed had the potential to impact multiple resources and each other. This resulted in studies and planning documents being undertaken simultaneously and extending across several years. This administrative history has sought to isolate each of the issues and planning efforts to identify key concepts and approaches, but, overshadowed in this approach is awareness of the way that each overlapped the others. Preserve staff did not have the luxury of the historian to separate the various topics but kept all of them moving simultaneously, like a juggler keeping multiple colored balls moving through the air. This concluding chapter, therefore, presents a chronological summary of the central management activities, organized according to the terms of the successive superintendents.

### ***Laying the Groundwork: Management by Everglades National Park***

Within days of the establishment of the Preserve, Department of the Interior Associate Director for Legislation Richard C. Curry informed Southeast Regional Director David D. Thompson Jr. that, with passage of the Preserve's enabling legislation, the process of planning for land acquisition could begin. Curry instructed Thompson to begin coordinating with the State of Florida for transfer of land already owned by the state, as well as lands that the state had authorized funds to acquire, to the federal government. Curry also authorized Thompson to coordinate with the NPS Chief of Land Acquisition to formulate a plan for completing the process. At the end of the memorandum, Curry stated, "It will, of course, be necessary to program funds for the land acquisition staff, and to provide personnel for protecting the resources on acquired lands." The legislative record did not identify the need for a park interpreter, Curry continued, but "you should consider that a continuing program of explaining the purposes of the preserve [sic] to residents and visitors, including an explanation of the means of acquisition, will be an important part of protecting the resources." Finally, Curry directed Thompson to coordinate "with the appropriate State agencies concerning the regulation of hunting, fishing, and trapping activities within the preserve," consult with the Miccosukee and Seminole tribes regarding the possibility of cooperative agreements for providing visitor services, and begin work on the wilderness suitability study.<sup>1</sup>

In early January 1975, Regional Director Thompson delegated responsibility for management of Big Cypress National Preserve to Everglades National Park Superintendent Jack E. Stark. During the next eighteen months, Stark, working with the Southeast Regional Office, laid a substantial foundation for the Preserve. Stark coordinated with his staff at Everglades National Park to begin contacting local organizations in hopes of building support for the coming

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<sup>1</sup> Memorandum, Associate Director, Legislation to Regional Director, Southeast Region, October 21, 1974; BICY 14605 Coll 00002-003-001-010 Box 2.



land acquisition program and initiated the management planning process. By late 1975, Stark had prepared a draft Statement for Management and began work on an Outline for Planning Requirements that identified the studies and management plans the Preserve would need. At the same time, Stark initiated negotiations with the Florida Game and Freshwater Fish Commission regarding management of hunting and fishing on the Preserve in accordance with the legislation, leading to a Memorandum of Understanding between the two agencies executed in March 1976.

As Stark was laying the groundwork for the Preserve's management structure and planning program, the Southeast Regional Office initiated the process of acquiring land. In May 1975, the Regional Office established the Big Cypress National Preserve Land Office with temporary office space in Naples, Florida. James Sewell transferred to the Preserve's Land Office from his position as Land Acquisition Officer for the Chesapeake & Ohio Canal National Historical Park, Maryland, and soon began establishing procedures and hiring staff. Congress authorized the use of \$156,700,000 for the land acquisition program for Big Cypress, recognizing that the State of Florida had promised to contribute \$40,000,000 to the effort. In the early 1980s, Congress appropriated another \$6,747,000, bringing the total land acquisition costs to \$203,447,000.

### ***Site Manager Irvin Mortenson***

Stark continued to oversee management of the Preserve even after appointing the Preserve's first Site Manager. Irvin Mortenson, who was serving as a Park Ranger at Everglades National Park, entered on duty in August 1976. Mortenson continued to report to Superintendent Stark in his new role, as the Preserve remained under the administration of its neighbor. After entering on duty, Mortenson opened the Preserve's first office, consisting of rented space in Naples, and began hiring his own staff. Superintendent Stark had set the Preserve on a solid foundation for management, and Mortenson built on it as he led the planning for resource management in accordance with the challenging requirements of the enabling legislation.

After Mortenson, the Preserve's first staff member was Chief Ranger Howard Dimont, who entered on duty in late 1977, having previously served as Park Ranger at National Capital Parks, District of Columbia. While assisting with the general resource management planning process at the Preserve, Dimont's principal task was to develop a fire management program. As discussed in Chapter 8, the Preserve gradually took responsibility for increasing amounts of land as the acquisition process continued; with these acquisitions, the Preserve's responsibility for fire protection expanded. According to the Preserve's annual report for 1979, Preserve staff under Dimont "became deeply involved in trying to establish fire management strategies including detection, implementing the suppression effort, and cooperative activities with other agencies." Dimont led the development of the Preserve's first Fire Management Plan in 1979, and initiated a research program regarding how prescribed fire could impact specific habitat types. By the early 1980s, Dimont was taking part in Service-wide discussions of fire management.

Although management of natural and prescribed fires was a major early concern of the Preserve, Mortenson also oversaw a wider range of resource planning. The Resource Baseline Inventory, which Stark had initiated and contracted for, was conducted and reviewed in the late

1970s and early 1980s under Mortenson's leadership. He also coordinated an Environmental Assessment for the Preserve's overall planning projects, the Visitor Use and General Development Plan, and the initial Wilderness Area Study. Although no specific budget information for the Preserve in these early years was located during research for this administrative history, the staff slowly expanded under Mortenson's tenure. By 1979, the Preserve was served by an administrative assistant, two rangers, and two maintenance workers, and, by 1981, Clerk-Typist Sandy Sehler and Resource Management Specialist Carroll Schell served at the Preserve.

### *Superintendent Fred Fagergren*

Irvin Mortenson accepted a transfer in January 1981 to serve as Acting Superintendent of Glen Canyon National Recreation Area in Arizona and Utah. In March of that year, Fred J. Fagergren entered on duty as the Preserve's first Superintendent. Fagergren, who transferred to the Preserve from his position as Superintendent of Mound City Group National Monument, Ohio, reported to Everglades Superintendent Morehead, who replaced Stark in the spring of 1980. Shortly after entering on duty, Fagergren issued a sharply critical assessment of the Preserve's General Development Plan, completion of which had been on hold since late 1979. In particular, Fagergren argued for an understanding of the particular needs and resources of Big Cypress National Preserve, asserting that comments from Preserve staff were being ignored by Regional and DSC personnel. While recognizing that the Preserve's Superintendent would continue to report to the Everglades National Park Superintendent, also opined that the Preserve ought to operate more like an independent unit of the National Park Service sooner rather than later, given the different natural resources issues and the great travel distance between the two headquarters: to drive from the Ernest Coe Visitor Center at the Everglades National Park's eastern entrance to the Preserve's headquarters in Ochopee, for example, required a nearly two-hour drive.

Plans to designate the Preserve as an independent unit moved forward through the early 1980s, though always in the context of sharing services among what were then the three units in south Florida: Everglades National Park, Big Cypress National Preserve, and Biscayne National Park. The Preserve underwent an Operations Evaluation in November 1984, which resulted in highly favorable remarks: "The key staff at the park is working together. Communication between the divisions is operating smoothly, and subordinate staff within the respective divisions were well informed. It was obvious from talking with the staff that morale is at an all-time high." The report made no mention of the formal relationship between Everglades and Big Cypress regarding administration but, instead, focused on determining the most efficient ways to coordinate administrative activities across the three units. In particular, the Operations Evaluation draft report recommended that the Administrative Division of Everglades National Park provide technical services and oversight for Big Cypress and Biscayne.<sup>2</sup>

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<sup>2</sup> Operations Evaluation Report, Big Cypress National Preserve, November 6-9, 1984; BICY 14605 00002/004.004-011 Box 5. The cover page includes a schedule of future deliverables including a final report by January 31, 1986; these later deliverables were not located in the present research.

Although no formal separation document was found in the current research, by 1987, a summary of the Preserve's operations did not indicate any reporting relationship with Everglades National Park, and the Preserve's Superintendent was at the GS-13 employment level, which is typically reserved for full superintendents; in 1983, while still reporting to Everglades National Park, Fagergren was at the GS-12 level. According to this 1987 summary, the Preserve's staff included a Chief Resource Management Specialist with three subordinate positions: one Environmental Specialist and two Park Rangers. The staff roster also included a Chief Ranger supported by two District Rangers, one Fire Management Officer, two temporary Park Rangers, and fourteen seasonal Fire Crew members. The Superintendent oversaw an administrative staff consisting of a Secretary, an Aircraft Pilot, a Research Biologist, an Administrative Officer, a Purchasing Clerk, and a Clerk Typist. The Maintenance Division consisted of a Facilities Manager, a Maintenance Mechanic Foreman, a Utility Systems Operator, an Electrician, a Maintenance Worker, a Heavy Mobile Equipment Mechanic, a Secretary, and two temporary Maintenance Workers. None of the Preserve's Ranger staff had law enforcement responsibilities, and the Preserve operated under a concurrent jurisdiction agreement which assigned most law enforcement responsibilities to local, state, and federal agencies.

