

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division**

Case No.: 1:23-cv-20495

**CENTER FOR BIOLOGICAL
DIVERSITY, BAT CONSERVATION
INTERNATIONAL, MIAMI BLUE
CHAPTER OF THE NORTH AMERICAN
BUTTERFLY ASSOCIATION, and
TROPICAL AUDUBON SOCIETY,**

Plaintiffs,

v.

DEBRA HAALAND, in her official capacity
as Secretary of the U.S. Department of the
Interior; **U.S. DEPARTMENT OF THE
INTERIOR; CHARLES F. SAMS III**, in his
official capacity as Director of the National
Park Service; and **NATIONAL PARK
SERVICE,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Center for Biological Diversity, Bat Conservation International, Miami Blue Chapter of the North American Butterfly Association, and Tropical Audubon Society (collectively, Conservationists) challenge the National Park Service's (NPS) unlawful decision to release land-use restrictions that paved the way for the proposed Miami Wilds waterpark, hotel, and retail development (the Project), which threatens the survival and recovery of endangered species and globally critically endangered pine rocklands, in violation of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*, National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370e, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706.

2. Pine rocklands are astoundingly unique and biodiverse ecosystems found only in south Florida and the Bahamas. Yet they have been reduced to only three percent of their historic

range and continue to be critically endangered by urban and agricultural development, climate change, and sea level rise.

3. The Richmond pine rocklands constitute the largest remaining fragment of rocklands in Miami-Dade County outside of the Everglades and are home to dozens of rare and imperiled species, including the federally protected Florida bonneted bat, Miami tiger beetle, Bartram's scrub-hairstreak, Florida leafwing, Florida brickell-bush, Carter's small-flowered flax, deltoid spurge, and tiny polygala. Florida bonneted bats depend on the area as the most important foraging and roosting habitat for the core population of bats in southeast Florida, whose protection is essential to the species' survival and recovery.

4. The proposed Miami Wilds development site (Project Area) is amid this rare and imperiled system and threatens the endangered species and environmental resources within it. Miami Wilds' operation and construction will directly destroy and degrade areas used by endangered species and kill, harm, or evict them from the area, putting these species' continued existence and recovery at grave risk. It also risks degrading surrounding pine rocklands systems that these imperiled species depend on for survival by introducing invasive species, increasing human disturbance, and hampering natural and prescribed fire needed to sustain the health of the rocklands.

5. Despite these significant and foreseeable harms to federally protected species and environmental resources, NPS approved an agreement with Miami-Dade County to transfer land-use restrictions from the Project Area so the Miami Wilds project could proceed without first completing requisite environmental analyses and taking requisite conservation measures required under the ESA and NEPA.

6. Therefore, Conservationists respectfully request that this Court declare NPS has violated the ESA, NEPA, and the APA; set aside NPS's agreement with Miami-Dade County and release of land-use restrictions; order NPS to complete formal consultation that complies with the ESA and APA; order NPS to complete an environmental review that complies with NEPA; and enjoin NPS from authorizing an amendment of land use restrictions on the Project Area until it fully complies with the requirements of the ESA, NEPA, and the APA. Such relief is necessary to safeguard federally endangered and threatened species and environmental resources in and around the Richmond pine rocklands.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under Section 11 of the ESA, 16 U.S.C. § 1540(c), (g) (ESA citizen suit); 5 U.S.C. § 702 (APA judicial review provisions); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 1361 (action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiffs); and 28 U.S.C. § 1331 (federal question).

8. The Court may grant the relief requested under the ESA, 16 U.S.C. § 1540(g); the APA, 5 U.S.C. §§ 702–706; and 28 U.S.C. §§ 2201–2202 (declaratory relief and injunctive relief).

9. Conservationists provided legally sufficient notice to Defendants of their intent to file suit under the ESA more than 60 days prior to filing this complaint, consistent with the act’s statutory requirements. 16 U.S.C. § 1540(g)(2). Defendants have not remedied the issues raised in that notice.

10. Venue in this Court is proper according to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because Defendants are federal agencies and officers or employees of the United States acting in their official capacity, and a substantial part of the violations giving rise to the claim occurred in Miami-Dade County, Florida, in this judicial district. The affected area is also in Miami-Dade County, Florida.

PARTIES

11. Plaintiff Center for Biological Diversity (the Center) is a national, nonprofit conservation organization that works through science, law, and policy to protect imperiled species and their habitats. The Center has more than 89,000 active members across the country. It is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States, including Arizona, California, Colorado, Florida, Hawai’i, Idaho, Minnesota, Nevada, New York, North Carolina, Oregon, Vermont, Washington, and Washington, D.C., and in Mexico. The Center brings this action on behalf of itself and its members.

12. Plaintiff Bat Conservation International (BCI) is a science-based, non-profit organization whose mission is to conserve the world’s bats and their ecosystems to ensure a healthy planet. Founded in 1982, and incorporated in Texas, BCI is committed to working with local organizations, key stakeholders, and members of the public to advance scientific knowledge and preserve bats and their habitats. Among BCI’s global priorities, the Florida

Bonneted Bat has been a focal species of the organization for nearly 20 years. In recognition of the severity of threats facing the Florida Bonneted Bat in Miami-Dade County, BCI has focused attention on protecting this urban-based population of endangered bats.

13. Plaintiff Miami Blue Chapter of the North American Butterfly Association (Miami Blue) is a non-profit organization dedicated to lepidopteran conservation, research, and educational outreach. Miami Blue is located in southeast Florida, a unique region in the continental United States harboring the globally imperiled pine rocklands ecosystem with high biodiversity and endemism. Miami Blue strives to preserve biodiversity and prevent catastrophic ecosystem service failures, which benefits people and wildlife. Among other things, Miami Blue focuses on the conservation of endangered south Florida butterfly species, including Bartram's scrub-hairstreak and the Florida leafwing.

