

Cone Ranch – An Overview, Analysis and Solution

For the purpose of clarifying and resolving the complex issues related to the recommendations of the Cone Ranch Environmental Advisory Board, the following analysis is offered. What should we do, why should we do it and what are the likely consequences of various options likely to be? How do we unravel this complex problem? What is the best solution for the future of the people of Hillsborough County? These are the issues to be addressed.

What are the factors affecting the continuation of the status quo? Why do anything?

Cone Ranch is listed on the County Land Use Plan as preservation property. It is zoned for agriculture and owned by the Water Enterprise. While its status can reasonably be argued to be “not currently protected”, one must ask, protected from what or whom? Hillsborough County owns Cone Ranch. Do we need to protect Cone Ranch from ourselves? Only in the sense that we need to protect Cone Ranch from the actions of our own BOCC is it unprotected. This may be an important reason to change the status of Cone Ranch, but not an immediate concern.

Cone Ranch is essentially unchanged since the County acquired it in 1988. While a complete ecological assessment has not been done, several points are clear. Cattle grazing and sod farming are having a minor, negative impact on Cone Ranch that is cumulative. On the other hand, the small rehydration project that was undertaken in the southern part of the property was a positive. The ecology of Cone Ranch is not in imminent danger of collapse. There is no need for an ecological emergency rescue.

The FC&EG presentation cites a letter from November 12, 1999 from CDM to the Water Department which states in reference to Cone Ranch, “It is no longer necessary, useful or

profitable in the operation of the Utilities Enterprise System”. If this remains true today, it is another reason to change the status of Cone Ranch, i.e., take Cone Ranch out of the Water Enterprise. However, if Cone Ranch was “surplus property” in 1999 and presumably since, it hardly seems reasonable that an immediate and drastic change in the status of Cone Ranch is mandated.

The FC&EG presentation also cites a letter from November 3, 1999 from McWeeny to CDM which mentions “nearly \$500,000 in carrying costs every year for Cone Ranch”. This figure is important to the analysis of the Cone Ranch solution and should be updated and verified by the Panel. If the current status of Cone Ranch is costing the County money, the amount needs to be considered when balancing the costs of doing nothing against an eventual solution.

On balance, there is single reason to act without delay on Cone Ranch: the annual “carrying costs”. The preservation status, ecological condition and “surplus property” status of Cone Ranch are conditions that are stable and long standing; they do not support the need for drastic, immediate remedy.

What are the potential benefits of the FC&EG proposal to the County?

One immediate positive of the FC&EG deal is the end of the nearly \$500,000 annual carrying costs of Cone Ranch to the County. (Again, this figure needs to be examined and verified.)

The FC&EG proposal essentially asks the County to venture into a real estate development scheme, with an environmental marketing angle. The potential benefits are the preservation of Cone Ranch and profit.

FC&EG is asking that the County pay the Water Enterprise for Cone Ranch and turn it over to the CLRT. FC&EG will then market the properties. By way of the CLRT, TNC or others who will hold conservation easements we are assured that Cone Ranch is

restored and preserved. In the event that the Cone Ranch parcels generate sufficient revenue, the possibility of a profit to the County may exist.

What are the potential negatives of the FC&EG proposal?

Like any real estate development plan, there are costs and risks.

The bond covenants will require that the County pay for two independent appraisals, costing hundreds of thousands of dollars. There will be administrative costs to creating and transferring Cone Ranch to the CLRT. The promised Ecological Assessment and Restoration Plan will cost an undetermined amount. The required “bridge financing” will cost money. FC&EG will have fees for services related to the marketing of Cone Ranch.

There is no guarantee that the sale of parcels to private owners will cover the costs of appraisals, administration, financing and marketing, especially in the current market. Remember, the value of these parcels to the buyers will be degraded by the conservation easements, but the price paid to the Water Enterprise will not reflect this degraded value. Rather, the amount paid by the County to the Water Enterprise will reflect “highest and best use”.