#### *Housing and Headquarters Space*

One of Superintendent Fagergren's tasks was to provide office space and housing for the Preserve's growing staff. The Oasis ranger station, which was renovated in the mid-1980s to serve as the Preserve's Visitor Center, where much of the ranger, fire, and aviation staff had offices. By the early 1980s, the administrative and resource management personnel had relocated from the rented office space in Naples to a series of houses in the Everglades Shores residential subdivision in Ochopee, which had recently been acquired by NPS. According to a summary of Preserve facilities in approximately 1985, one of the Everglades Shores residences provided approximately 1,500 square feet of office space. Eight other houses were available for staff housing. Other government-owned housing units, including single-family houses and trailers, were scattered throughout the Preserve but were in fair to poor condition. Housing opportunities in the remote areas, according to another summary, "are unsafe because of the illegal activities of hunting and drug smuggling in the Preserve. Expecting employees to live in remote areas is not acceptable."<sup>3</sup> The house used for office space, however, was intended as a temporary measure. It was too small to accommodate the increasing number of staff as the Preserve expanded its resource management and administrative operations.

Although housing for staff remained a concern, the Preserve identified an innovative solution for a headquarters space. The Golden Lion Motor Inn was built on the Tamiami Trail in Ochopee in 1971, and, although it was a popular spot for locals to gather and hold events, it was only marginally successful as a hotel operation. Although it is located within the Preserve boundary, it qualified as an improved property and therefore could be acquired only from a willing seller, which the then-owner, Daniel Whichello, decidedly was not. In December 1977, Big Cypress National Preserve Land Acquisition Officer James Sewell reaffirmed to Whichello

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<sup>3</sup> "GMP Rationale for Big Cypress National Preserve facilities," undated, c.1986; BICY 14605 00002/004.004-009 Box 5. See also undated summary of Park Operations, c. 1985; BICY 14605 00002/004.004-009 Box 5.

that NPS had determined not to try to acquire the property.<sup>4</sup> Although the Golden Lion gained some notoriety in 1976 for housing crew members filming the feature film “Thunder and Lightning,” which was released in 1977 and starred David Carradine and Kate Jackson, the business struggled in the late 1970s.

By the early 1980s, the Whichello family was inclined to sell the property either to NPS or to another business entity. The building contained fifty hotel rooms and suites, a restaurant and bar, and a swimming pool, and was located on four acres on the south side of Tamiami Trail. A private appraisal was completed in 1982 by an entity on behalf of the owners, which NPS rejected as deviating widely from current professional standards, and, although no NPS appraisal was found during research for this report, the building was acquired in 1985. Discussions over renovations to provide housing and office space were under way by early 1986. Planning for extensive renovation to the facility, which contained two wings, continued into early 1987, when work began on a new roof. Once the roof was complete in December 1987, the Preserve worked to organize funding and contracting to begin renovation work to the interior, which required converting the individual rooms in the “A” wing for office space. The work involved installation of new windows, doors, flooring, electrical, plumbing, and utilities. In addition, thirteen housing units for temporary employees were incorporated into the interior renovation plan of the “B” wing. Negotiations over the contract, which was a set-aside for small businesses, continued throughout 1988 and into early 1989. The AEC Corporation eventually received the contract. Mark Hardgrove, Preserve Facilities Manager, oversaw the work in coordination with facilities management staff from Everglades National Park. Work on the interior renovations began in March 1989 and was accepted as final on September 7, 1989.<sup>5</sup> The Preserve’s staff then relocated to the “A” wing of the former Golden Lion Motor Inn later in 1989.<sup>6</sup>

#### *General Management Plan, GIS, and Resource Management*

Chapter 5 discussed development of the Preserve’s General Management Plan, which occupied much of Fagergren’s attention throughout the 1980s. This was a remarkably complex process in which Fagergren, in coordination with the Southeast Regional Office and the Denver Service Center, sought, for the first time, to define the balance that Congress had mandated between the protection of resources and access for existing recreational and consumptive uses. This process, moreover, drew upon several studies and management plans during the decade that included cultural resources surveys, often tense negotiations with the Florida Game and Freshwater Fish Commission regarding hunting regulations, draft off-road vehicle regulations,

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<sup>4</sup> James F. Sewell to Dan Whichello, December 12, 1977; BICY14661 S5-2. Whichello’s relationship with NPS was made clear in a letter that he wrote to Sewell and Everglades National Park Superintendent John Good pertaining to an unknown complaint, in which he concluded by stating that he had initiated legal action against NPS, Sewell, and Good: “I shall make sure that you are occasioned every inconvenience and embarrassment that you have foisted upon us, regardless of the length of the litigation and/or substance. You and your ilk will be brought to the bar of justice. Laugh it up gentlemen—I assure a more somber mood will come to prevail;” Whichello to Sewell and Good, October 4, 1977, BICY 14661 S5-3.

<sup>5</sup> Limited correspondence pertaining to the renovation of the Golden Lion, occasionally referred to as the Big Cypress Lodge, from 1987 to 1989, is found in BICY 14661 S2, SSB, F1. See Memorandum, Facility Manager, BICY to Contracting Officer, SERO, October 12, 1989. See also “Big Cypress National Preserve Two-Year Quarters Management Plan,” June 14, 1988; BICY 14605 00002/004.004-009 Box 5.

<sup>6</sup> In comments on this administrative history, former Chief of Resource Management Ron Clark recalled moving into an office in the “B” wing of the former Golden Lion Motel in August 1989, with additional renovations continuing into 1990.

water quality and sheet flow monitoring programs, attempted panther recovery plans, and initial discussions about recreational access from soon-to-be-constructed Interstate 75 across land that Congress approved for acquisition in 1988. At the same time, Fagergren was forced to address the issue of trespass camps in the Preserve's backcountry. As discussed in greater detail in Chapter 3, a process for removing those camps was established in 1979 but was put on hold in 1982 to allow NPS review of the process and was halted again in 1984 by a series of lawsuits and motions filed by groups of camp owners. The issue remained in the courts until a decision in June 1989 confirmed the NPS policy. As discussed in Chapter 3, Superintendent Fagergen, in his eagerness to protect the integrity of the Preserve's background, created ill will by the hastily-arranged removal of many of the camps, often with only forty-eight hours' notice; former Preserve Management Assistant Christine Clark observed that it took more than a decade to restore trust and good will among the Preserve's recreational hunters.

The GMP process also brought to the fore the latest in mapping technology. In March 1985, DSC mapping staff member Harvey Fleet described to Preserve Resource Management Specialist Bruce Freet the extensive mapping needs for organizing all the information about resources spread throughout more than a half-million acres, including identifying features on multiple layers of mylar overlaid on topographic maps combined with new aerial photographs.<sup>7</sup> By summer of 1985, however, the Preserve was compiling a new Geographic Information System (GIS) database.<sup>8</sup> GIS is a way of joining maps and geographical information with data sets using digital means. Through digitized maps and computer databases, GIS allows analysis of huge amounts of data in spatial terms. First developed in Canada in the 1960s, it was further expanded by several key academic centers through the 1970s and 1980s. The Harvard Laboratory for Computer Graphics and Spatial Analysis at Harvard University, and the Environmental Systems Research Institute, Inc. (ESRI) in California, developed new means and approaches to tying digital data to ever more complex maps. ESRI soon developed GIS for wider governmental and, later, commercial uses. The USACE was among the early users of GIS in the 1970s, and, by the mid-1980s, GIS was becoming more widely used throughout federal, state, and municipal governments once desktop software became available. In a memorandum from July 1985, the Chief of the Washington Office Remote Sensing Unit reported that

The construction of the Geographic Information System (GIS) data base for Big Cypress National Preserve is current with the information that has been provided for input. However, some delays in supplying data for input into the GIS have occurred. The GMP team has already found the GIS output to be useful and further output should save considerable time when alternatives are being formulated and impacts are being described.<sup>9</sup>

By early 1987, the new GIS technology was proving to be immensely useful in the GMP process as well as the Preserve's overall resource management program. In April, Resource Management Specialist Bruce Freet submitted a funding request for the acquisition of a computer and the necessary software to allow the Preserve to develop its own GIS program. Freet identified several benefits, including its applicability for the Preserve's minerals

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<sup>7</sup> Memorandum, Harvey Fleet to Bruce Freet, March 14, 1985; BICY 14605 Coll 00002-003-001-015 Box 2.

<sup>8</sup> Memorandum, Chief, Remote Sensing Unit, GISFU, WASO to Assistant Manager, Southeast/Southwest Team, Denver Service Center, undated by c. July 1985; BICY 14605 Coll 00002-003-001-015 Box 2.