14. Plaintiff Tropical Audubon Society (Tropical Audubon) is a nonprofit 501(c)(3) organization incorporated in the State of Florida and headquartered in Miami, Florida. Tropical Audubon is a science- and solutions-based nonprofit conservation organization driven by its grassroots community and principles of equity, diversity, and inclusion. Tropical Audubon's legacy is to protect, conserve, and restore South Florida ecosystems by working closely with local governments and other stakeholders, and by fostering wise stewardship of native habitats, birds, and other indigenous wildlife. Tropical Audubon has more than 1,000 active members, including members who appreciate and have ethical, recreational, and aesthetic interests in the Florida bonneted bat, Miami tiger beetle, and their habitat in and around the Project Area.

15. Conservationists and their members are interested in the conservation of imperiled species and habitats that would be harmed by the Project, including but not limited to the Florida bonneted bat, Miami tiger beetle, Bartram's scrub-hairstreak, Florida leafwing, Florida brickell-bush, and Carter's small-flowered flax, and the effective implementation of the environmental laws that protect them.

16. Conservationists have members who have visited the areas where these species are known to occur. Plaintiffs' members use these areas for observation of these species and other wildlife, research, nature photography, aesthetic enjoyment, recreation, education, and other activities. Conservationists' members derive professional, aesthetic, spiritual, recreational, economic, informational, and educational benefits from these species and their habitat. These

members have concrete plans to continue visiting and recreating in areas where they can observe these species and their habitat.

17. For example, one member of the Center has spent more than 40 years researching tiger beetles, including more than 20 trips to the Miami pine rocklands. He has conducted and published extensive research on the Miami tiger beetle, including its description as a species, biology, habitat, and rarity. His research aided in formulating the basis for listing the Miami tiger beetle as an endangered species. He believes protecting the Miami tiger beetle and the unique pine rocklands habitat is of paramount importance and plans to conduct further research on the Miami tiger beetle in the near future. He also plans to recreationally visit the Richmond pine rocklands, with hopes of encountering the tiger beetle and other imperiled species on the site.

18. One member of BCI has been involved in environmental conservation her entire, with a focus on bat conservation. She cares deeply about the Florida bonneted bat and has worked to protect it for many years. Her work includes surveying for bats and conservation education, and she personally designed bat houses used at Zoo Miami. She is interested in protecting the entire natural system that supports the bat, including the pine rocklands and many rare and imperiled species who live there. She has visited the Richmond pine rocklands and the Project Area many times and plans to return in furtherance of her conservation mission.

19. A member of Miami Blue is part of an imperiled butterfly working group and has visited the Richmond pine rocklands and the Project Area to survey for butterflies, including Bartram's scrub-hairstreak and Florida leafwing. He also enjoys observing and identifying other pine rocklands species, including the Miami tiger beetle and rare and imperiled plants when he visits. He plans to return to the area to lead an organizational field trip to observe plants and wildlife in the Richmond pine rocklands.

20. A member of Tropical Audubon used to work at Fairchild Tropical Botanic Garden and has visited the Richmond pine rocklands and properties around Zoo Miami, where he has observed the Miami tiger beetle and Bartram's scrub-hairstreak, along with many other rare and imperiled plants and animals that rely on pine rocklands and nearby lands. He enjoys observing and photographing species in the area. Because he lives near the Project Area, he regularly travels past it and plans to return to publicly accessible areas where he can visit pine rocklands and observe the species who rely on them.

21. Conservationists and their members' interests are adversely affected by NPS's failure to comply with the APA, ESA, and NEPA. The Defendants' failure to comply with federal law is harming imperiled ecosystems and the prospects of survival and recovery for federally protected species.

22. Conservationists are also directly injured by NPS's failure to comply with the APA, ESA, and NEPA. They have had to divert funding, staff time, and other resources away from other conservation priorities to address the agency's legal violation, including to educate the agencies on their legal obligations under federal environmental law, to independently investigate the environmental effects of the proposed development in the absence of federal environmental review and public participation, and to litigate to enforce federal environmental law. NPS's legal violations also frustrate Conservationists' missions to protect the environment and endangered species by denying them access to information about environmental impacts of the proposed development and the opportunity to comment on them, which directly harms Conservationists' core conservation missions.

23. Conservationists and their members also have a procedural interest in seeing NPS comply with its legal obligations, and they suffer procedural injury from the agency's failure to do so.

24. The injuries described above are actual, concrete injuries presently suffered by the Conservationists and their members, and the injuries will continue to occur unless this Court grants the requested relief.

25. Defendant Debra Haaland is the Secretary of the Interior. As Secretary of the Interior, she has the ultimate responsibility to administer and implement the provisions of the ESA, and to comply with all other federal laws applicable to the U.S. Department of the Interior, including the APA and NEPA. Conservationists sue Defendant Haaland in her official capacity.

26. Defendant U.S. Department of the Interior is an agency of the United States charged with administering the ESA for terrestrial and freshwater species, and with complying with all other federal laws applicable to the agency, including the APA, ESA, and NEPA.

27. Defendant Charles F. Sams III is the Director of the National Park Service. As Director of the National Park Service, he has the ultimate responsibility to ensure the agency complies with all applicable federal laws, including the APA, ESA, and NEPA. Conservationists sue Defendant Sams in his official capacity.

28. Defendant National Park Service is a federal agency within the Department of the Interior charged with managing national parks, most national monuments, and other natural, historical, and recreational properties. The agency is further charged with complying with all applicable federal laws, including the APA, ESA, and NEPA.

STATUTORY AND REGULATORY BACKGROUND

Endangered Species Act

29. The ESA “represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its purpose is to “provide a program for the conservation of . . . endangered species and threatened species” and “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

30. Congress entrusts special duties to the Secretary of the Department of the Interior to administer the ESA for terrestrial and freshwater species, *id.* § 1532(15), and the Secretary has delegated her ESA duties to the U.S. Fish and Wildlife Service (FWS). 50 C.F.R. § 402.01(b).

31. Once FWS has listed a species as endangered or threatened under the ESA, it receives an array of procedural and substantive protections that constitute the effective “program for the conservation of . . . endangered species and threatened species,” 16 U.S.C. § 1531(b), which is essential to the species’ overall survival and recovery, *see* 50 C.F.R. § 424.02.

32. For example, ESA Section 9 makes it unlawful to “take” endangered species, which means no person can harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect these species without first receiving authorization from FWS.¹ 16 U.S.C. § 1538.

