

**MEMORANDUM CONCERNING IMPLICATIONS OF BEAR ISLAND DECISION
AND OTHER LEGAL REQUIREMENTS FOR ORVAC'S CONSIDERATION OF
TRAILS**

Management of Big Cypress National Preserve has asked the ORVAC to reconsider trail recommendations in light of U.S. District Court Judge John E. Steele's Opinion and Order in the Bear Island litigation. However, we also understand that the Preserve management has advised the ORVAC that NPS will not provide any interpretation of the Opinion and Order or of its implications for this purpose, asking each member instead to read and digest the decision themselves. On behalf of National Parks Conservation Association and John Adornato, we have been asked to provide our opinions concerning the implications of that decision and other legal requirements for the designation of trails in the Original Preserve.

Accordingly, here are what we believe to be the requirements the ORVAC should consider in reassessing trail recommendations in the original Preserve. We do not address here all the legal requirements with which NPS would need to comply before opening any trail to use, and we assume for this purpose that NPS will not prepare a new environmental impact statement to amend the 2000 Plan, will not obtain new studies of ORV impacts and will not obtain an amended biological opinion from the Fish and Wildlife Service.

(1) Secondary trails must be limited to short trails connecting a primary trail and a specific location, such as a designated camp site. A secondary trail may not be one used for recreational purposes such as general off-road driving, hunting or retrieving killed game, wildlife viewing or for long drives through the Preserve, which is the purpose of primary trails. Opinion at 59-60, 73, 75-76.

(2) The Court did not define what would be a "short" secondary trail, but the Court's analysis leads to the following factors as important in assessing whether a trail would be a legitimate secondary trail:

- (a) the length of the secondary trail in absolute terms. If the trail does not merely connect a primary trail with a nearby site, but instead extends a considerable distance, it is not an appropriate secondary trail.
- (b) the total length of all secondary trails in a unit in relation to the length of all primary trails in the unit. Opinion at 73-74. If the total length of all secondary trails is significant in relation to the length of all primary trails in a unit, the "secondary" trails are probably not really intended to be secondary ones.
- (c) whether it is likely that the trail will have a minor amount or a significant amount of ORV use. Opinion at 59. The 2000 Plan did not evaluate the

environmental impacts of secondary trails on the theory that, because they would receive only limited use by a handful of vehicles going to a specific campsite, for example, the environmental impacts would likely be insignificant. Trails likely to have a greater level of use cannot be considered secondary trails. For this reason, ORVAC (and NPS) will need to evaluate the likely level of use before any final secondary trail designation is made.

(3) Primary trails must not deviate substantially from the trails specifically set forth in the 2000 Plan. Opinion at 59. A substantial change would be one which designated substantially more miles of primary trails in a unit or which created a substantially greater risk of environmental harm than those evaluated in the 2000 Plan. *See* Opinion at 75-76. Accordingly, trails may not go through prairies or other sensitive areas unless the impacts of the trail were specifically evaluated in the 2000 Plan.

(4) All trails must be situated such that they (i) protect the resources of the Preserve from adverse affects on its natural, aesthetic or scenic values; (ii) minimize damage to soil, surface water flow, vegetation, wildlife, wildlife habitat or other resources; (iii) minimize harassment to wildlife or significant disruption of wildlife habitat. Opinion at 65-68. While not addressed in that decision, the same Executive Orders on which that finding was made also require that trails be located so as to (iv) minimize conflicts between off-road vehicle users and other visitors, taking into account such factors as noise and damage to trails caused by off-road vehicles. Executive Order 11,644, § 3(a).

(5) In addressing trail locations, total length and extent of likely use, preservation of the Preserve's natural and ecological integrity must be the first priority, according to the legislation establishing the Preserve. Trails and ORV use must be compatible with that overriding mandate.

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