



December 29, 2014

District Engineer
Palm Beach Gardens Permit Section
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, FL 33410

Sent via Certified Mail

Re: SAJ-2008-04052(GGL)
Crosstown Parkway Bridge

Dear Sir:

This letter is to submit comment on behalf of the Conservation Alliance of St. Lucie County (CASLC) and the Indian Riverkeeper (IRK) pursuant to the referenced public notice issued on December 5, 2014. The proposed permit, if granted, will allow substantial and irrevocable impact to the Halpatiokee Trails section of Savannas Preserve State Park. Both of our organizations recommend in the strongest possible terms that this permit application be denied with prejudice.

The CASLC was founded in 1972 with a mission to “protect the water, soil, air, native flora and fauna, upon which all earth’s creatures depend for survival.” In alliance with other environmental and civic organizations, their efforts have resulted in many notable successes over the years, including the creation of the Ft. Pierce Inlet State Park, and the Savannas Preserve State Park in the 1970s.

The mission of the IRK is to “protect and restore the waters of North America’s most diverse estuary, the Indian River Lagoon, its tributaries (which include the St. Lucie River, and the North Fork of the St. Lucie River Aquatic Preserve), fisheries and habitats through advocacy, enforcement and citizen action.” The Riverkeeper, Marty Baum, and the members of this organization are extraordinarily active in assuring the health of our unique and special watershed.

Numerous members from both groups enjoy the protected, pristine, serene, and other rare qualities of Halpatiokee Trails and the widest Buffer Preserve area of the North Fork of the St. Lucie River Aquatic Preserve (AP), (which includes three tributaries of the Lagoon watershed: North Fork, Evans Creek, and the Coral Reef Waterway). If the Crosstown Parkway Extension (CTPE) bridge is built through this area, known as Route 1C, those qualities will be lost to us, as well as many other folks in our community.

Because the scope of consequences would be extensive far beyond its most immediate effects on Halpatiokee Trails if the permit is granted, we include discussion of the critically important reasons why the permit's issuance is contrary to the public interest, and must be denied, with prejudice.

1. Pending federal lawsuit: The U.S. Army Corps of Engineers (COE) states that it is basing its decision based on information supplied by the FEIS, and the fact that the FHWA signed the Record of Decision in February of 2014 that authorized federal funding for the now "approved" route: Route 1C. The CASLC and the IRK assert that the FEIS process was flawed and unlawful. We filed a lawsuit on May 12, 2014, to challenge the FHWA's and DOT's decisions.

We allege violations of the Transportation Act and the Administrative Procedures Act. We assert that there were six other viable alternative routes, all of which would be less ecologically damaging and use less or no 4(f) resources (park and conservation lands). The law is clear: unless there is demonstration of exceptional and extraordinary circumstances the least impacting alternative route must be chosen. Instead, the most ecologically damaging route, and the one with the most 4(f) resources, was chosen.

It remains unclear to us why the city insists on Route 1C, as it is the second most expensive route of all build alternatives, according to the FEIS.

2. Granting Permit Cements Halpatiokee and thus Route 1C: In granting this permit, the Army Corps will be party in causing irrevocable destruction to Halpatiokee Trails due to both the direct and indirect effect of deforestation and filling of wetlands. The action will most likely close Halpatiokee Trails, as it will at least remove over 1.5 acres at the very eastern section of the park's entrance and the first part of the hiking trail itself. This action will not only literally cement this area, it could solidify Route 1C before we have had our day in court.

Additionally, the project purpose of transportation cannot be met with only the portion considered under the permit application, and should be denied on that basis alone. Furthermore, in reviewing this grant application, the impacts caused by the entire bridge construction along Route 1C must be considered.