33. ESA Section 4 requires FWS to designate protected “critical habitat,” which includes areas “essential to the conservation of the species.” *Id.* §§ 1533(a)(3), (f); 1532(5).

34. ESA Section 7, often considered the “heart of the ESA” because of its strong conservation mandate, requires all federal agencies to ensure their actions are not “likely to jeopardize the continued existence” of any endangered or threatened species or “result in the destruction or adverse modification” of critical habitat. *Id.* § 1536(a)(2).

¹ Threatened species listed before September 26, 2019, receive protections from take under an FWS regulation that imposes a “blanket take prohibition.” 50 C.F.R. § 17.31. Threatened species listed after that date may receive take protections through species-specific rules. *Id.*

35. To meet this substantive mandate, the ESA establishes a procedural mandate: interagency consultation procedures between federal action agencies and expert fish and wildlife agencies—in this case FWS—to determine whether the agency actions will jeopardize any listed species’ survival and recovery or adversely modify critical habitat, and if so, to identify ways to modify the action to avoid that result. 50 C.F.R. § 402.14.

36. The ESA requires federal agencies, including FWS, to use the “best available scientific and commercial data” in fulfilling the consultation requirement. 16 U.S.C. § 1536(a)(2).

37. FWS has adopted regulations governing Section 7 consultation procedures. Under the regulations, a federal agency must initiate consultation with FWS whenever it undertakes an “action” that “may affect” a listed species or critical habitat. 50 C.F.R. § 402.14(a).

38. The threshold for a “may affect” determination and the required ESA section 7(a)(2) consultation is low. *See* 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) (“Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement”); *see also* U.S. Fish & Wildlife Serv. & Nat’l Marine Fisheries Serv., *Endangered Species Consultation Handbook* 3-13, 4-26 (1998). An agency is relieved of the obligation to consult only if the action will have “no effect” on listed species or designated critical habitat.

39. The ESA requires that each federal agency review its actions “*at the earliest possible time*”—and certainly before committing to or carrying out the agency action—to determine whether the action “may affect listed species or critical habitat.” 50 C.F.R. § 402.14(a) (emphasis added); *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 188 n. 10 (D.C. Cir. 2017).

40. The ESA’s implementing regulations broadly define the scope of “agency actions” subject to consultation to include “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by [f]ederal agencies,” including but not limited to “the granting of licenses, contracts, [or] leases” and “actions directly or indirectly causing modifications to the land, water, or air.” 50 C.F.R. § 402.02.

41. If an agency determines that its action “may affect” but is “not likely to adversely affect” a listed species or its critical habitat, and FWS concurs in writing, ESA regulations permit a less comprehensive “informal consultation.” *Id.* § 402.13.

42. If FWS does not concur with the “not likely to adversely affect” determination or if the action agency determines that the action is “likely to adversely affect” the listed species, the agencies must engage in “formal consultation.” *Id.* §§ 402.02, 402.14(a).

43. Formal consultation “is a process between [FWS] and the [f]ederal agency that commences with the [f]ederal agency’s written request for consultation under section 7(a)(2) of the Act and concludes with [FWS’s] issuance of the biological opinion under section 7(b)(3) of the Act.” *Id.* §§ 402.02, 402.14(c)(1).

44. During formal consultation, FWS must “evaluate the effects of the action and cumulative effects on listed species and critical habitat” and add them to the “environmental baseline and in light of the status of the species and critical habitat” to determine whether the agency action will jeopardize species or destroy or adversely modify critical habitat. *Id.* § 402.14(g)(3)–(4).

45. Effects of the action include “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action.” *Id.* § 402.02. An agency action “causes” a consequence if the consequence “would not occur but for the proposed action and it is reasonably certain to occur.” *Id.* Effects of a proposed action “may occur later in time and may include consequences occurring outside the immediate area involved in the action.” *Id.*

46. Cumulative effects are “effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur” within the action area of the federal action. *Id.*

47. At the conclusion of the consultation process, FWS must issue a “biological opinion” that “detail[s] how the agency action affects the species,” 16 U.S.C. § 1536(b)(3)(A), and sets forth FWS’s opinion as to whether the action is “likely to jeopardize” the continued existence of a listed species, 50 C.F.R. § 402.14(h)(1)–(3).

48. If FWS determines the agency action *is not* likely to cause jeopardy to listed species or to destroy or adversely modify critical habitat, FWS must provide a statement that specifies the impact of the incidental take on the listed species, outlines “reasonable and prudent measures” (known as RPMs) that are necessary or appropriate to minimize the impact from incidental take, and sets forth terms and conditions for the federal agency to implement the RPMs. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1)(ii).

49. If FWS determines that the agency action *is* likely to jeopardize the continued existence of a listed species or result in adverse modification of critical habitat, the biological opinion must suggest “reasonable and prudent alternatives” (known as RPAs) that would reduce action-related impacts such that the agency action may avoid jeopardizing listed species. 16 U.S.C. § 1536(b)(3)(A).

50. If the agency action is expected to cause “take” of listed species, FWS must also include an incidental take statement in its biological opinion that, where practicable, quantifies the amount of take allowed for each species. 50 C.F.R. § 402.14(i).

51. Compliance with a biological opinion and its incidental take statement protects the federal action agency, and others acting under or consistent with the biological opinion, from enforcement action under ESA Section 9’s prohibition against take. 16 U.S.C. §§ 1536(o)(2), 1538(a); 50 C.F.R. § 17.31(a). However, take that is not in compliance with a legally valid biological opinion or occurs absent a valid ESA Section 7 incidental take statement or ESA Section 10 incidental take permit violates ESA Section 9. *See* 16 U.S.C. § 1536(b)(4), (o)(2).

52. Federal agencies must also confer with FWS on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the ESA or result in the destruction or adverse modification of proposed critical habitat. 16 U.S.C. § 1536(a)(4). The purpose of the conference is to identify and resolve potential conflicts at an early stage in the planning process and to “minimize or avoid adverse effects.” 50 C.F.R. § 402.10(a), (c).