<sup>9</sup> Ibid.

management program, ORV use, and wildland fire management program. Having its own GIS program, moreover, would allow the Preserve's resource management staff to coordinate more effectively with the other National Park System units in south Florida. The nature of the Preserve's ecosystem was an important consideration. As Freet observed in his justification statement, "Most resource management projects are located in areas where fieldwork can only be carried out effectively during the dry season. Quick processing and analysis of spatially referenced data, and availability of hardcopy, is essential to managing an area of multiple resource uses and pressing external threats."<sup>10</sup> The Preserve was successful in acquiring GIS equipment, which impacted the Preserve's staff. As the Superintendent's annual report for 1990 noted, "With the authorization and funding of a computer specialist position, the Geographic Information System (GIS) program is again underway."<sup>11</sup> A year later, Superintendent Hibbard reported that the Preserve's GIS system "is fully operational and compatible with the system at the South Florida Research Center."<sup>12</sup>

Late in his time as Superintendent, Fagergren also sought to formalize the Preserve's approach to cattle grazing. Ranchers who owned cattle had for decades leased land in what became Big Cypress National Preserve, and the activity was specifically allowed in the Preserve's enabling legislation but took place only in the Bear Island Unit. The principal impact of cattle grazing in the Preserve's earliest years was the traditional practice of the leaseholders to conduct periodic prescribed burns of the grazing land as a way to spur the growth of grasses. In 1980, for example, grazing leaseholders conducted ten prescribed burns of more than 6,000 acres. The 1982 Fire Management Plan included references to these rangeland burns, noting that no information on their extent existed prior to 1978. "All that is known," the Plan reported, "is vocalized by the cattlemen, who generally indicate a desire to burn 'their' range between November and February before fuels become too dry. They also prefer burning a part of the range on a two-year rotation." In the wake of the Fire Management Plan, grazing leaseholders were required to secure permits to conduct prescribed burns.<sup>13</sup>

The 1988 act that expanded the Preserve's boundary, however, excluded cattle grazing from the Addition Lands. In late 1990, Fagergren established for the first time a formal policy statement for grazing. By that time, there were only six existing leases for grazing cattle, covering 32,000 acres. The earliest lease then current was from 1974. The leases could be renewed only by the existing leaseholder and only during the lifetime of the permit holder; in the case of a corporate leaseholder, the lease was for a maximum of twenty-five years.<sup>14</sup> As a result, the number of cattle grazing leases dwindled as the leaseholders ceased cattle-raising operations, died, or reached the end of the twenty-five year limit, and all grazing had ceased by the early

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<sup>10</sup> "Justification for the Procurement of GIS Equipment and Services for Big Cypress National Preserve," attached to email, Bruce Freet to OS, April 30, 1987; BICY 14661 S6, SSC, F5.

<sup>11</sup> Superintendent's Annual Narrative Report, 1990.

<sup>12</sup> Superintendent's Annual Narrative Report, 1992.

<sup>13</sup> *Fire Management Plan*, 1982, 89.

<sup>14</sup> Memorandum, Superintendent, Big Cypress National Preserve to Big Cypress Staff, November 16, 1990; BICY 26817, S3, SSA.

2000s.<sup>15</sup> As late as 2007, however, wild livestock remained in the former grazing areas, with up to 100 animals identified in the backcountry.<sup>16</sup>

Looming over all these complicated issues was the question of oil and gas exploration and extraction in the original Preserve and in the Addition Land. Determining ways to manage these processes on the Preserve required extensive coordination with the NPS Minerals and Mining Branch of the DSC and with attorneys from Collier Resources. In recognition of the immense task facing the Preserve, and in coordination with Everglades National Park, Cordell Roy was appointed to lead development of a Minerals Management Plan in 1985. Roy had served as the Chief of Resource Management and Science at Capital Reef National Park, Utah, until accepting a lateral transfer to Everglades in June 1983. In that position, Roy collaborated closely with Big Cypress National Preserve Resource Management Specialist Bruce Freet, who entered on duty in 1982.

#### *Administration*

Through his energetic promotion of the Preserve and its resource management needs, Fagergren presided over a substantial expansion of its budget and staff. In FY 1989, the Preserve received \$1,027,300 in base Operations of the National Park Service (ONPS) appropriation. This core budget was supplemented with more than \$1.4 million for special projects that included Natural Resource Protection Program funds, money from various sources for fire management, cyclic maintenance rehabilitation and repair project funds, money for science projects and programs, and funds for housing and employee relocation. The base budget provided for forty full-time employees, including thirty-seven permanent and three term positions, with an additional twenty-eight temporary employees during the busy winter season. In addition, outside funds provided for five new, permanent, fire management positions. Finally, the Preserve enjoyed the support of an extensive volunteer program consisting of seven Youth Conservation Corps (YCC) workers for eight weeks in the summer, two Senior Community Program volunteers organized by the American Association of Retired Persons, and nearly 100 other volunteers who donated more than 9,000 hours on various projects and activities of the Preserve.<sup>17</sup>

At that point in the late 1980s, Everglades National Park was handling the Preserve's personnel services, but this responsibility was transferred to the Southeast Regional Office in 1990. Also in that year, key staff changes included Ron Clark, hired as Environmental Specialist in 1989 under the supervision of Greg Hogue, who replaced Cordell Roy as the Preserve's Minerals Management Officer after Roy's departure in 1989. Clark was promoted to serve as Minerals Management Specialist in 1990, after Hogue left the site. Meanwhile, Environmental

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<sup>15</sup> No later documents discuss cattle grazing leases on the Preserve. Nearly all of those who provided oral history interviews for this project were asked about cattle grazing, and none could recall when cattle grazing was phased out, only that it had happened before they arrived at the Preserve.

<sup>16</sup> Annual Narrative Report, Big Cypress National Preserve, FY 2007; BICY 378, Box 5.

<sup>17</sup> Annual Superintendent's Narrative Report—1989, submitted to Regional Director, Southeast Region, March 28, 1990; BICY 26817, S3, SSA.

Specialist Patrick Kenney and Administrative Officer David Bagozzi filled vacant positions, and Prescribed Fire Specialist Marlo Mino entered on duty in a newly created position.<sup>18</sup>

With the number of high-profile issues that remained on the Preserve's plate, public relations were key in 1990:

in many instances the complexity of important issues directly and indirectly associated with BICY, requires that management maintain open and friendly relations with a wide variety of 'publics.' Major issues that required informational responses, public relations contacts and publicity efforts during 1990 include the resolution of the trespass camp issue, the joint public hunting agreement between the State of Florida and the preserve public access into the new addition lands from I-75, and the continued review and comment on the draft GMP.<sup>19</sup>

As part of Fagergren's campaign to build public relations in the face of such challenging issues, the Preserve hosted a one-day orientation program in 1990 for local news media outlets. The program included a tour of portions of the Preserve, presentations by staff members, and information discussions.<sup>20</sup>

### *Superintendent Wallace Hibbard*

Superintendent Fred Fagergren remained at the Preserve through the completion of the GMP in the summer of 1991, serving through a decade of difficult decisions regarding vital issues and intense planning efforts, during which he maintained a strong emphasis on the conservation of the Preserve's natural resources. Later in 1991, he accepted a lateral transfer to serve as Superintendent of Bryce Canyon National Park, where his father, former Midwest Regional Director Fred C. Fagergren, began his career in 1934.<sup>21</sup> He was replaced by Wallace Hibbard, who entered on duty as Superintendent in late 1991. Hibbard was then serving in the Southeast Regional Office, and, previous to that, had served as Superintendent of Castillo de San Marcos and Fort Matanzas National Monument, Florida, since 1987. Hibbard was tasked with implementing the GMP and faced the daunting project of integrating the new Addition Lands, both northeastern and western, into the Preserve. The GMP, as complicated and detailed as it was, deliberately avoided providing guidance for the Addition Lands since not all parcels had yet been acquired.

The biggest issue that Hibbard faced in this first year was Hurricane Andrew, a massive, Category 5 storm that hit south Florida from the east on August 24, 1992. As Hibbard reported in his annual report for 1992, the storm "slammed into the three south Florida National Park Service areas causing unprecedented damage to park facilities and the lives and property of

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<sup>18</sup> In comments on a draft of this Administrative History, former Resource Management Chief Ron Clark recalled that David Bagozzi was the Preserve's second Administrative Officer and Kenney was the second Environmental Specialist. The names of the original holders of these two positions were not identified in the current research.

<sup>19</sup> "Annual Superintendent's Narrative Report—1990," BICY 16183 100001/001.001.001-055 Folder 3 of 3.

<sup>20</sup> Ibid.