3. Longstanding objections remain valid: Since the late 1980s, Port St. Lucie has made public its selection of the West Virginia route for the Crosstown Parkway Extension (CTPE) Bridge, later to be known as route 1C,¹ however, its "official" selection was very late in the EIS process. For over two decades, various agencies, including (and not limited to) the Treasure Coast Regional Planning Council, the Florida Department of Environmental Protection (FDEP), the Fish & Wildlife Service and the National Park Service of the U.S. Department of the Interior, the U.S.

¹ Scanlon, S., "West Virginia Drive seen as candidate for highway," *The Tribune*, Nov. 25, 1988. Accompanying map shows connection to Village Green Drive, clearly Route 1C.

Environmental Protection Agency, the National Marine Fisheries of NOAA, and the COE itself have all voiced strong objections to this route, precisely because they identified it to be the most ecologically damaging route, impacting the most wetlands and listed species, and because it takes the most state preserved lands. These objections remain valid, and the CASLC and the IRK expect to air the violation of existing laws, which include that no route should be pre-selected without a full and impartial analysis of the less impacting alternatives, during the court hearings.

For the record here, we attach three letters, which give support to our position:

a. A FDEP memorandum, May 25, 1999, from Larry Nall of the Bureau of Coastal and Managed Areas to Tom Butler of the Bureau of Public Lands Administration, details their objection to the West Virginia route that would impact the aquatic/buffer preserve complex and Halpatiokee Trails. (Attachment 1) We ask that you consider this letter in its entirety. In stating that it is unlikely that a location with greater environmental impact could be chosen," Nall goes on to list the now rare habitats and critical estuarine, riverine ecosystem services that are at risk if the referenced bridge project proceeds. Water quality, rare and listed species, and compromise of the intended use of state lands and waters (the AP is also an Outstanding Florida water) are also detailed. Nall states that the "location is in the widest part of the aquatic buffer complex impacting public lands to the greatest possible extent." This route "... requires crossing three separate tributaries of the system, the North Fork, Evans Creek, and the Coral Reef Waterway," and thus its protection must be given even higher priority.

In terms of habitat and ecosystem fragmentation, then, the referenced route is the very worst route possible.

b. The COE is also on record stating that Route 1C is the "MOST ecologically damaging route," that the "wetlands within the project area are part of an important complex of intact floodplain wetlands," that are of "extremely high quality." Additionally, the Corps "recommends the use of previously disturbed lands with no wetlands, or parcel under public ownership for conservation."² (Attachment 2)

4. Clean Water Act Requires Avoidance First: The COE has served as a cooperating agency on the CTPE bridge project because of its regulatory role for navigable waters, and as such knows that the first priority under Section 404 of the Clean Water Act (CWA) for any project such as this is to **avoid** impacts. Thus, Mr. Lips states in a December 4, 2013 letter to Caicedo-Maddison of FDOT: *where practicable, we recommend every effort to avoid filling wetlands associated with bridge abutment or other project components.* (Attachment 3)

² October 3, 2011 letter to Beatriz Caicedo-Maddison of the Florida Department of Transportation from Garret Lips, project manager from the U.S. COE.

The COE also knows that the CWA mandates that if other less damaging practicable alternatives exist then it cannot authorize the more damaging alternative. If the COE grants this permit, they are, in effect, selecting the most damaging route.

5. Mitigation the last resort, and will not compensate:

a. The next two steps after avoidance when evaluating projects according to the CWA are minimization and compensatory mitigation. That is, only after finding avoidance to be impossible, should minimization strategies be examined, and only after that has been proven impossible, should mitigation be employed. It is the strategy of last resort. In terms of the CTPE bridge project, the mantra seems to be “if we mitigate we can build a bridge anywhere.” We argue that that is contrary to the CWA’s intent, and in any event, the mitigation for loss of wetlands (and other habitats) that Port St. Lucie has proposed, pertains to all build alternatives. Thus, the least impacting route must still be chosen.

b. Intact natural and high quality functioning wetlands like those found in Halpatokee Trails and the Buffer Preserve, provide superior ecosystem services such as flood control, water filtration, water capture and storage, and species habitat than artificially created wetlands. And they provide their services for free.