53. Compliance with the procedural requirements of ESA Section 7—identifying the likely effects of the action through the consultation process before the action is taken—is integral to compliance with the substantive requirements of the act.

54. Federal actions that “may affect” listed species or critical habitat may not proceed unless and until the federal agency ensures, through completion of the consultation process, that the action is not likely to cause jeopardy or adverse modification of critical habitat. 16 U.S.C. § 1536(a); 50 C.F.R. §§ 402.13, 402.14.

55. To that end, the ESA requires that during consultation, action agencies “shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures” necessary to avoid jeopardizing species. 16 U.S.C. § 1536(d). This

prohibition “is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied.” 50 C.F.R. § 402.09.

National Environmental Policy Act

56. NEPA is the Nation’s “charter for protection of the environment.” 40 C.F.R. § 1500.1(a). Its central goals are “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321.

57. Congress designed NEPA to ensure environmental information is available to public officials and citizens before decisions are made and “that important environmental consequences will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Protect Key W., Inc. v. Cheney*, 795 F. Supp. 1552, 1560 (S.D. Fla. 1992) (quoting *North Buckhead Civic Ass’n v. Skinner*, 903 F.2d 1533, 1538 (11th Cir. 1990)).

58. The president, federal agencies, and courts share responsibility for enforcing NEPA and guaranteeing that high quality information is available to the public and analyzed by the federal agencies before the agencies make decisions and take actions. 40 C.F.R. § 1500.1(a).

59. To accomplish these objectives, NEPA requires federal agencies to prepare environmental impact statements (EIS) to consider the effects of each “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). To determine whether the impacts of a proposed action are significant enough to warrant preparation of an EIS, the agency may prepare a preliminary environmental inquiry known as an Environmental Assessment (EA).

60. Pursuant to 42 U.S.C. § 4342, Congress created the Council on Environmental Quality (CEQ) to promulgate regulations applicable to all federal agencies consistent with the intent and purposes of NEPA. *See* 40 C.F.R. § 1500 *et seq.*²

61. When considering a proposed action under NEPA, an agency must first determine whether the action: (1) requires an EIS because it is likely to have significant environmental effects; (2) requires an EA because it is not likely to have significant effects or the effects are unknown; or (3) does not require NEPA review at all because it normally does not have significant effects and is categorically excluded. *Id.* § 1501.3(a).

62. Agencies must identify categories of actions that constitute categorical exclusions in their respective NEPA procedures. *Id.* § 1501.4(a). Even when an activity may normally be categorically excluded from NEPA review, extraordinary circumstances such as significant environmental effects may necessitate the preparation of an EA or EIS. *Id.* § 1501.4(b).

63. Agencies may prepare an EA on any action to assist with planning and determining whether the action will have significant effects on the environment. *Id.* § 1501.5.

64. When considering whether the effects of a proposed action are significant, agencies must analyze the potentially affected environment and degree of the effects of the

² In 2020, CEQ published a final rule revising the NEPA regulations, which went into effect September 2020. 85 Fed. Reg. 43,304 (July 16, 2020). The 2020 Rule drew five lawsuits challenging it on various grounds, which were stayed or dismissed without prejudice pending the Biden Administration's review of the 2020 rule. *See Wild Va. v. Council on Env'tl. Quality*, 544 F. Supp. 3d 620 (W.D. Va. 2021), *aff'd*, 56 F.4th 281, 303 (4th Cir. 2022) (dismissed without prejudice); Stay Order, *Env'tl. Justice Health All. v. Council on Env't Quality*, No. 1:20-cv-06143-JLR (S.D.N.Y., Feb. 16, 2021) (stayed); Stay Order, *Alaska Cmty. Action on Toxics v. Council on Env't Quality*, No. 3:20-cv-5199-RS (N.D. Cal., Feb. 12, 2021) (same); Stay Order, *California v. Council on Env't Quality*, No. 3:20-cv-06057-RS (N.D. Cal., Feb. 12, 2021) (same); Stay Order, *Iowa Citizens for Cmty. Improvement v. Council on Env't Quality*, No. 1:20-cv-02715-TJK (D.D.C., Feb. 9, 2021) (same). On April 16, 2021, the Secretary of the Interior issued Secretarial Order 3399, directing agencies in the Department of the Interior to "not apply the 2020 Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect." Sec. Or. No. 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (April 16, 2021), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_0.pdf. Subsequently on April 20, 2022, CEQ finalized the first and of two proposed rulemakings to revise its NEPA regulations. 87 Fed. Reg. 23453, 23455 (April 20, 2022). The second more comprehensive proposed rulemaking is still forthcoming.

action, including connected actions. 40 C.F.R. § 1501.3(b) (citing *Id* § 1501.9(e)(1)). Actions are “connected” if they: “(i) [a]utomatically trigger other actions that may require environmental impact statements; (ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously; or (iii) [a]re interdependent parts of a larger action and depend on the larger action for justification.” *Id.* § 1501.9(e)(1)(i)–(iii).

65. When considering the potentially affected environment, agencies should consider “the affected area . . . and its resources, such as listed species and designated critical habitat under the Endangered Species Act.” *Id.* § 1501.3(b)(1).

66. Agencies should consider direct effects, “which are caused by the action and occur at the same time and place”; indirect effects, “which are caused by the action and are later in time or farther removed in distance[] but are still reasonably foreseeable” (including growth-inducing effects like changes in land use and population density); and cumulative effects, “which are effects . . . that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions.” *Id.* § 1508.1(g).

67. When considering the degree of the effects, agencies should consider the short- and long-term effects, beneficial and adverse effects, effects on public health and safety, and effects that would violate laws protecting the environment. *Id.* § 1501.3(b)(2).

68. If, after preparing an EA, an agency determines an EIS is not required, the agency must provide a statement of reasons why the project’s impacts are insignificant and issue a Finding of No Significant Impact or “FONSI.” *Id.* §§ 1501.6; 1508.1(l).

69. If the agency determines that the proposed action has a significant effect on the environment, then it must prepare a detailed EIS that describes, among other things, the purpose and need for the action, alternatives to the proposed action, and the affected environment and environmental consequences of the action. *Id.* §§ 1502.10–1502.19.