<sup>21</sup> "Fred J. Fagergren," brief biographical sketch on the website of The Coalition to Protect America's National Parks, <https://protectnps.org/centennial-biographies-2/fred-j-fagergren/> (accessed September 26, 2023).



employees. Significant impacts also occurred to natural and cultural resources.”<sup>22</sup> Although the Preserve suffered less damage than either Everglades National Park or Biscayne National Park, the impact was significant. The high winds caused damage to antennas, signs, roofs, and automobiles, and destroyed a trailer used for staff housing, as well as a maintenance facility. Most of the natural resource damages occurred in the Stairsteps Unit including old growth pinelands and hardwood hammocks. The Preserve was vital in the recovery efforts of Everglades and Biscayne National Parks, providing fixed-wing and helicopter aircraft to transport personnel and goods and to conduct aerial surveys. The Oasis ranger station at Big Cypress National Preserve served as the principal supply and distribution center for all three units of the National Park System.<sup>23</sup>

As part of the expansion of the Preserve’s staff, Ellen Hand was hired in 1993 as the Administrative Officer. Hand was then serving as Contracting Officer and Acting Administrative Officer for North Cascades National Park, Washington, and was part of the Emergency Management Team that responded to Hurricane Andrew in 1992. A native Floridian, Hand successfully applied for the position, which was reclassified as GS-11. Hand was one of only five staff members in the Administration Division, and the Preserve had a limited number of computers.<sup>24</sup> Hand worked quickly to improve the Preserve’s information technology capacity and to create more order in the Preserve’s budgeting process. Hand rose to the level of Acting Superintendent at the Preserve prior to the arrival of Superintendent John Donahue. She then transferred to Gulf Islands National Seashore, in Florida and Mississippi, in the spring of 2000, where she served as Chief of Administration.<sup>25</sup>

Several controversies emerged during Hibbard’s tenure as Superintendent, primarily related to ORV use and resulting in lawsuits. In the summer of 1994, rising water levels had prompted expanded airboat use after several years of low water. After receiving reports of negative impacts to wildlife and vegetation resulting from this increased use in the southern portion of the Preserve, particularly in the Ochopee Prairie and the Stairsteps Unit, Superintendent Hibbard announced that these areas would be closed to all airboat uses including the several commercial airboat tours. Concerned for the economic viability of the Everglades City area, Hibbard reopened the area to a smaller number of commercial airboat tour operators the next year, placing them under stricter environmental guidelines. This prompted questions from the Miccosukee Tribe of Indians, however, who counted experienced airboat tour operators among its members. The Tribe questioned the Preserve’s decision to reopen portions of the Ochopee Prairie and Stairsteps Unit in regard to two issues in particular. First, the tribe challenged Hibbard on the grounds of environmental concerns, as his decision was not made as a result of either an Environmental Analysis or an Environmental Impact Statement to evaluate the impacts of airboat use on the Preserve. Second, the Tribe complained that it had not been offered the right of first refusal to conduct the tours as guaranteed in the Preserve’s enabling legislation regarding concessions. Hibbard’s response to the question of concessions, that the airboat tour

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<sup>22</sup> Big Cypress National Preserve, 1992 Superintendent’s Annual Narrative Report, March 23, 1993; BICY 16183 100001/001.001.001-055 Folder 3 of 3.

<sup>23</sup> Ibid.

<sup>24</sup> Ellen Hand, oral history interview, February 26, 2021. Hand recalled that the Preserve had only three computers, though former Chief of Resource Management Ron Clark recalled that several staff members of the Preserve had computers in 1993, including one devoted to GIS use.

<sup>25</sup> Ellen Hand, oral history interview, February 26, 2021.

operators were not concessioners but were working under licenses that were available to anyone, failed to satisfy the Tribe. In 1998, the Tribe filed a lawsuit on these two grounds, citing depositions by the Preserve's resource management staff that Hibbard had disregarded their requests for an impacts analysis. In 2000, the court ruled in favor of the Tribe regarding the Preserve's failure to conduct an environmental impact study. The National Park Service promised to conduct an EIS before reopening the area to commercial airboat tours. In 2001, the court ruled that the issue of concessions was moot since the Preserve would not issue any concessions for airboats until the EIS had been completed. The EIS, however, was never completed, and the ban on commercial airboat usage in the Stairsteps and Ochopee Prairie remains in place.

At the same time that the Miccosukee Tribe filed its lawsuit regarding airboats and concessions, the Preserve was embroiled in determining the number and type of recreational access points to allow, particularly in the Addition Lands, from Interstate 75, which was then under construction. The key question for two of the three proposed access points was whether ORV use would be allowed; the westernmost access point at Turner River had already been determined to be pedestrian use only. When the U.S. Army Corps of Engineers released the permit applications for public review, the response from state and national environmental organizations was swift and resulted in a lawsuit filed by the Florida Biodiversity Project and others in early 1995. The environmental groups argued that NPS had not conducted studies that would promote understanding of the impacts resulting from ORV use. The 1991 GMP had suggested nearly forty ORV access points, which would allow extensive and dispersed travel through several of the Preserve's management units, but it had provided few specifics regarding the environmental impacts of that access. As a result of settlement talks between the Florida Biodiversity Project and NPS, the Preserve agreed to prepare an ORV Management Plan. Work on the ORV Management Plan began in 1997 under Superintendent Hibbard's leadership.

A third major issue confronting Hibbard during the late 1990s pertained to oil and gas activities. The 1988 legislation that authorized the addition of new areas on the Preserve's northeast and western boundaries resulted largely from the sale of land owned by the several Collier family enterprises to NPS. The legislation incorporated an agreement regarding procedures for approving plans of operations for new oil exploration and extraction projects on the Addition Lands. Once the Collier's lands had been acquired in the early 1990s, Collier Resources Company began submitting multiple plans of operations for the Addition Lands under the new procedures and for the original Preserve under procedures defined in the 1991 GMP. At the same time, the Collier family companies initiated overtures to sell their mineral rights in the Preserve, together with those in the adjoining Florida Panther National Wildlife Refuge and the Fakahatchee Strand National Wildlife Refuge, to the federal government. Tensions between the Collier family and the Preserve increased during the latter years of Superintendent Hibbard's tenure, as the Preserve consistently found the plans of operation to be insufficient. Finally, in 2000, as Superintendent Hibbard's term was ending, the Collier families and the Department of the Interior reached an agreement regarding the sale of mineral rights. The conclusion of this issue, like the preparation of the ORV Management Plan, however, awaited Hibbard's successor.

In addition to these controversial issues, Hibbard presided over a more positive and slightly less contentious development. In 1974, Congress created the Office of Juvenile Justice

and Delinquency Prevention within the Department of Justice to lead national efforts to address juvenile delinquency and improve the justice system for youthful offenders. In 1993, Senator Bob Graham (D-FL) introduced legislation to establish a national network of local programs to provide youthful offenders with environmental work and educational opportunities on federal lands. The legislation was not successful, but the attempt prompted discussions between the Department of the Interior and the Department of Justice. These discussions resulted in a Memorandum of Understanding between the two agencies in October 1993 that established the type of network Senator Graham had proposed, which was named the Youth Environmental Service (YES) program. The program did not provide funding, but the MOU allowed the two agencies to “support program development by helping interested agencies locate Federal land for YES programs and identify environmental work projects” and provide training and technical assistance. The YES program leaders worked with federal, state, and local officials in the District of Columbia, Utah, and Florida for pilot programs later in 1994. Two programs in each state and the District of Columbia were established. The programs ranged from weekend volunteer activities for at-risk preteens, to full-time programs providing off-site residences, to a full-time program that provided onsite housing on federal land. The latter of these was the Wilderness Institute at Big Cypress National Preserve.<sup>26</sup>

Once the MOU between the Departments of Justice and the Interior was executed in October 1993, representatives from the Florida Health and Rehabilitative Service met with Preserve staff about the possibility of locating a rehabilitation facility within the Preserve. Drawing on the recently-completed GMP that identified sensitive resource areas, Preserve staff chose three parcels where a suitable facility would have a low potential for impacts to natural and cultural resources. In December 1993, the Preserve prepared an Environmental Analysis for the site selection, though not for the construction of a facility, that included the three alternative locations: Turner River Mill, a former saw mill site on the west side of Turner River Road approximately four miles north of Tamiami Trail; Bass Lake Estates, located approximately one mile north of Tamiami Trail near Ochopee; and Cooks Camp, a former backcountry hunting camp on Bear Island Grade, east of State Route 29. The EA identified the Turner River Mill site as having the lowest impact.<sup>27</sup>

The site was quickly approved, and plans were made for Associated Marine Institutes of Tampa, Florida, to operate the facility under contract to the State of Florida. It was the first NPS site to collaborate with the YES program, and a groundbreaking ceremony was held in February 1994 with NPS Director Roger Kennedy, U.S. Attorney General Janet Reno, and Senator Graham in attendance and Southeast Regional Director Jim Coleman serving as Master of Ceremonies. Planning and design for the new facility continued through 1995, consisting of a campus with five buildings accessed by a 600-foot crushed limestone driveway extending west from Turner River Road. It was designed to house up to thirty youths and be staffed by twenty-five adult personnel. The goal of the Big Cypress Wilderness Institute was to provide a non-institutional rehabilitative placement for young men fifteen to eighteen years old as an alternative to incarceration and would offer counseling, education, and work experience. In the spring of

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<sup>26</sup> “Youth Environmental Service in Action: Program Summary,” brochure published by the Office of Juvenile Justice and Delinquency Prevention, June 1996, available online: <https://www.ojp.gov/pdffiles/yesprgsm.pdf>.