Additionally, the statewide context for loss of wetlands is very poor. Florida has been at the top, or near to the top, of wetland loss for decades. Taking of wetland must be avoided at nearly all costs due to that fact, unless there is extraordinary justification for doing so. That justification does not exist for this permit application, nor for the larger Route 1C as a whole. Route 1C destroys and degrades the most wetlands of all considered routes.

Brody et al report in their 2008 article in the journal *Wetlands*³ that “there is growing evidence that created wetlands do not function as natural wetlands, even after several decades post-creation.” Studies in the scientific literature “document the failures of previous attempts at wetland mitigation.”

Since Halpatokee Trails of SPSP hosts the last remaining palustrine wetland area bordering US1, and since it hosts other wetlands types, it is in the public’s interest to retain their healthy ecosystem functions at this very site.

c. The one-size-fits-all site of Platt’s Creek for wetland mitigation presents several problems:

³ Brody, Samuel, Davis, Stephen, III, et al, “A Spatial-Temporary Analysis of Section 404 Wetland Permitting in Texas and Florida: Thirteen Years of Impact Along the Coast,” *Wetlands*, Vol.28, No. 1, March 2008. p. 107-116

1. A former citrus grove, the soil may well be contaminated with agricultural by-products such as copper and arsenic, which are toxic to a variety of species.
2. The mitigation plan calls for the creation of both wetland and upland habitat, including hydric hammock, depression marsh, floodplain swamp, mesic flatwoods. This is a highly ambitious plan most likely to fail for these reasons:
 - a. different habitats require different soils, and different elevations
 - b. creating one type of wetland has proven difficult, not to mention 4 types of habitat in one area
 - c. highly trained and knowledgeable staff required; where are they coming from, and who will pay their salaries?
 - d. sustained, intensive, expensive, multi-decade maintenance required: one can't add a bit of soil and a few plantings and depart
 - e. high probability of exotic intrusion
3. Platt's Creek is 6.2 miles north of the project area, and even under the best of conditions, cannot replace the ecosystem functions and habitats needed in this part of the watershed.

6. Pending lawsuit challenging SFWMD permit: On August 19, 2014, the CASLC filed a petition against the SFWMD for granting Port St. Lucie and the FDEP a permit for "pre-construction" geotechnical borings in Halpatiokee Trails and the AP. We argue that issues pertinent to the public interest were not adequately addressed, such as the existence of environmentally sensitive wetlands and federally and state listed species. We also asserted that planning was inadequate to reduce or eliminate impacts, and that the proposed mitigation did not offset the adverse direct, secondary, and cumulative impacts. Although Port St. Lucie pulled the permit as a result of our challenge, this petition remains unresolved at this time. This action represents another example of the city's insistence on forging ahead with build plans despite legal challenges.

7. Exceptionally varied habitat, high biodiversity, and listed species:

a. Along the entire Route 1C project span: Referring again to the 1999 FDEP memorandum, recorded is the incredible habitat diversity: depression marsh, mesic flatwoods, scrub, scrubby flatwoods, blackwater stream, bay gall, floodplain marsh, hydric hammock, tidal swamp, and riverine open water. "The river flood plain and vegetation provides nursery habitat for fish, invertebrates, amphibians and reptiles," as well as birds.

It is a place preferred by rare fish: *The river is also one of the few places in the state providing suitable habitat for four threatened tropical peripheral fishes: bigmouth sleeper, opossum pipefish, river goby, and slash cheek goby, the latter two species are only found in the freshwater tributaries of the Indian River Lagoon.* Noted fish scientist, Dr. Grant Gilmore, who has written in opposition of this route states that

the opossum pipefish may well be making its last stand in one of two areas, which includes the project area.