Administrative Procedure Act

70. The APA provides that any person who has suffered legal wrong because of agency action or who is adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review of that agency action. 5 U.S.C. § 702.

71. Under the APA, a reviewing court “shall hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

72. An agency’s action is arbitrary and capricious if the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of the agency’s expertise. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

73. Courts allow challenges to federal agencies’ failure to comply with NEPA under the APA. 5 U.S.C. §§ 701–706.

74. While the ESA provides for judicial review of federal agencies’ failure to consult, 16 U.S.C. § 1540(g), the APA governs the standard and scope of judicial review. 5 U.S.C. §§ 701–706.

FACTUAL BACKGROUND

The Miami Pine Rocklands and Imperiled Species Who Live There

75. Pine rocklands are one of the rarest habitats on earth. Only three percent of their historic extent remains.

76. Unique to south Florida and the Bahamas, they are characterized by limestone outcrops, a canopy composed of slash pine, and a diverse understory of scrubs and herbs. Periodic fires maintain the distinct diversity and health of pine rocklands ecosystems.

77. In Florida, pine rocklands still exist in small fragments across Miami-Dade and Monroe counties, but they are disappearing to urban sprawl, lack of natural fire, and sea level rise driven by climate change.

78. Urban sprawl is the greatest current driver of pine rocklands losses. Even when development does not directly destroy pine rocklands, it degrades nearby habitat by suppressing natural and prescribed fire necessary to maintain the unique native biodiversity. Without fire, the diverse native plants cannot persist, and non-native plants can invade, causing cascading adverse effects on the entire system.

79. One of the largest remaining fragments of pine rocklands in Miami-Dade County outside of Everglades National Park is known as the Richmond pine rocklands, found in a 2,560-acre area known as the Richmond Tract.

80. The Richmond pine rocklands are as diverse as they are imperiled, supporting more than 300 native plants and many endangered or threatened animals, plants, and insects. Imperiled species who depend on the Richmond pine rocklands include the endangered Florida bonneted bat (*Eumops floridanus*), the endangered Miami tiger beetle (*Cicindelidia floridana*), the endangered Bartram's scrub-hairstreak (*Strymon acis bartrami*), the endangered Florida leafwing (*Anaea troglodyte*), and threatened and endangered plants like the Florida brickell-bush (*Brickellia mosieri*), Carter's small-flowered flax (*Linum carteri* var. *carteri*), deltoid spurge (*Chamaesyce deltoidea* ssp. *deltoidea*), and tiny polygala (*Polygala smallii*).

81. The Richmond Tract encompasses federally protected critical habitat for Bartram's scrub-hairstreak, Florida leafwing, Carter's small-flowered flax, and Florida brickell-bush. It also encompasses proposed critical habitat for the Florida bonneted bat, Miami tiger beetle, sand flax (*Linum arenicola*), Blodgett's silverbush (*Argythamnia blodgettii*), Everglades bully (*Sideroxylon reclinatum* ssp. *austrofloridense*), and the Rim Rock crowned snake (*Tantilla oolitica*), which FWS recently proposed protecting as an endangered species.

82. As human development continues encroaching on Miami-Dade County's remaining pine rocklands, the Richmond Tract has become a critical lifeboat of biodiversity in a sea of urban sprawl.

The Miami Wilds Development and Its Threat to Endangered Species and Critical Habitat

83. The Richmond Tract also contains the prospective site for Miami Wilds, a 27.5-acre water park, hotel, retail, and restaurant development with approximately 40 acres of associated parking lots.

84. As proposed by the developer, Miami Wilds, LLC, and as shown in the map below, the Miami Wilds project would span 27.5 acres across three parcels near Zoo Miami, with an option to develop an additional 39 acres to the northeast (the Project Area), all owned by Miami-Dade County.



Map of Proposed Miami Wilds Site, Parcel Ownership, and Pine Rocklands
(Map credit: Kara Clauser, Center for Biological Diversity)

85. Construction and operation of the Miami Wilds development may affect—and indeed is likely to adversely affect—several federally endangered and threatened species.

86. According to records from Miami-Dade County, FWS identified 17 federally listed species that may be present within the Project Area. Several of these species have already been documented on or around the site.

87. For example, scientists have documented that the Project Area is the most important site for Florida bonneted bat social and foraging activities in Miami-Dade County, supporting the largest known population across the whole species’ range.

88. The conservation of the bat population roosting and foraging in and around the Project Area is critical to the long-term survival and recovery of the species.

89. It represents the core population of Florida bonneted bats in the species’ southeast range.

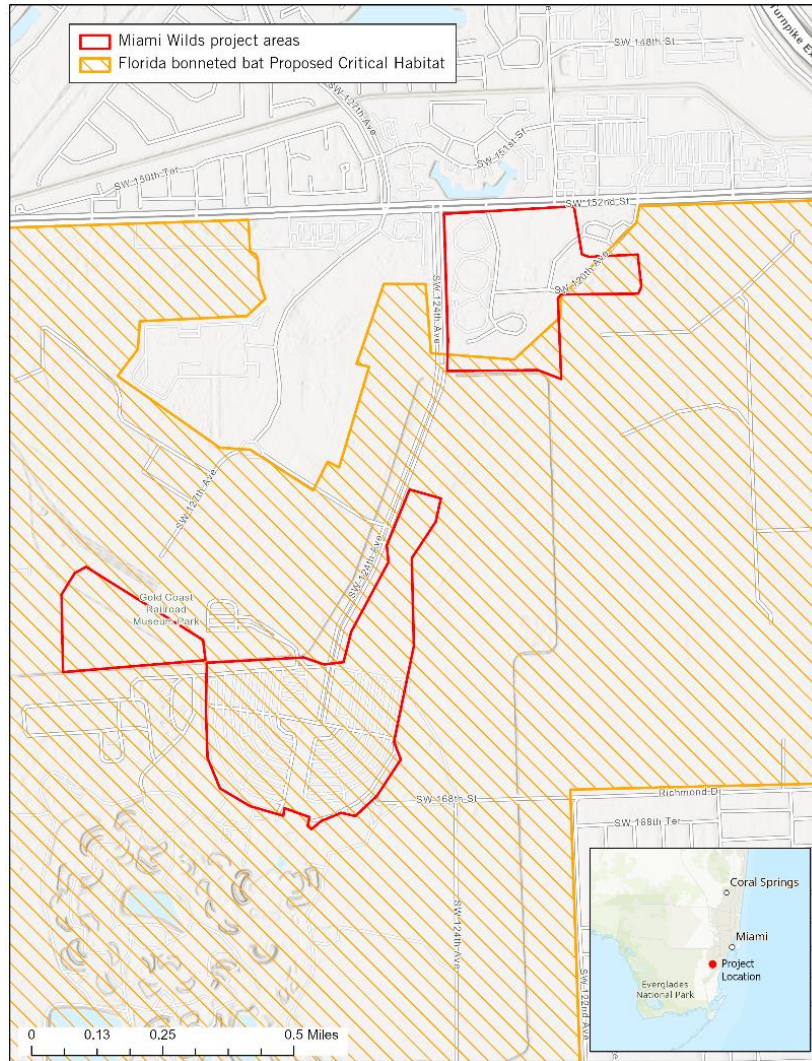
90. This population also represents unique genetic diversity critical to the species’ conservation. Early genetic analysis indicates bats in this population are genetically distinct from