<sup>27</sup> “Environmental Assessment Decision Notice and Finding of No Significant Impact, Big Cypress Conservation Corps Site Selection,” December 1993; BICY 16183 S2, SSA, SSS2, F7.

1997, as the Wilderness Institute prepared to open in the fall, staff from Associated Marine Institutes and the Preserve met to identify the types of work experience that would be available, including exotic vegetation removal, trail maintenance, cleaning abandoned camps, and other maintenance and development projects; the educational program was to focus on environmental issues.

Unfortunately, the Wilderness Institute experienced a tragedy only a year after opening. In August 1998, two students, ages sixteen and seventeen, killed one of the counselors, Michael Sierra, and rolled his body into a lake before taking his car. The crime was witnessed by a third student, who alerted the police; the two students were captured and taken into custody following a high-speed chase. The two students were indicted by a Collier County grand jury in October 1998, and, following a trial in January 1999, one of the two was convicted of second-degree murder and sentenced to life in prison without parole. The second student pleaded guilty to first-degree murder and was also sentenced to life in prison. Despite this tragic episode, the Wilderness Institute continued to function, using its remote location rather than fences for security, and students continued to assist with projects at the Preserve and receive an education focused on the environment. By 2016, however, the Florida Department of Juvenile Justice reported multiple violations at the facility, including failure to provide adequate staff, poor training regarding the handling of background checks of employees, and reports of abuse. In August, the Department of Juvenile Justice terminated its contract with Associated Marine Institutes.<sup>28</sup>

Wallace Hibbard remained at Big Cypress National Preserve until early 2000, when he accepted the position as Deputy Regional Director of the Southeast Region. In 1992, his first full year as Superintendent, Hibbard oversaw a budget that included \$1.673 million in base ONPS funds and \$1.35 million in special project funding. This budget provided sixty-five employees comprising permanent, term, subject-to-furlough, temporary, and stay-in-school positions, with an additional forty-five seasonal positions. During that Fiscal Year 2000, when he departed, the Preserve's budget had expanded to approximately \$4.4 million including the ONPS base and special project funding, an increase of more than one million dollars from his first budget in 1992. The Preserve's staff allotments also increased, from sixty-five employees in 1992 to eighty-six in 2000. Clearly, the scope of activities at the Preserve had grown substantially, partly driven by the addition of 146,000 acres of land and the resulting pressure to also protect natural and cultural resources in the new areas while continuing to allow access. The complexities of managing the Preserve had become more clear than ever, manifested in the multiple lawsuits which Hibbard confronted throughout the 1990s. The pressure would not ease for his successors.

### ***Superintendent John Donahue***

The number of full-time staff positions at the Preserve grew throughout the mid- and late 1990s, adding the position of Assistant Superintendent, which was created in 1993. John Donahue, then serving as an Environmental Protection Specialist at the NPS Washington Office, applied for the position that year and received an offer from Superintendent Hibbard. However,

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<sup>28</sup> "Florida Ends Contract to Run Ochopee Camp for Sentenced Teens," *Naples Daily News*, August 21, 2016, page 1.

as Donahue recalled, “it turned out that some of his superiors had offered the job to somebody else, so, Wally said ‘Let’s not make a big deal about it,’ so I didn’t.” Instead, Donahue accepted an offer in 1993 to serve as Superintendent of George Washington’s Birthplace National Monument, Virginia, followed by a term as Superintendent of Thomas Stone National Historic Site, Maryland, where he also served concurrently as the Special Assistant to the Assistant Secretary for Fish, Wildlife, and Parks in the Department of the Interior. In 2000, Donahue accepted a lateral transfer to the Preserve, entering on duty in March 2000.<sup>29</sup>

As referenced earlier, Donahue inherited two complicated issues from his predecessor. His most pressing task upon starting work at the Preserve was to shepherd to a conclusion the ORV Management Plan, begun in the late 1990s under his predecessor at the direction of the court as a condition of the settlement of the Florida Biodiversity Project lawsuit. As discussed in Chapter 7, Donahue’s remit from the Southeast Regional Office was to strengthen the environmental protections in the ORV Management Plan. As part of his effort to build consensus for the need to increased protections, he frequently took visiting officials on helicopter tours where the visitors could observe first-hand the maze of trails that had been cut through large portions of the Preserve as a result of the dispersed use of ORVs. Donahue successfully guided the revised draft plan through agency reviews, and, in August 2000, NPS released the final ORV Management Plan and EIS. The key component of the final plan was the elimination of dispersed trails, which were replaced by a planned network of primary trails, with secondary trails leading to specific sites, either public campgrounds or private inholdings. The plan was immediately challenged by advocates of ORV usage at the Preserve, who filed a lawsuit against NPS on the grounds that the decision-making process was flawed. Although early indications from the court support the NPS position, the case remained in the court system past Donahue’s tenure.

The second major issue Donahue inherited from his predecessor was the Collier families’ efforts to sell their mineral rights in the Preserve to the federal government. As discussed in Chapter 8, this came to a head during 2001 and 2002, when the administration of President George W. Bush advocated purchasing the mineral rights for \$120 million. The deal unraveled when allegations of inappropriate appraisals were raised to the Department of the Interior’s Office of Inspector General, which then conducted an extensive investigation. Donahue had already transferred to his new position as Superintendent of Delaware Water Gap National Recreation Area, Pennsylvania, when he was interviewed by OIG investigators. In his recollections for this administrative history, however, Donahue regrets that the deal was scuttled by our friends in the environmental movement. They simply could not believe that George W. Bush was doing something beneficial for the environment. They believed that it was just a gift to the oil companies.

It was a lost opportunity, he contends, that would have allowed the federal government to decide when, or if, to extract the oil: “It could have been used, perhaps, when [there] was [a] more sustainable way of extracting oil, or it could have been saved for reserves for a rainy day or never used at all.” Instead, he concluded, the decision to abort the sale left the question of oil exploration and extraction in private hands.<sup>30</sup>

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<sup>29</sup> John Donahue, oral history interview, February 22, 2021. See also Annual Narrative Report, 2000.

<sup>30</sup> Ibid.

During his brief tenure at the Preserve, Donahue also initiated projects that his successors inherited. Chief among these was to begin planning the GMP for the Addition Lands. This was a massive undertaking that reopened many of the debates over recreational access to the Preserve and that highlighted the need for a new Wilderness Area Study. Former Administrative Officer Ellen Hand, who transferred from the Preserve shortly after Donahue arrived, recalled that the Addition Lands GMP had been delayed at the request of the Southeast Regional Office due to the intensity of effort required to complete the ORV Management Plan: “There was [sic] just so many different issues going on, it was really problematic, not only for the Preserve, but for the Regional Office.”<sup>31</sup> The challenges of implementing the ORV Management Plan were increased during Donahue’s tenure by deteriorating relations between the Preserve and the Florida Fish and Wildlife Conservation Commission, whose Executive Director, Allan Egbert, wrote several letters critical of Preserve management to NPS Director Fran Mainella. Despite this brief period of animosity, relations between the two agencies gradually improved over the next several years, allowing increased collaboration on studies of endangered species in the Preserve.

During his tenure, Donahue also kicked off the planning, and helped to secure funds, for the new Visitor Center on the Tamiami Trail, now the Nathaniel Reed Visitor Center. The proposed new Visitor Center was part of Donahue’s emphasis on the Preserve’s interpretation program. In 2002, Donahue secured permission to reorganize the management structure by creating a new Division of Interpretation, which previously had been a branch of the Visitor and Resource Protection Division. The new division was headed by a new Chief of Interpretation, Robert DeGross, who entered on duty in November 2003, having previously served as a sub-district interpreter supervisor for the Shark Valley area of Everglades National Park. Several improvements to the interpretive program were also incorporated into the extensive construction project centered around U.S. Route 41. This \$4.2 million project focused on driver safety and new and improved visitor amenities, including construction of four new sites for visitor access on U.S. Route 41, reconstruction of three parking areas, installation of turning lanes, and construction of three new boardwalks. It was also a milestone project for the Preserve as its first congressional line-item budget contract.

Donahue’s efforts to bolster the Preserve’s interpretive program were supported by a new Friends group. In 2003, the internationally known landscape photographer Clyde Butcher, who, with his wife, owned a studio and residence in the Preserve as inholders, gathered other like-minded friends to establish the Friends of Big Cypress. The Friends group had as a goal to support the Preserve’s efforts in outreach, education, and interpretation. Later that summer, Preserve staff coordinated with the Butchers to promote a Labor Day gathering. The goal of the event was to give residents from communities throughout the area the chance to meet with NPS staff and was designed to foster “a better understanding and appreciation for Preserve resources within participants;” the event was covered by the Today Show morning television program.<sup>32</sup>

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<sup>31</sup> Ellen Hand, oral history interview, February 26, 2021.

<sup>32</sup> Annual Superintendent’s Narrative Report, 2003.

