

April 7, 2008

Dear Broward County Mayor Wexler, Vice Mayor Ritter, and Commissioners:

Audubon of Florida and Broward County Audubon Society recently submitted a letter to the Secretary of the Florida Department of Environmental Protection (FDEP)¹ regarding the plans for the transfer of a conservation easement, and ultimate destruction of mangroves contained within the easement, at Port Everglades. During the March 11, 2008 workshop on the proposed turning notch expansion, the Commission asked the Port to respond to the concerns stated in our letter. We have subsequently reviewed the Port's comments and submit this letter in response.

In general, the Port's response focuses on the ordinary steps necessary to meet mitigation requirements for wetland destruction but largely ignores the fact that the wetlands in question are protected by a conservation easement. At the time the original permits were granted to allow the construction of the turning notch in the 1980's, the potential cumulative impacts of possible future Port destruction of the remaining mangroves were a significant concern. For this reason, the Administrative Law Judge, FDEP, and the interveners (including Audubon), agreed on the easement requirement which represented a real estate conveyance of all rights for future development, terminating the future option of Port expansion in the remaining mangrove wetlands.

We sincerely appreciate the opportunity to continue the dialogue in this important discussion and provide you with the following responses, preceded by excerpts of the Port's comments, for your consideration.

Port: While excavation (referring to previous expansion of the turning notch) impacted the mangroves and the biota, it also produced an open water area that provided a new and different habitat for marine organisms. The same positive result is expected to occur with the new proposed Turning Notch as a new open water area will be created that will be ecologically diverse within the extended turning notch (Page 1).

Audubon Response: We strongly disagree that the open water area of the expanded turning notch will be "ecologically diverse". While marine life may be able to transit through this area, the depth of the notch, and the bottom substrates in it will result in no significant opportunity for biological productivity. The bottom substrates will become highly turbid silts and muds (and there will be fewer mangroves remaining to help stabilize sediments). Over time it is possible that toxins from anti-fouling paint on vessel hulls, residue of overboard spills and other pollutant sources common in port waters will present a problem for marine life coming in contact with the turning notch substrate.

¹ Letter addressed to the Secretary of the FDEP, Michael Sole, dated March 11, 2008.

The conservation easement protecting the mangroves was established to guide Port planning in the future, and preclude future consideration of the mangrove area for Port expansion. Its purpose was to protect a valuable habitat in perpetuity that was and is increasingly rare in Broward County from potential cumulative losses due to expansion of the Port. Even if there were ecological benefits attributable to creating open water areas, such benefits are irrelevant to the reason the easement was imposed.

Port: The ecological function of the remaining 36.2 acres of mangroves, including serving as a refuge for wildlife, will continue to serve the existing wildlife population (Page 1).

Audubon Response: The conservation easement will be reduced in size by approximately 23% if both the 8.7 and 3.2-acre portions of the easement are vacated. While the remaining acreage may continue to serve wildlife, a considerable portion of the mangrove's ability to provide services such as storm protection, sediment stabilization, and nursery habitat for juvenile fish will be lost. Simply put, 36.2 acres of mangroves does not serve as *an equivalent* refuge for wildlife as the existing 50 acres of mangroves. Further, due to the location of the proposed 8.7 and 3.2-acre impacts, the changes to tidal creeks and flow patterns within the remaining mangrove wetland complex will be impacted to a greater degree than if the affected areas were simply solid mangrove wetlands with no tidal creek features. Mangrove forest edges along tidal creeks are the most productive part of the mangrove system due to daily tidal flushing, and the ready access of marine life to the rich areas within the sheltered area beneath the mangrove prop root zone.

Additionally, if the 8.7 and/or 3.2-acre mangrove parcels are destroyed as proposed through a rationale that trivializes the importance of the conservation easement, there is absolutely no guarantee that the Port will not again seek to vacate the remaining conservation easement (or portions thereof) and continue to chip away at the remaining 36.2 acres in the future. In fact, the manner in which the Port proposes to trade-off the conservation easement simply because the Uniform Mitigation Assessment Method's requirements are being met at West Lake Park serves as a virtual invitation to such future conversions. The smaller and more isolated the remaining wetland fragments become, the more compromised the ability of the wetland to provide important ecosystem services.

Port: The mangroves being removed are proposed to be fully mitigated at West Lake Park...(Page 1). Assessments of these ecological improvements approved in the permits, using Florida's Uniform Mitigation Assessment Method (UMAM), provide functional gain (FG) credits that can be applied to Broward County projects during environmental resource permitting (Page 2).

Audubon Response: The discussion of the calculation of credits required under UMAM completely ignores the fact that the wetlands in question are protected by a conservation easement. The application of UMAM credits in the Port's discussion is appropriate for sites that are not protected by conservation easements. The conservation easement is a **different issue separate and apart from wetland mitigation requirements. The conservation easement represents a specific, legally binding commitment by the Grantor (the Port) to preserve the particular area described in perpetuity without future disturbance. The purpose of the easement was to prevent future cumulative impacts at the site in question. The Port's comments simply fail to address this issue.**

Port: The Port believes that the acquisition and enhancement of Deerfield Island is generous and more than adequate compensation for the ecological value of the area of the easement proposed to be abandoned (Page 3).