other populations, meaning their loss or decline could threaten genetic diversity the species needs to survive and recover.

91. The Project Area plays a vital role in supporting this important bat population, likely because of the juxtaposition of open space and nearby pine rocklands.

92. It is considered a critical foraging area. At night, the dark, open space and presence of insects above the area make it the most active location for Florida bonneted bats in the Miami-Dade County. It is six times more active than the next most active site in the area.

93. The critical importance of this area is underscored by FWS’s recent proposal to designate areas in the Richmond Tract—including the Project Area—as critical habitat for the Florida bonneted bat. 87 Fed. Reg. 71,466 (Nov. 22, 2022).



Map of Proposed Critical Habitat for the Florida Bonneted Bat
(Map Credit: Kara Clauser, Center for Biological Diversity)

94. Because much of the limited roosting and foraging habitat remaining for urban Florida bonneted bat populations is under threat from urban and agricultural development, climate change, and sea level rise, the importance of the foraging and roosting habitat in and around the Project Area continues to grow.

95. Construction of buildings, other structures, and parking lots in the Project Area is likely to displace Florida bonneted bats from this critical foraging habitat during construction because of habitat loss, lighting, noise, and human disturbance. Impacts from lighting, noise, and human disturbance will inevitably continue during Miami Wilds' operation.

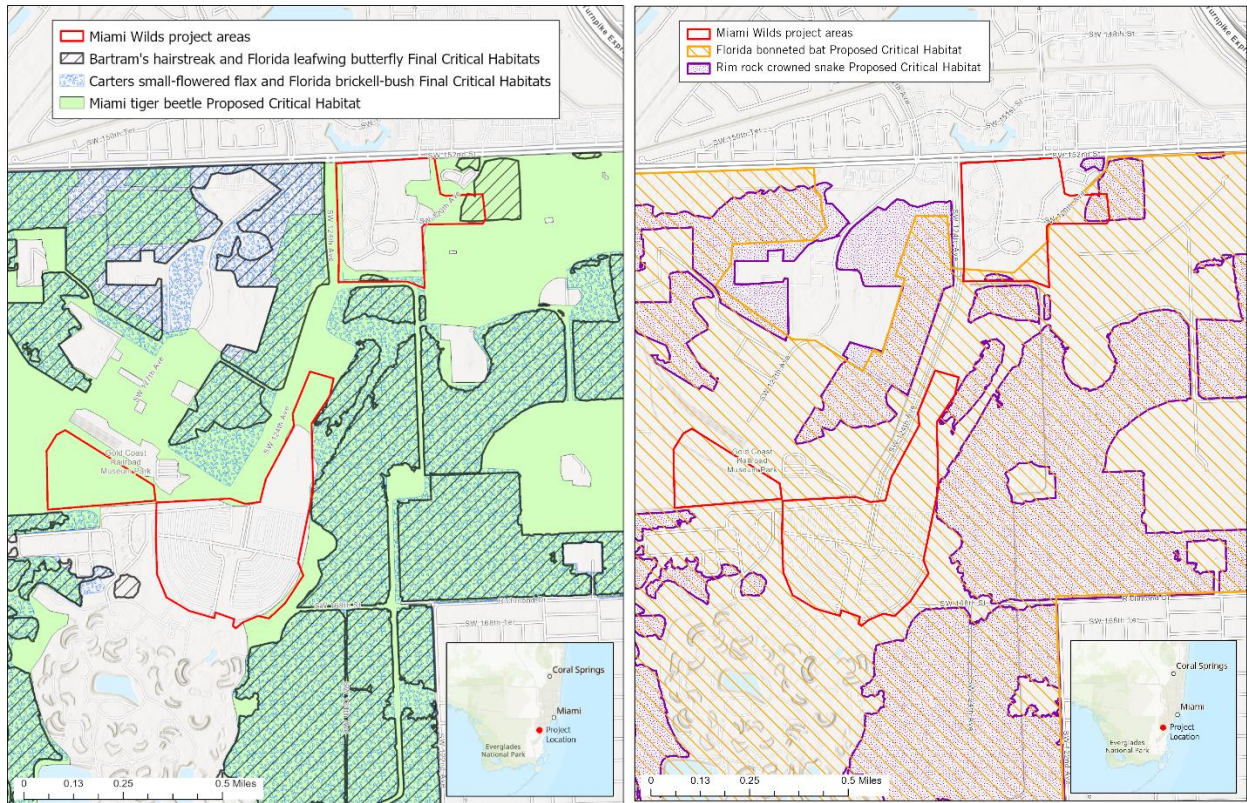
96. Construction and operation of Miami Wilds is also likely to alter local conditions that currently support Florida bonneted bat foraging by reducing the abundance of insect prey and disrupting natural feeding behaviors.