### *Superintendent Karen Gustin*

John Donahue remained at the helm of Big Cypress National Preserve from March 2000 until June 2003, when he accepted a lateral transfer as Superintendent of Delaware Water Gap National Recreation Area, Pennsylvania. Donahue was successful in bringing the ORV Management Plan to completion and, with it, the elimination of dispersed access, replaced by construction of designated trails and access points. There were those in Florida and in the Southeast Regional and Washington Offices, however, who believed that his emphasis on resource protection lost sight of the balance with recreational access that Congress envisioned in the enabling legislation. Deputy Superintendent Carol Clark, who had entered on duty shortly before Donahue's arrival in early 2000, shared Donahue's convictions. Clark served as Acting Superintendent until January 2005, when she transferred to Canaveral National Seashore, Florida, as Superintendent. Karen Gustin entered on duty as Big Cypress National Preserve Superintendent in April 2005. Formerly the Superintendent of Pictured Rocks National Lakeshore, Michigan, and having previously served in Alaska and Guam, Gustin's appointment was supported by NPS Director Fran Mainella and Franklin Adams, the long-time Preserve supporter and advocate of responsible hunting and recreational access, for her perceived willingness to work more closely with supporters of recreational access.

The question of ORV access to the Preserve was the dominant feature of Gustin's tenure, which lasted until early 2008, when she transferred to Olympic National Park, Washington, as Superintendent. The lawsuit filed by advocates for increased access against the ORV Management Plan in 2001 was dismissed in early 2005, shortly before Gustin's arrival, but the debate soon turned to the relationship between primary and secondary ORV trails. Gustin established the ORV Advisory Committee recommended by the ORV Management Plan in 2000 but never implemented and organized a first meeting of the Committee in 2007. With the support of this committee, the Preserve proposed a plan to open primary and secondary trails in the Bear Island Unit in 2007. This proposal ignited a strong negative response from several environmental groups and led to yet another lawsuit charging that the Preserve had again failed to comply with NEPA by not taking into consideration the potential impacts to the Preserve's resources and calling for preparation of an EIS. That lawsuit remained in the courts throughout Gustin's tenure while Preserve staff began conducting additional studies of potential impacts.

At the same time, Gustin was confronted by the need to reignite work on the GMP for the Addition Lands, an effort which had stalled as a result of debates over whether a new Wilderness Study should accompany the GMP. The process had been on hold since late 2003, after Superintendent Donahue left; when Gustin re-started efforts to complete the Addition Lands GMP, she incorporated plans to include a Wilderness Study in it. By the spring of 2007, the Preserve, working with the DSC, released to the public the preliminary alternatives then being considered. Gustin oversaw efforts to revise the alternatives in concert with Regional and Washington Office staff throughout 2007 before releasing revisions in the spring of 2008.

By FY 2007, Gustin's last full year there, the Preserve operated on a base ONPS budget of \$5,696,400, with an additional \$283,500 in special project funding. This represented only a seven percent increase from her first budget FY 2005, when the Preserve had a base ONPS allocation of \$5,338,000. The limited increase reflected declining levels of funding for

discretionary activities throughout the federal government during the decade. In February 2007, the Preserve took part in a Core Operations Analysis Plan, one of several components of NPS' attempts to instill a greater concern for effective management. According to NPS Comptroller Bruce Sheaffer in his testimony before Congress in 2006, "As we strive toward management excellence, we are putting in place the people, tools, information, and structures to ensure efficiency, effectiveness, transparency, and accountability in all that we do. We are using a suite of business strategies to achieve these management goals."<sup>33</sup> The suite of strategies to which Sheaffer referred included a new budget planning model, a systematic, goal-oriented annual scorecard for each unit of the National Park System, and business plans, as well as the CORE operations analysis program. The Preserve hosted a workshop in late February and early March 2007, facilitated by the superintendents of Biscayne National Park and Castillo de San Marcos National Monument/Fort Matanzas National Monument. The workshop focused on the Preserve's priorities and purposes, reviews of past budgets and staff levels, and discussions meant to identify possible operational efficiencies and a plan for implementing them.<sup>34</sup>

The workshop in the winter of 2007 resulted in a draft report the following summer. The report's introduction described the stagnant budgets across NPS in recent years, observing that: In recent years, park areas have continued to experience erosion in buying power primarily due to limited base funding increases and increased costs of personal services, inflation, the need to fund national initiatives, and the increased burden of implementing unfunded Congressional mandates. While parks can sometimes cope with these dynamics for a short period, the prolonged nature of the financial attrition has resulted in many parks becoming insolvent.<sup>35</sup>

Workshop participants agreed that the Preserve could expect base funding increases of less than three percent per year for the foreseeable future; given that the current staff level would require a 3.1% increase in salaries, budget shortfalls totaling more than one million dollars per year were likely as early as 2009. As a result, the participants were tasked with finding efficiencies and ways to streamline operations while maintaining the core priorities of the Preserve. These priorities included monitoring the status of natural and cultural resources, compiling and implementing management plans, protecting endangered species and eradicating invasive exotic species, improving public relations and inter-agency collaborations, and assuring a safe environment for staff and visitors. These discussions resulted in a five-year plan that incorporated potential reductions in staff levels intended to save nearly \$700,000 per year.<sup>36</sup>

### ***Superintendent Pedro Ramos***

Karen Gustin, like her predecessor, John Donahue, had a relatively short tenure as Superintendent of Big Cypress National Preserve, lasting approximately three years. Gustin

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<sup>33</sup> "Statement of Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, before the Subcommittee on National Parks of the House Resources Committee on the National Park Service Business Strategies," March 16, 2006; available on the Department of the Interior's website, <https://www.doi.gov/ocl/NPS-Business-Strategies> (accessed September 28, 2023).

<sup>34</sup> "Introduction to the Core Operations Workshop Process," February 15, 2007, printed version of presentation given at Oasis Visitor Center; BICY 16183 S2, SSA, SSS2, F3.

<sup>35</sup> "Core Operations Analysis Plan, Big Cypress National Preserve, Summer 2007," BICY 378, Box 5.

<sup>36</sup> Ibid.



transferred to Olympic National Park, Washington, in April 2008, and was replaced by former Deputy Superintendent Pedro Ramos, who entered on duty in January 2009. Ramos, a native of Puerto Rico who attended college in Massachusetts, began his federal career with the U.S. Department of Agriculture in Vermont. He transferred to NPS in 2001, when he was appointed the Administrative Officer at the Preserve, serving under Superintendent Donahue. In early 2005, he was promoted to the position of Deputy Superintendent when his predecessor, Carol Clark, was serving as Acting Superintendent. Ramos retained his position as Deputy Superintendent, reporting to Superintendent Gustin following her appointment in April 2005. Ramos worked closely with Gustin to reopen communications and restore relations with adherents of recreational access to the Preserve. As discussed in Chapter 7, Franklin Adams, the well-respected and influential leader of the Wilderness Foundation and one of the Preserve's earliest supporters, found both Ramos and Gustin to be invaluable assets who willingly engaged with partners of various interests.

As with his predecessor, Ramos was tasked with completing several high-profile and complicated planning documents. In 2010, the long-delayed General Management Plan for the Addition Lands was completed and released to the public. Five months after he entered on duty as Superintendent, Ramos oversaw delivery of a revised draft GMP that included an ORV Management Plan for the Additions Lands, and a separate Wilderness Eligibility Assessment was completed and approved by NPS Director John Jarvis. The GMP finalized plans for recreational access points on Interstate 75 first proposed in the early 1990s. The Record of Decision was signed in February 2011.

Completion of the Addition Lands GMP did not solve all questions of recreational access to the Preserve, however, and, shortly after the Record of Decision was issued, the Public Employees for Environmental Responsibility filed a complaint that the Wilderness Eligibility Assessment was insufficient and improperly prepared. Following refutation by NPS Director Jarvis in the summer of 2011, the National Parks and Conservation Association filed a similar complaint in federal court. At the same time, the Preserve faced questions regarding the specifics of hunting on the Addition Lands, which the 2010 GMP allowed. The relationship between FWCC and the Preserve had often been strained, as discussed earlier, but the willingness of Superintendents Gustin and Ramos to communicate and collaborate with advocates for recreational access to the Preserve helped rebuild the relationship. In 2011, building on the closer ties between the agencies, Ramos negotiated a new Cooperative Partnership Agreement with FWCC, which allowed development of a Hunting Management Plan. The final plan, completed in 2014, made use of an adaptive management process that allowed ongoing studies and monitoring to guide ongoing changes to the management of hunting on the Preserve.

As the Hunting Management Plan was moving through the public comment and revision phases, the Preserve also initiated planning for a Backcountry Access Plan. The creation of this plan arose from the ongoing challenges to the wilderness eligibility study that was a component of the Addition Lands GMP and from challenges to the Preserve's use of secondary ORV trails. Initial development of the Backcountry Access Plan began in 2013, and a scoping report was released in 2014. As with most of the earlier planning projects, it was a convoluted process, and, although a new wilderness eligibility assessment was not included in the original scope, the

Preserve announced in 2014 its intent to conduct a new wilderness assessment as a component of the Backcountry Access Plan.