Audubon Response: The Deerfield Island site is distant from the losses that will occur at the turning notch site within the Port, and whatever good may be done there will not replace the easement area lost at the Port site in any meaningful way. Further, should the FDEP accept the “trade” of lands at Deerfield Island for the portions of the conservation easement to be lost at the Port site, the agency will have set in motion a rationale which is almost certain to lead to the eventual elimination of the entire remaining acreage under easement. If the Port can merely “replace” this large contiguous easement by finding and protecting a few acres here and a few acres there through widely separated and disjointed tradeoffs in the future, then it is almost certain that the entire easement will eventually be traded away.

Ecologically speaking, the approximately 8.5 acres of mangroves growing on Deerfield Island are not entirely contiguous². The existing conservation easement is a continuous parcel, and the ecological value of the 8.7 and 3.2-acre parcels is further enhanced because they are attached to the rest of the conservation easement. The two sites are not equivalent from an ecological perspective, and we see no loss replacement for the easement area in this proposed trade.

Port: Purchase and preservation of this island, including conveyance into state ownership, along with proposed environmental enhancements, will both prevent the site from ultimately being lost to development and provide significant habitat improvements (Page 3). The Port believes that the removal of the State conservation easement over approximately 12 acres of Port mangroves would be well compensated for by the acquisition of the potentially developable Deerfield Island...(Page 8).

Audubon Response: The purpose of establishing the conservation easement over the remaining mangroves in the Port’s turning notch area was to protect this specific mangrove ecosystem tract from future cumulative losses due to possible future Port development from the 1980’s forward. In contrast, “the mangroves on Deerfield Island appear to be under no risk for development, and are expected to remain that way for at least the next 60 years³”. Encumbering Deerfield Island with an easement does not replace the easement areas lost at the Port’s turning notch site.

Port: Providing for a new fixed structure at Berth 29 will not be detrimental to the manatees who will utilize the realigned canal outfall entrance in the same way they utilize it today. In accord with the Port Master/Vision Plan, the Berth 29 extension and the channel entrance move simultaneously to the south and there will be no change in vessel activity or proximity to manatees (Page 6).

Audubon Response: In regards to “there will be no change in vessel activity or proximity to manatees”, the very idea of the Port’s expansion is to attract bigger ships (i.e. Post-Panamax vessels) and more ships, thereby certainly changing vessel activity by increasing it. The larger

² Martin K. Seeling (Administrator, Environmental Permitting, Bureau of Beaches & Coastal Systems) letter to Mr. Allan D. Sosnow (Environmental Projects Manager, Seaport Construction and Planning Division, Broward County, Port Everglades Department). April 30, 2007.

³ ibid

ships able to access the Port's proposed expanded areas will host larger propellers and draw deeper drafts, thereby increasing the risk of either more frequent manatee interactions, or the severity of such interactions, or both.

The following excerpt from the Florida Fish and Wildlife Conservation Commission (FWC) comments⁴ on the Draft Environmental Impact Statement (DEIS) illustrates the risks associated with relocating the FPL canal:

The Port area that includes the Port Everglades power plant warm water discharge canal is very important habitat for the Atlantic manatee population. Manatees aggregate here during the cold winter months. Therefore, the work itself and the use of the area by larger vessels in and out of such a narrow waterway would increase the manatee/vessel interaction and risk of injury and death and any disruption to the habitat may have severe adverse effects on manatees. Proposed widening near the inlet that would directly impact the limited foraging resources (seagrass) creates a need for the manatees to travel farther for food increasing the risk of cold stress. And loss or degradation of the protected mangrove habitat at the turning notch would definitely diminish the value of this manatee refuge.

Additionally, the realignment of the FPL canal will replace a natural shoreline with an unnatural shoreline, thereby reducing the natural habitat accessible to manatees in a channel that is heavily utilized by small boat traffic. Therefore, even if the Port utilizes all of the dredge protection plan measures outlined in their response to avoid interaction with manatees during construction, the extension of Berth 29 and reconfiguration of the FPL channel will certainly impact the manatees utilizing the area. Additional boat traffic comprised of larger vessels envisioned in the Port's Master Plan logically correlates with additional impacts to the Florida manatee.

In conclusion, for the above stated reasons, Audubon does not see benefits in the package of mitigation proposed at West Lake Park and the conservation easement transfer to Deerfield Island which merit consideration of the proposed partial abandonment of the existing conservation easement. Therefore, we feel the Broward County Commission should decline to adopt any Alternatives which necessitate vacating portions of the conservation easement at this time.

We thank you for this opportunity to comment.

Sincerely,



David E. Anderson
Executive Director
Audubon of Florida



Lisa Baumbach-Reardon
Conservation Chair and Board of Directors
Broward County Audubon Society
[Signature waived to expedite delivery]

⁴ Florida Fish and Wildlife Conservation Commission (FWC) Comments addressing Interim DEIS. Submitted March 6, 2008.