97. Once the bats are driven from the Project Area, there are no documented alternative foraging habitats nearby. This is the last site in urban Miami-Dade County with enough pine rocklands forest to generate food for the bats, and dark, open space for them to forage. Without suitable unoccupied replacement habitat, the bats are likely to starve or try to move farther for food, which harms their fitness.

98. Because of the importance of the bat population and the critical foraging area in the Project Area, the Miami Wilds development risks threatening the survival and recovery of the southeast population of Florida bonneted bats and the species as a whole.

99. Miami Wilds is also likely to affect other species and destroy or adversely modify their critical habitat in and around the Project Area.

100. For example, the Project Area overlaps with critical habitat and proposed critical habitat Bartram's scrub-hairstreak, Florida leafwing, Miami tiger beetle, Carter's small-flowered flax, and Florida brickell-bush, as shown below.



Miami Wilds Project Site and Proposed and Final Critical Habitat for Seven Species
(Map credit: Kara Clauser, Center for Biological Diversity)

101. The Project Area directly and significantly overlaps with proposed critical habitat for the Miami tiger beetle.

102. The Miami tiger beetle, a diminutive, iridescent native insect, is exceptionally rare. It is known from only two populations in extremely low numbers.

103. The Richmond Tract is one of only two remaining places the beetle is known to survive.

104. Because the beetle is critically endangered and has very little remaining habitat, protecting this habitat—especially proposed critical habitat—is gravely important to the species’ survival and recovery.

105. But construction and operation of buildings, other structures, and/or associated parking lots within the footprint of the Miami tiger beetle’s proposed critical habitat is likely to directly destroy or adversely modify it such that its value for survival and recovery of the species is diminished.

106. Moreover, the presence of proposed critical habitat for the Miami tiger beetle suggests the beetle is present in and around the Project Area and could be directly killed or otherwise negatively affected by the Miami Wilds development.

107. The Project Area also potentially overlaps with or is adjacent to designated critical habitat for two butterflies, Bartram's scrub-hairstreak and Florida leafwing, and two plants, Carter's small-flowered flax and Florida brickell-bush.

108. And surveys of the Project Area have also identified the widespread presence of pineland croton, the host plant for the endangered Bartram's scrub-hairstreak and Florida leafwing. Bartram's scrub-hairstreak is commonly observed throughout the Richmond Tract.

109. Construction and operation of buildings, other structures, and associated parking lots in the Project Area is likely to adversely affect species with critical habitat in and around the Project Area and to alter and appreciably diminish the value of critical habitat for the survival and recovery of those species.

110. For example, construction and operation of Miami Wilds is likely to hamper natural and prescribed fire in the adjacent pine rocklands, which is likely to negatively affect federally listed species and degrade crucial habitat in and around the Project Area. The development is also likely to increase the introduction and establishment of non-native invasive species that threaten the existence of native endangered and threatened species.

111. Construction and operation of Miami Wilds will also introduce artificial light, which will have detrimental impacts on surrounding pine rocklands habitat and the bat's foraging habitat.

112. Given the pervasive presence of several federally endangered and threatened species, and critical habitat in and around the Project Area, the Miami Wilds development is likely to adversely affect these listed species and their critical habitat.

**The National Park Service's Unlawful Amendment of Land-Use Restrictions
in the Project Area**

113. Miami-Dade County owns the lands in the Project Area, subject to land-use restrictions imposed by NPS. Miami-Dade County received these lands in the 1970s and 1980s from the U.S. Department of the Interior and NPS through conveyances that required the county to use and maintain the land for public park or public recreational purposes, along with other terms, covenants, and restrictions.

114. Before Miami-Dade County could enter a development lease agreement with Miami Wilds, LLC, to construct and operate the Miami Wilds waterpark, hotel, and retail development, the county needed to negotiate with NPS to transfer those restrictions to other lands outside the Project Area.

115. To that end, on June 23, 2022,³ NPS, acting on behalf of the United States, entered an agreement with Miami-Dade County to amend the restrictions on three parcels of land in and around Zoo Miami, consisting of approximately 67 acres, and imposed those same restrictions on different parcels of land (2022 Agreement).

116. Pursuant to the 2022 Agreement, NPS also executed a Release and Termination of Restrictions (2022 Release) that “cancels, removes from, terminates, and releases” the 67 acres “from all of the terms, conditions, covenants, and restrictions . . . including the requirement to maintain the [area] for public park or public recreational purposes,” meaning “such terms, conditions, covenants and restrictions shall have no further force or effect.”

117. On June 9, 2022, the Center submitted to NPS’s Southeast Regional Office a records request under the Freedom of Information Act, 5 U.S.C. § 552, specifically requesting “all records about informal or formal Endangered Species Act . . . consultation and National Environmental Policy Act analysis over NPS’s approval of the release and/or transfer of deed restrictions . . . on land associated with a project known as Miami Wilds waterpark, related hotel and retail, and/or a shared parking lot for Miami Wilds and Zoo Miami.”

118. On June 16, 2022, NPS sent the Center a final FOIA determination letter stating that “[a] search of files at the Southeast Regional Office returned no responsive records.”

119. Despite the ESA’s requirement that federal agencies initiate and complete consultation before they take actions that may affect listed species or critical habitat, NPS did not initiate and complete ESA consultation on its decisions to enter the 2022 Agreement and execute the 2022 Release and how those decisions will affect federally listed species and their habitat in and around the Project Area.

120. Furthermore, despite NEPA’s requirement to analyze the environmental effects of agency actions that significantly affect the environment, NPS failed to complete an EA or EIS for its decision to enter the 2022 Agreement and execute the 2022 Release.

³ NPS signed the agreement on February 4, 2022, but Miami-Dade County did not sign until June 23, 2022.

121. The 2022 Agreement and 2022 Release were necessary condition precedents to Miami-Dade County's approval of a development lease agreement with Miami Wilds, LLC. In other words, the Miami Wilds development could not or would not proceed unless NPS entered the 2022 Agreement and executed the 2022 Release.

122. Accordingly, once NPS and Miami-Dade County finalized the 2022 Agreement and 2022 Release, on or about June 23, 2022, Miami-Dade County entered a lease agreement with Miami Wilds, LLC, to construct and operate the new development.