The Backcountry Access Plan and the new wilderness eligibility study were both drawn-out projects that continued past Ramos' tenure as Superintendent. They were not the only projects that remained for his successor to complete, however. In 2014, while the Backcountry Access Plan revisions were ongoing, Burnett Oil Company submitted a proposal to conduct seismic testing for oil in the Preserve using a controversial new technique that required massive vehicles to access the testing area. Ramos led the initial efforts to evaluate the potential impacts of the seismic study in 2014 and the responses to initial complaints from environmental groups. The final resolution of the proposal, however, lay with his successor.

### *Superintendent Tammy Whittington*

In January 2015, Southeast Regional Director Stan Austin announced that Pedro Ramos had been selected as the new Superintendent of Everglades and Dry Tortugas National Parks. Six months later, Austin announced that Tamara "Tammy" Whittington had been selected to replace Ramos as Superintendent of Big Cypress National Preserve. Whittington, who entered on duty in October 2015, had served since 2011 as Associate Regional Director of Resource Stewardship and Science in the Intermountain Region and, before that, as Deputy Chief, then Chief, of the NPS Environmental Quality Division in Denver, Colorado. Whittington recalled that, when she entered on duty, she found a management structure that was deeply divided into separate divisions without a strong sense of transparency and teamwork. As she described the relationship among Division Chiefs, "They didn't work together as a team. Everybody was siloed into their own world, and they were pretty much told the direction of things coming down from the Superintendent." This relationship created a lack of transparency regarding how decisions were made, a situation that she attempted to change. The key to making this change, she stated, was to start with the budget: "Budget manages everything. Without budget, you don't do the project work. Without budget, you don't hire people. So, [I] brought everybody in so that they could understand where we were with the budget."<sup>37</sup>

Whittington was also immersed almost immediately in the seemingly endless lawsuits that the Preserve faced. A lawsuit filed in 2013 by environmental groups in relation to the secondary ORV trail network, which spurred development of the Backcountry Access Plan, was still in the courts when she entered on duty. In 2016, less than a year after Whittington arrived, other environmental organizations filed a lawsuit regarding the approval of Burnett Oil's plan of operation for seismic testing for oil, alleging that NPS failed to adhere to NEPA in making its decision. Whittington summarized the responsibilities of the superintendent:

we put together our documentation. It takes months to work with the Department of Justice, the Solicitors Office, all the lawyers, and try to build the case. And, eventually, the case goes back to court, and they just—whatever is needed, but it is my job to review all documents that we put forth and make sure that they're sound.<sup>38</sup>

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<sup>37</sup> Tamara Whittington, oral history interview, October 20, 2020.

<sup>38</sup> Ibid.

Regarding the lawsuit filed against NPS over the approval of the Burnett Oil Company's plan of operation for seismic testing, the court decided in favor of NPS in April 2017. The protections that the Preserve had put in place for access and mitigation of potential damages were sufficient, the court decided, to allow the seismic testing to proceed. Chapter 8 includes a discussion of the public backlash that followed from revelations of the damages to wetlands that occurred during the first season of testing. In the face of this public response, however, Whittington in her later recollections maintained that it was the right thing to do based on the wording of the enabling legislation and the required access to the mineral rights: "they wanted to do some exploration, and by law, we have to allow them to, but we can have them do it as environmentally-conscious as possible, and that's what we did." Several of the senior staff at the Preserve were opposed to allowing the work, she recalled, "which makes it even more hard as the Superintendent to go against the wishes of some of your staff...I wasn't in the position to fight it like previous Superintendents had wanted to fight it. It's the law, and we have to do it."<sup>39</sup>

While the seismic testing issue was taking place, Whittington also oversaw renewed attempts to prepare two plans: the Backcountry Access Plan and the Fire Management Plan, the latter of which was a collaboration with the Florida Panther National Wildlife Refuge. The Preserve's new Wilderness Eligibility Assessment had recently been completed and approved by NPS Director Jarvis and was incorporated into the Environmental Analysis for the joint Fire Management Plan. Later in 2016, the Washington Office issued a revision to the NPS resource stewardship plan, which included strategies for adapting to climate change and other factors. The stipulations in the Director's Order that proclaimed the revisions to resource stewardship led to a revised EA for a new Fire Management Plan for the Preserve alone, not in collaboration with the National Wildlife Refuge, in 2017. The new plan went through additional revisions through 2019, after Whittington had left the Preserve, and was released in its final form in 2020.

Whittington was also unable to see the Backcountry Access Plan to its completion. The determination regarding wilderness eligibility for the Addition Lands was completed in 2015, and Whittington led a renewed attempt to prepare the plan, including a wilderness eligibility assessment for the entire Preserve, with a request for public comment in early 2016. As a result of this public comment period, the Preserve prepared a new set of alternatives. In early 2018, however, the long-time Chief of Resource Management Ron Clark announced his retirement, and Whittington also announced her departure. This sudden loss of leadership put the Backcountry Access Plan on hold, and it was not resumed until Whittington's successor, Tom Forsyth, entered on duty in September 2020, as discussed in greater detail in Chapter 7.

A more positive development took place when the Preserve was named an International Dark Sky Place. This international movement emerged in the 1990s to bring attention to the constantly increasing light pollution around the world. In 2001, Flagstaff, Arizona, was named as the nation's first International Dark Sky City. In 2016, the Preserve was the first National Park System unit east of Colorado to achieve this designation, which required that Preserve staff change lighting fixtures and establish new guidelines to specify when and where outdoor lighting could be used. The designation has allowed the Preserve's interpretation and recreation staff to

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<sup>39</sup> Ibid.

create new programs encouraging visitors to experience the increasingly rare phenomenon of night-time skies without any intruding light.

In May 2018, Whittington announced that she had accepted an offer to return to Colorado, taking on the position of Deputy Regional Forester for Rocky Mountain Region of the U.S. Forest Service. Shortly after her departure, Southeast Regional Director Robert Vogel announced to staff at Everglades National Park, Biscayne National Park, Dry Tortugas National Park, and Big Cypress National Preserve in an email that the management of these four units would be consolidated within a single organization, with Superintendents at Big Cypress and Biscayne reporting to Pedro Ramos, Superintendent of Everglades and Dry Tortugas National Parks. The rationale for this realignment was to reduce expenses by sharing resources among these units, given their water resource management needs and proximity to one another. Vogel's announcement led to extensive planning among staff at all four units to identify management strategies and any potential duplication in staffing.<sup>40</sup>

As a result of this change in management strategy, the Superintendent position at Big Cypress National Preserve remained unfilled for more than a year. Finally, in August 2019, Southeast Regional Director Vogel announced that Thomas Forsyth had been appointed to fill the role and would report to Superintendent Pedro Ramos. Forsyth had a first career in retail management, transitioning to NPS in 2011, when he served as a supply management officer at National Mall and Memorial Parks, Washington, D.C., and was promoted in 2012 to program and management analyst. Prior to his appointment at the Preserve, Forsyth was working at Gettysburg National Military Park, Pennsylvania, after having been promoted from Chief of Administration to Deputy Superintendent, while also serving as Acting Superintendent of Big Bend National Park, Texas in 2018.<sup>41</sup> Forsyth entered on duty as Superintendent of Big Cypress National Preserve in late 2019. As discussed in detail in Chapter 7, the major issues facing Forsyth were the Backcountry Access Plan, the uncertain status of a Wilderness Eligibility Study, and the ongoing question of Burnett Oil Company's proposed oil drilling project with the possibility that an EIS would be required. All these major planning projects remain in process as of the writing of this administrative history.

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<sup>40</sup> "South Florida National Parks Targeted for New Management Plan. Critics Fear Cuts," *Miami Herald*, July 19, 2018.

<sup>41</sup> "Thomas Forsyth Named Superintendent," Big Cypress National Preserve News Release.

## Conclusion

The shift to a consolidated form of management in 2018, in which the Superintendents of Big Cypress National Preserve and Biscayne National Park report to the Superintendent of Everglades and Dry Tortugas National Park, was part of an attempted overhaul of NPS funding and staffing in the late 2010s as the administration of President Donald J. Trump sought to find increased efficiencies within the National Park System. Many NPS staff and outside observers decried the move at the time, fearing that already strained personnel would have additional burdens with a resulting loss of oversight of fragile environmental resources. The long-term impacts of this managerial shift lie outside the purview of this administrative history, though they may play a larger role in a later history of Big Cypress National Preserve. What is compelling about this development in 2018, however, is its resonance with the earliest attempts to formalize the Preserve's management structure.