This is extremely important. The County could, at the end of the day, be money out of pocket on this deal. The County could lose Cone Ranch forever, and pay for the privilege.

Another serious potential negative to the FC&EG proposal comes from the very nature of conservation easements; their monitoring and enforcement. That conservation easements can be and are modified (and even revoked) is a matter of record and fact. Yes, by layering easement upon easement upon easement a complex web of protection can be created. But without monitoring and enforcement, they’re worthless. Each layer of protection must have independent monitoring and enforcement to be effective.

The CLRT members are to be appointed by the BOCC. There is no way of knowing what a future BOCC and newly appointed CLRT members might do. We cannot create a legal structure for the CLRT that is not subject to amendment.

Furthermore, the creation of a not for profit corporation (i.e., the CLRT) to escape the requirement of a competitive bid process stipulated in Section 125.35 will be challenged in court. If the disposal of public property without the competitive bid process per Section 125.38 was possible by creating a new not for profit corporation, solely for the purpose of facilitating the transfer of public property into private hands, Section 125.35 would be virtually mute.

Involvement of The Nature Conservancy is no guarantee of protection. They have a good record of protecting the environment, but faults have been found with some of their activities. I hope the members of the Panel have made themselves aware of the Senate investigation of TNC practices that was concluded in 2005. It is fair to say the TNC involvement would probably be a net positive, but TNC partnering with the CLRT does not guarantee environmental protection of Cone Ranch of the nature and degree that the Panel might expect.

Whatever level of protection is achieved by creating the CLRT and selling off Cone Ranch parcels, one thing is clear. This will mean continuing, eternal involvement by Hillsborough County with Cone Ranch. For Cone Ranch to be protected, the CLRT will have to continue as a new County entity with associated staff requirements, reports and analysis. We already have a department that does exactly this kind of work: the Environmental Lands Acquisition and Protection Program. Should we create yet another government agency, more bureaucracy?

The FC&EG proposal to the Panel quotes from the July 7, 2009 presentation by Bob Stetler to the Panel, "So the picture is pretty clear, especially for the nutrients and coliforms and things like that that it's likely that Blackwater Creek's going to make the list as an impaired stream." The conservation easement proposed by FC&EG allows for

continued cattle grazing and other agricultural activities. The coliform bacteria in Blackwater Creek are primarily attributable to the cattle ranching operation, as are much of the nutrients. A preservation plan for Cone Ranch that allows continued ranching and agricultural activities will fall short of a comprehensive plan seeking to restore the entire tract to a more natural state. The proposed FC&EG conservation easements would also allow other activities, such as hunting, that are not consistent with a comprehensive ecological restoration plan

The FC&EG proposal, if accepted, would mean several lost opportunities for Hillsborough County. As private property, there will be no public access to Cone Ranch. While this is the current status of access, the future of Cone Ranch as public property will certainly include public access for passive recreation activities, including ecotourism. Another lost opportunity is the potential revenue stream from wetland mitigation banking and carbon credits.

The negatives of the FC&EG deal are: 1) The cost of two independent appraisals. 2) The requirement (by the bonds) that the Water Enterprise be compensated for Cone Ranch at “fair market value” according to its “highest and best use”. 3) County funds are put at risk venturing into a depressed real estate market. 4) Future BOCCs and CLRT boards will have to be trusted to continue to maintain and enforce the conservation easements. 5) A new (and redundant) government bureaucracy must be created and maintained. 6) The conservation easements and restoration plan falls short. 7) Hillsborough County will lose the opportunity to generate revenue from mitigation banking, carbon credits and related activities.

What about ELAPP?

ELAPP has put Cone Ranch at the top of their acquisition list. What are the positives and negatives of transferring Cone Ranch to ELAPP?