On its website, the North Fork of the St. Lucie River Aquatic Preserve states that the federally listed fish, the mangrove rivulus and the opossum pipefish, “ should be protected to the greatest extent possible,” because of their exceedingly rare distribution.

www.dep.state.fl.us/coastal/sites/northfork/resources/listed_species.htm

The Marine Fisheries Service has stated that Route 1C has the greatest impact to Essential Fish Habitat (as well as to wetlands) of all alternative build routes.

Accessing the North Fork of the St. Lucie River Aquatic Preserve’s website we can see that there are over 60 listed species, with more than 30 birds alone in the AP. www.dep.state.fl.us/coastal/sites/northfork/pub/NF_Listed_Species.pdf (Attachment Four) Florida Audubon is on record stating that it wants the Route 1C project area protected as part of the migratory Eastern flyway.

b. Halpatokee Trails: Despite its compact area, Halpatokee Trails hosts a great diversity of habitats: the FNAI lists twelve community types, including rare sand pine scrub and baygall. FDEP notes in 1999 that 124 plant species were identified; we have identified over 200 and expect that there may be at least 100 more. In 1999 FDEP identified 19 listed plant species. They documented the presence of 101 animal species, including 16 listed species. With proper park management the site would be suitable habitat for the Florida scrub jay and the swallow tail kite. An eagle was seen by one of our members directly over Evans Creek, close to one of the documented nesting sites, on December 16, 2014, and a swallow tail kite was observed in the area by another of our members earlier this year. Ospreys clearly favor this private area for their nesting and they do not like disturbances.

8. Unique and rare aesthetic, recreational, and historical values at risk: In order to fully grasp the loss and degradation of this area to local residents who have delighted in its aesthetic and recreational offerings, we are attaching a December 27, 2013 letter submitted to FHWA by long-time resident of Port St. Lucie, Robert Post, as part of the FHWA’s public comment period. (Attachment 5) Please consider it in its entirety. Mr. Post has made every effort over two decades to voice his opposition to the proposed route. He and his family have derived great joy in residing directly next to the Coral Reef waterway for 34 years. He reports first-hand the type of plant and animal species he sees, including varieties of fish. He knows they depend on a healthy and undisturbed habitat. He concludes: *No other area of the North Fork of the St. Lucie River provides such a habitat for plants, animals, birds, and fish. This (Route 1C bridge construction) is environmental destruction on the fast track. Mitigation has been proposed as the solution. Not possible! Not possible to re-create or replace this unique place along our precious St. Lucie River.*

Port St. Lucie lost over 85 square mile of its original native Florida landscape when General Development Corporation bulldozed it to prepare for development. As FDEP states, the 8-mile long Buffer Preserve is the only contiguous natural corridor within city limits and one of a few in St. Lucie County rapidly losing green space because of development. Remaining natural lands in this area are very limited.

The Halpatiokee Trails section is the only remaining area accessible from US1 that hosts the native flora and fauna, both upland and along the banks of Evans Creek, and the St. Lucie River, that the local legendary pioneer, Ernest F. Lyons, wrote so lovingly about, and for which he received many awards. It is the only area with the original ambience of his "Rio de Luz" intact, the only area that young residents can imagine what Ernie's magical world was like when he was exploring its hinterlands in the early 1900s.

To replace our ecological gem, our remaining piece of Florida paradise, with all kinds of plants and animals in all kinds of habitats that give young and old alike a sense of wonder, with a highway and bridge is a violation of not only the laws designed to insure protection of places like this, but of our very souls, and the souls of generations yet to come who will not even know what magic used to be here.

Not only are we concerned for our own ecological gem, but we are concerned that allowing this bridge project to go through Route 1C would set a horrible precedent in that no state park and conservation land, even that with the highest ecological value, can ever be assured protection.

Thank you for giving our request your fullest consideration.

One additional request: Please include the comments that both of our groups, the CASLC and the IRK, submitted to the FHWA as part of the COE administrative record.

Sincerely,

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