In September 1981, shortly after entering on duty, Superintendent Fred Fagergren wrote a strongly-worded critique of the Preserve's General Development Plan, then in draft form. His comments ranged across the planning process led by the Denver Service Center and the lack of local input, the lack of coordination between the Preserve's General Development Plan and a similar one for Everglades National Park's Shark Valley, the dismissal and proposed demolition of the Oasis ranger station, and the lack of provisions for interpretation at Big Cypress National Preserve. As discussed in Chapter 3, Fagergren also took issue with the assumption that Big Cypress would be largely subsumed under Everglades National Park. This was, he contended, "an integration that doesn't now exist nor can exist as complexities of operations continue." Everglades Superintendent Morehead was already delegating an increasing number of responsibilities to Fagergren, a necessity due to the distance between Everglades National Park and the Preserve and the ever-increasing complexities of the issues facing the Preserve. Fagergren stopped short, however, of calling for the two units to be entirely separate. The trend over the past year, he explained in his memorandum to the Southeast Regional Director, was "toward a more independent operation where the Superintendent, BICY operates as any other NPS Superintendent except that his supervisor is the Superintendent, EVER." The rationale for this arrangement, he explained, was "the strong need for a single NPS voice in south Florida, rather than a need to 'reduce duplication of efforts and facilities' as stated in the [General Development] Plan." He went on to observe that "we are moving towards [sic] a group/cluster situation rather than an integrated management. I believe such a move to be in a correct direction. While there are many similarities between the areas, there are vast differences."<sup>1</sup>

The similarities among these units of the National Park System, in particular the connection between Everglades National Park and Big Cypress National Preserve, were a large part of the impetus for establishment of the Preserve in 1974. Water, especially its almost imperceptibly slow movement across the surface of Big Cypress Swamp and into the adjoining Everglades, that "River of Grass" described by Marjory Stoneman Douglas, defines much of what is significant and irreplaceable about Big Cypress National Preserve. Beyond its importance to the overall ecosystem of south Florida, of which the Everglades is a key

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<sup>1</sup> Memorandum, Superintendent, Big Cypress National Preserve, to Regional Director, Southeast Region, September 14, 1981; BICY 14661 S2, SSA, F1.

component, the annual cycle of wet and dry periods gives the Preserve a special significance of its own by supporting a distinctive mix of plant and animal species, many of them recognized as threatened or endangered. Cypress domes and hardwood hammocks, marshes, and prairies all support a breathtaking array of plants and animals that rely on a particular balance of wet and dry areas and seasons to thrive.

With the creation of Big Cypress National Preserve in 1974, however, this intricate balance of natural resources had in turn to be balanced with the values that so many people with vast differences had attached to the place. The Seminole and Miccosukee Tribes and their forebears had used this difficult and often-forbidding place for housing, sustenance, and security for many generations, to the point that the place was an important part of their cultural identity. In more recent years, residents of south Florida had enjoyed the opportunity to hunt and fish in the vast, untamed wilderness, seeking solitude or camaraderie with like-minded sportsmen which created a sense of freedom from outside constraints and a refuge against the encroachments of the modern world by accessing this wilderness on recently-developed types of off-road vehicles. The national obsession to discover sources of oil in the early twentieth century, meanwhile, resulted in discovery of oil in the bedrock throughout south Florida, the rights to access which could be severed from ownership of the land above.

The administration of President Richard Nixon and members of Congress led by Florida's delegation in the House of Representatives and the Senate, following the national outrage over the proposed destruction of land to create a massive airport in the Big Cypress Swamp and in response to the increasingly potent environmental movement, recognized the need to protect Big Cypress for its own sake and to protect the Everglades. Political realities that led to this protective effort were countered by an equally strong political base that rejected federal intrusion into this wilderness. Florida's Representative James Haley in the House of Representatives and Lawton Chiles in the Senate, with their colleagues, worked out a compromise over several years in the early 1970s to allow both political realities to co-exist: create a new type of National Park System unit which let traditional users continue their enjoyment of the land while being subject to regulations to protect the Big Cypress Swamp's ecosystem. This balanced system of countervailing pressures was born of necessity to provide federal protection for natural and cultural resources while limiting the power of the federal government to eliminate the freedom of individuals in their enjoyment of the place. It was a masterpiece of congressional compromise and the only way to protect this ecosystem from depredation. Like many elegant theories, however, it was devilishly difficult to put into practice.

The staff at Big Cypress National Preserve have worked diligently for nearly a half-century to put this theory into practice, seeking a balance between protection of significant and threatened natural and cultural resources and access for recreational and consumptive uses. Because the political demands for protection and for access have been so strong, and because the interconnection among the resources are so dense, it has been an enormously complex task, frequently resulting in lawsuits and legal pressure from advocates for various interests. Under successive superintendents, the emphasis has oscillated slightly, some urging stronger protections for resources and others urging greater compromise with advocates for recreation and extractive activities, though often in unpredictable ways. All those who have worked at the Preserve, however, have recognized the vital importance of this place and the need to protect it,

not just for its own sake but to allow as many as possible to experience and enjoy it now and in the future. Much has been done to find that balance, and much remains to be done, since the balance that allows people with a wide range of interests to enjoy the unique and fragile ecosystem of Big Cypress, will never be static.

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The principal research for this project was conducted in the South Florida Collections Management Center, a multi-park archival facility with extensive collections from Big Cypress National Preserve, Everglades National Park, Dry Tortugas National Park, and Biscayne National Park. The author conducted in-person research during two phases, in November 2019 and March 2022. In addition, archival staff at the South Florida Collections Management Center provided to the author a large quantity of scanned files in PDF format.

Most of the records in this archive pertaining to Big Cypress National Preserve are from the Preserve's early years, from the earliest administrative and land acquisition activities through the development of the General Management Plan and other resource-based management plans of the 1990s and early 2000s. Information on subsequent plans and administrative developments came primarily from the planning document themselves and from the oral history interviews that were conducted for this report.

In addition, the Papers of Lawton Chiles is an immensely valuable collection housed in the Special and Area Studies Collections of the George A. Smathers Libraries at the University of Florida, Gainesville. The author also consulted the Papers of Representative James A. Haley, housed at the Sarah D. and L. Kirk McKay Jr. Archives Center at Florida Southern College, Lakeland.

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## **Appendix A: Legislation**























## Appendix B: Staff List and Budgets

Note: The following list of staff who have served at Big Cypress National Preserve represents permanent staff only in key positions and does not include seasonal staff or student employees.

<u>Name</u>	<u>Dates of Service</u>
<b>Site Manager</b>	
Irvin L. Mortenson	August 1976 – January 1981
<b>Superintendents:</b>	
Fred J. Fagergren	March 1981 – 1991
Wallace Hibbard	1991 – 2000
Ellen Hand (Acting)	2000 – 2000
John Donahue	March 2000 – June 2003
Carol Clark (Acting)	June 2003 – January 2005
Karen Gustin	April 2005 – April 2008
Pedro Ramos	April 2008 – January 2015
Tamara Whittington	October 2015 – May 2018
Tom Forsyth	December 2019 – present
<b>Deputy Superintendent</b>	
Carol Clark	2000 – 2003
Pedro Ramos	2005 – April 2008
J.D. Lee	2010 – January 2018
<b>Management Assistant</b>	
Christine Clark	2004 – present
<b>Administrative Officer</b>	
David Bagozzi	1989 (?) – ?
Ellen Hand	1993 – 2000
Pedro Ramos	2001 – 2005

**Clerk-Typist:**

Sandy Sehler 1981 – ?

**Rangers / Park Guides**

Howard Dimont (Chief) 1977 –?

John Bowie 2002 – July 2007

(Law Enforcement)

**Chief of Interpretation**

Robert DeGross March 2003 – December 2016

Joshua Boles July 2020 – January 2022

**Wildlife Biologist**

Deborah Jansen 1991 – 2023

**Resource Management Specialist/Chief of Resource Management**

Carroll Schell 1981 (?) – (?)

Robert “Buck” Thackeray 1989 (?) – 1995

Ronald Clark 1995 – 2018

Tony Pernas May 2019 – 2022

**Hydrology**

Christine Clark February 1995 – 2004

(Hydrologic Technician)

Robert Sobczak 2000 – present

(Hydrologist)

**Research Biologist**

James Snyder 1984 – present

**Environmental Specialist**

Ron Clark	1989 – 1990
Patrick Kenney	1990 – 1999

**Minerals Management Specialist**

Cordell Roy	1985 – 1989
Greg Hogue	1989 – 1989
Ronald Clark	1989 – 1995

## Budgets

Budget information for the following years was identified in Superintendent's Annual Reports

<b>Fiscal Year</b>	<b>Base/ONPS</b>	<b>Cyclical/ Donations/ One-time</b>	<b>Line-Item Construction/ Other</b>	<b>Total</b>
1989	1,062,000	1,404,900		2,466,900
1990	1,083,700	1,656,550		2,741,250
1991	1,451,500	1,793,700	110,500 <sup>2</sup>	3,355,700
1992	1,672,600	1,349,375		3,021,975
1993	1,814,500	1,680,650	203,645 <sup>3</sup>	3,698,795
1996	3,375,100	1,862,400		5,237,500
2000				4,408,000
2003	5,145,000	615,127		5,760,127
2005	5,053,300	209,203	1,260,726	6,523,229
2007	5,696,400	1,194,565		6,890,965

<sup>2</sup> Additional funding for fire suppression and pre-suppression activities.

<sup>3</sup> Hurricane Andrew Recovery Funding.



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