The sale of Cone Ranch to ELAPP will save the County the \$500,000 annual “carrying costs”, just as the FC&EG proposal would do. Again, that figure needs to be confirmed.

Should the County sell Cone Ranch to ELAPP, taxpayer funds will not be put at risk, as they would in the FC&EG plan. Quite the opposite is true. ELAPP can partner with other agencies to engage in revenue generating activities such as wetland mitigation banking, carbon credits and more. (The County cannot directly engage in mitigation banking, because of regulations.)

Within ELAPP, Cone Ranch will be protected and preserved, but to a greater extent than with the FC&EG conservation easements. ELAPP is an existing structure within the County that does not require the creation of a new government bureaucracy to protect Cone Ranch. ELAPP is owned by the County. If ELAPP owns Cone Ranch, the taxpayers of Hillsborough County own Cone Ranch, in its entirety.

The elimination of the agricultural and ranching activities will reduce the nutrient and coliform levels in Blackwater Creek, even if no further wetland restoration were done. As a wildlife sanctuary, Cone Ranch within ELAPP would be a safe haven for flora and fauna, including many threatened and endangered species. It would not be a private hunting preserve, as permitted by the FC&EG conservation easements.

Restoration and preservation undertaken by ELAPP will be comprehensive and more effective than a plan involving several private owners. Monitoring a single large site where permitted activities do not include ranching, agriculture, hunting, and more will be less demanding than the monitoring required to enforce the FC&EG easement and several private owners. Enforcement will be extremely simplified, as well.

With mitigation banking, ELAPP can reasonably be expected to go beyond restoring the current wetlands (estimated that make up about 35% of Cone Ranch) expanding Cone Ranch wetlands to their historic level of 65% to 80%. This can result in a constant flow of purified water thru Blackwater Creek rather than polluted water that quickly drains off

the cattle pastures. This is important to the health of the Hillsborough River and to the City of Tampa, which spent \$14.2 million over the last two years to replace water that was not flowing in the Hillsborough River. Cone Ranch wetlands have the potential to save the City of Tampa millions of dollars each year by slowly releasing, pure water all year round rather than dumping what amounts to storm water run off into the river during the rainy season.

While mitigation banking would be an option for private owners of FC&EG parcels, the revenues from this would go into private hands. Up to \$100,000 per acre has been paid in Hillsborough County for wetland mitigation. Do the math. At that rate, using only 1% of Cone Ranch for mitigation banking would generate nearly \$13 million. While this is an unlikely scenario, it illustrates the tremendous potential of mitigation banking on Cone Ranch.

An ELAPP owned (taxpayer owned) Cone Ranch can reasonably be expected to become a viable eco-tourism destination. There was a Florida before Disney, and Cone Ranch is one of the few places where it still exists. ELAPP will make it open to the public, not shut behind locked gates.

So, to review, the positives of putting Cone Ranch into ELAPP are 1) As with the FC&EG proposal, the County would save the \$500,000 annual carrying cost of having Cone Ranch in the Water Enterprise. 2) Unlike the FC&EG plan, no taxpayer funds will be put at risk in a real estate development partnership. 3) Cone Ranch will be protected and preserved beyond the conditions of the FC&EG conservation easements. 4) Agricultural and ranching activities will cease with an immediate improvement in the water quality of Blackwater Creek. 5) A more comprehensive and effective restoration plan can be implemented than is allowed within the activities permitted by the FC&EG easement. 6) Mitigation banking by ELAPP will generate revenue for Hillsborough County, not private owners. 7) Expanded wetlands on Cone Ranch can save the City of Tampa millions of dollars per year and improve the health of the Hillsborough River. 8) Cone Ranch will remain public property with public access for passive recreation, etc.

What are the negatives of putting Cone Ranch into ELAPP?

As with the FC&EG deal, the bonds require two independent appraisals and compensation of the Water Enterprise at “fair market value”.