123. The lease agreement authorizes Miami Wilds, LLC, to construct and operate the Miami Wilds development for a term of 40 years, with two additional options to renew 20 years each, totaling up to 80 years of impacts to listed species, habitat, and the surrounding environment.

124. Therefore, NPS's actions—entering the 2022 Agreement and executing the 2022 Release—triggered and set into motion the Miami Wilds development and its significant and long-term threats to listed species, habitat, and the surrounding environment.

125. In failing to comply with the requirements of foundational environmental law set forth in the ESA and NEPA, NPS has left critically endangered species and environmental resources vulnerable to significant, unmitigated threats.

PLAINTIFFS' CLAIMS FOR RELIEF

First Claim for Relief

Violation of NEPA/APA — NPS Failed to Comply with NEPA

126. Conservationists re-allege and incorporate by reference all the allegations set forth in this Complaint as though fully set forth below.

127. NEPA requires federal agencies to take a "hard look" at the consequences of environmental impacts, and adverse effects of its proposed actions. 42 U.S.C. § 4332(2)(C). Specifically, NEPA requires federal agencies to prepare an EIS to consider the effects of each "major [f]ederal action[] significantly affecting the quality of the human environment." *Id.* The effects analysis must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts, and impacts of connected actions. 40 C.F.R. §§ 1508.1(g), 1501.3(b), 1501.9(e)(1)(i)–(iii).

128. NPS's entry into the 2022 Agreement and execution of the 2022 Release with Miami-Dade County are agency actions within the meaning of NEPA.

129. NPS's entry into the 2022 Agreement and execution of the 2022 Release are also final agency action under the APA. 5 U.S.C. § 704.

130. Upon information and belief, NPS did not document a finding that a lawful categorical exclusion applied to its actions.

131. NPS did not prepare an EIS for the 2022 Agreement and 2022 Release.

132. NPS did not prepare an EA for the 2022 Agreement and 2022 Release.

133. NPS did not make a finding of no significant impact for the 2022 Agreement and 2022 Release.

134. NPS's failure to prepare an EA and finding of no significant impact or an EIS for the 2022 Agreement and 2022 Release violates NEPA and is arbitrary, capricious, and otherwise not in accordance with law. 42 U.S.C. § 4332; 5 U.S.C. § 706(2)(A), (D).

Second Claim for Relief

Violations of ESA Section 7(a)(2) — NPS Failed to Consult and Ensure Against Jeopardy and Destruction or Adverse Modification of Critical Habitat

135. Conservationists re-allege and incorporate by reference all the allegations set forth in this Complaint as though fully set forth below.

136. ESA Section 7 mandates that each federal agency must consult with FWS to ensure that “any action authorized, funded, or carried out by the agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. § 1536(a)(2).

137. Under the ESA's implementing regulations, the action agency must initiate the consultation process whenever a proposed action “may affect” listed species, 50 C.F.R. § 402.14(a), which generally concludes with a biological opinion that evaluates the impacts of the action on protected species, including both the incidental take of species that is expected to occur and the steps that must be taken to minimize and mitigate adverse impacts. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(g).

138. NPS's decisions to enter the 2022 Agreement and execute the 2022 Release are agency actions within the meaning of the ESA.

139. NPS's decisions to enter the 2022 Agreement and execute the 2022 Release may affect—and indeed are likely to adversely affect—ESA-listed species or destroy or adversely modify designated critical habitat.

140. NPS violated ESA Section 7's procedural requirement to initiate and complete consultation before entering the 2022 Agreement and executing the 2022 Release.

141. NPS also violated ESA Section 7's substantive requirement to ensure its actions do not jeopardize listed species or destroy or adversely modify critical habitat.

142. Therefore, NPS's failure to initiate and complete consultation before entering the 2022 Agreement and executing the 2022 Release violates the ESA, the ESA's implementing regulations, and the APA. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706.

Third Claim for Relief

Violations of ESA Section 7(d) — NPS Unlawfully Irreversibly or Irretrievably Committed Resources Prior to Completing a Lawful Consultation

143. Conservationists re-allege and incorporate by reference all the allegations set forth in this Complaint as though fully set forth below.

144. ESA Section 7(d) provides that "after initiation of consultation . . . the Federal agency . . . shall not make any irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures." 16 U.S.C. § 1536(d).

145. This prohibition "continues until the requirements of section 7(a)(2) are satisfied." 50 C.F.R. § 402.09.

146. NPS entered the 2022 Agreement and executed the 2022 Release with Miami-Dade County before satisfying ESA Section 7(a)(2) consultation requirements.

147. By entering the 2022 Agreement and executing the 2022 Release before completing Section 7 consultation, NPS foreclosed itself from formulating or implementing reasonable and prudent alternative measures to avoid jeopardizing listed species and destroying or adversely modifying critical habitat.

148. Therefore, NPS irreversibly or irretrievably committed resources in a manner that foreclosed the formulation or implementation of reasonable and prudent alternative measures to protect listed species and critical habitat.

149. Consequently, NPS's entry into the 2022 Agreement and execution of the 2022 Release violates the ESA, the ESA's implementing regulations, and the APA. 16 U.S.C. § 1536(d); 5 U.S.C. § 706.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter Judgement for Plaintiffs and provide the following relief:

- (1) Declare that Defendants are in violation of the ESA, NEPA, and APA as alleged herein;
- (2) Set Aside NPS's 2022 Agreement amending land-use restrictions in the Project Area and NPS's 2022 Release and Termination of Restrictions.
- (3) Order NPS to complete formal consultation with FWS that complies with the ESA and APA;
- (4) Order NPS to complete an environmental review that complies with NEPA;
- (5) Enjoin NPS from authorizing an amendment of land use restrictions on the Project Area until it fully complies with the requirements of the ESA, NEPA, and the APA;
- (6) Award Plaintiffs their reasonable attorneys' fees and costs pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g)(4), Equal Access to Justice Act, 28 U.S.C. § 2412 and Fed. R. Civ. P. 54(d), as applicable; and
- (7) Grant Plaintiffs such other relief as the Court deems just and proper.

DATED: January 8, 2023

Respectfully submitted,

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