Also, the funding of the purchase of Cone Ranch by ELAPP must be provided. The taxpayers of Hillsborough County authorized up to \$200 million dollars in bonds for ELAPP purchases in the last election by an overwhelming majority.

What about the “hybrid” solution?

Continued ownership of any part of Cone Ranch by the Water Enterprise is not consistent with a finding that it is “surplus property”. The net negatives and net positives of selling Cone Ranch to private owners as opposed to transferring it to ELAPP remain unchanged in principle. Especially objectionable would be a plan that allows developers to cherry pick the best portions of Cone Ranch for private parcels and leave ELAPP with the leftovers. No reasonable rationale for the hybrid solution has been presented. In fact, the hybrid solution was not created until the eleventh hour, and has not been a part of the Panel’s vetting process. The public has not been allowed comment or input on the hybrid proposal. Before being seriously considered the hybrid proposal should stand for examination, just as the original FC&EG proposal did. Even then, it seems unimaginable that it could be the best solution.

What about those bonds, “fair market value” and the need for two separate appraisals?

This is inescapable whether Cone Ranch is sold to FC&EG plan or put into ELAPP, at this time. However, if it is true that the Series 2001 bonds will expire in 2012, new bonds

need not include Cone Ranch. This being done, the County is relieved of the requirement to pay for two independent appraisals and the “fair market value” condition need not apply.

What about the TBW easement?

In 1999, when Cone Ranch was being considered for other purposes, negotiations between TBW and Hillsborough County were moving forward towards the elimination of that easement (Notice: conservation easements are no more or less permanent than the TBW subsurface water easement.)

Furthermore, Interlocal Agreement states that “If the Cone Ranch cannot be used as a water supply resource, then the Authority’s interest in the Cone Ranch shall be transferred to the County and thereafter the Authority shall have no further rights to or interest in the Cone Ranch.” This condition was also added to the deed transferred to Hillsborough County and continues to apply today with regards to TBW. In so far as it has been more than twenty years and there is not even a plan to use Cone Ranch as a water supply resource in the future, it seems more than reasonable to assume that this matter can be resolved easily.

Two sets of choices, what do we do and when do we do it?

The “when” is simpler. We don’t really have to do anything, right now. But, if the costs of dealing with the bonds, the two appraisals and the currently required “fair market value” stipulation exceeds the annual “carrying costs” (which may or may not be \$500,000 per year) the Panel should recommend simply waiting for the bonds to mature in 2012, which will allow the County to escape the requirement of two appraisals and “fair market value” by not using Cone Ranch as part of the security for the new bond issue. This is essentially a simple problem with a mathematical solution.

What we do is slightly more complicated.

Let's step back and review.

The FC&EG proposes to protect and restore Cone Ranch thru a complicated scheme requiring the creation of the CLRT (which would be challenged in court). ELAPP already exists and would protect and restore Cone Ranch, the wildlife and the water resources to a significantly higher degree.

FC&EG offers the possibility of a profit to Hillsborough County, and the possibility of a net loss. ELAPP simply takes Cone Ranch from one county department and transfers it to another.

Both plans allow for mitigation banking, carbon credits, etc; but with ELAPP the revenue goes to the County, not private owners.

FC&EG offers to allow public access to 800 acres, with ELAPP the public gets 12880 acres.

Consideration of the TBW easement, the bonds, the requirement of two appraisals, "fair market value" and the annual carrying costs remain the same whether the FC&EG proposal is accepted or the land is sold to ELAPP.

When the negative and positives of the FC&EG proposal and the ELAPP solution are considered in aggregate, the answer appears quite clear. The negatives and potential negatives of the FC&EG proposal far outweigh the negatives and potential negatives of the ELAPP solution. On the other hand, FC&EG positives fall far short of ELAPP positives. The correct conclusion is obvious. Begin planning to transfer the entirety of Cone Ranch, either now or in the near future, to ELAPP. But by all means, keep Cone Ranch whole, as public land, forever.