

**IDENTIFYING THE ORDER, THE NATURE OF THE ORDER, AND THE  
PROCEEDING FROM WHERE THE ORDER WAS PRODUCED**

Indian River County respectfully requests review by the Florida Land and Water Adjudicatory Commission ("FLWAC") of a final order ("Order") issued by the St. Johns River Water Management District ("District") on September 12, 2007. The Order approved the exchange of District owned land known as the Berry Groves ("Sand Lakes") Parcel LA # 1999-005 for Corrigan Parcel LA #2001-46, in Indian River County, and other considerations. The Order was voted upon by the Governing Board of the District on its regular scheduled meeting of September 11, 2007. A copy of the Order is attached. (R. 1-29.) (Citation to the record will be (R. #.))

The Order had the effect of exchanging 1265 acres of District owned land for approximately 460 acres of lands owned by Pat Corrigan Family Partnership and Hugh Corrigan Family Partnership ("Corrigan"). Further, the District received 20 acres of Flowage Easement, and a Release and Hold Harmless Agreement in favor of the District over an additional approximate 7171 acres of Corrigan lands, which included the 1265 acres of the Sand Lakes parcel. (R-2.)

**HOW THE ORDER CONFLICTS WITH STATUTORY REQUIREMENTS**

Florida Statutes §373.089 sets forth the rules regarding the sale or exchange of lands, or interests, or rights in lands. Section 373.089(6) F.S. states that any lands the title of which is vested in the governing board of a water management district may be surplused pursuant to the procedures set forth in this section. Those procedures state that all lands for which title has vested in the governing board prior to July 1, 1999, shall be deemed to have been acquired for conservation purposes. The District purchased the Sand Lakes tract in January 1999 with Preservation 2000 (P2000) funds. Therefore, the Sand Lakes tract is deemed to have been acquired for conservation purposes. (R. 13.)

This notion is further supported by §259.101(6)(b), F.S. , which provides that prior to disposing of lands purchased with P2000 funds, the District must determine that the "land no longer needs to be preserved...". Finally, Article X, Section 18 of the Florida Constitution, mandates that

"[T]he fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board."

Together, these requirements create a legal prohibition against disposing of conservation lands except when the lands

are no longer needed for conservation. Any finding to the contrary should preclude an order disposing of the conservation lands. If a water management district attempts to surplus and dispose of land purchased for conservation even though the land is still needed for conservation, that decision must be reversed by the FLWAC. Section 373.616, F.S., allows the FLWAC to liberally construe the provisions of Chapter 373 in order to effectively carry out its purposes. The purpose and intent is to protect the conservation lands of the state. (F.S.373.016(3))

The voters spoke when they amended the Constitution to include Article X, Section 18. The Florida Legislature spoke when they created Chapter 373. Now the FLWAC needs to speak firmly in enforcing the laws and protections afforded to the citizens from Florida's Constitution and its Statutes.

Indian River County asserts that the arguments presented in this Request for Review demonstrate that the Sand Lakes tract has significant conservation value, is still needed for conservation purposes, and therefore requires this Commission to rescind the decision of the District.

**HOW THE ORDER AFFECTS THE INTEREST OF INDIAN RIVER COUNTY**

The District's Order affects Indian River County directly by disposing of land within the County's borders held in conservation. (R. 64-66.) While in public ownership, the Sand

Lakes tract carried a land use designation of C-1, conservation. This designation provides for the highest protection of land and precludes the development of any residential units on the property. In the unincorporated area of the county where the Sand Lakes tract lies, two land use designations exist. The first is AG-2, which is an agriculture designation allowing one developable unit per ten acres. The second is the C-1 conservation designation.

Both land use designations are restrictive and rural in nature. In Chapter 2 of the Future Land Use Element, the Conservation Element describes the following:

The largest conservation area is the St. Johns Marsh in the Western portion of the county. In addition to containing significant wetlands and the Blue Cyprus Lake, the marsh serves as the headwaters of the St. Johns River. The St. Johns River Water Management District maintains this significant freshwater wetland resource.

Further, Policy 1.5 of Objective 1: Compact, Low-Density Development of the Future Land Use Element states:

The Conservation Land Use designations shall be applied to those areas which contain or possess lands with qualities and features which play a vital or essential role in the normal functioning of the county's ecosystems and have been so identified in the conservation element or merit preservation as vestiges of once common county ecosystems.

By trading away the Sand Lakes Parcel, the District is directly affecting the County's Objectives, Policies and Goals of its Comprehensive Land Use plan.

Speculation pertaining to the future of this environmentally sensitive property is not necessary, for recent history has provided its likely outcome. Earlier this year, the District "traded" away the other portion of the Berry Groves Parcel (the portion of the Berry tract not particularly sensitive from an environmental standpoint, and west of the Sand Lakes tract, totaling roughly 2000 acres) to Fellsmere Joint Venture ("FJV"), a private enterprise. The trade was part of a deal in which the District acquired 6,000 acres of land from FJV in exchange for roughly 2000 acres and \$35,000,000. The 2000 acres acquired by FJV carried the County's C-1 land use designation. Shortly after the trade, FJV annexed over 18,000 acres of land into the city of Fellsmere. The Berry Groves Parcel obtained by FJV was the needed link in obtaining a contiguous border with the city of Fellsmere, as required by Chapter 171 Florida Statutes for annexation. The city of Fellsmere is currently seeking a land use designation on the property that would allow up to two units an acre.

**HOW INDIAN RIVER COUNTY ASSERTS STANDING**

Indian River County asserts standing in front of the FLWAC on two grounds. First, the Board of County Commissioners for Indian River County unanimously passed and adopted Resolution 2007-070 on June 19, 2007, supporting continued public ownership of the conservation tract known as Berry Groves, urging the District to keep this parcel of land in conservation forever. The County forwarded this Resolution to the Governing Board of the District. Second, Commissioner Gary Wheeler, Chairman of the Board of County Commissioners, sent a letter dated September 10, 2007, reiterating the County's position to keep the Sand Lakes tract in public ownership for public conservation. Both are part of the public record put forth by the District. (R. 64-66.) The County's resolution and letter in the record of this proceeding demonstrate that the county submitted substantive testimony in the record of the proceeding, making it a party which stated with particularity objections to the Order at issue in this proceeding (373.114(1)(a), F.S.)

**HOW THE ORDER SUBSTANTIALLY AFFECTS NATURAL RESOURCES ON A REGIONAL AND STATEWIDE LEVEL**

The District's Order substantially affects natural resources on both a regional and statewide level in two ways. First, the Sand Lakes tract contains multiple communities that are vital to the region and the state for providing habitat to

endangered and threatened species of wildlife. Second, the Sand Lakes tract is part of a vital wildlife corridor connecting two large preserves.

The Florida Natural Areas Inventory ("FNAI") asserts that the Sand Lakes Parcel appears to be located on or very near a significant region of scrub habitat, a natural community in decline that provides important habitat for several rare species within a small area. (R. 47.) The District confirmed the FNAI assessment by describing the Sand Lakes tract as a patchwork of native and altered plant communities including deep marsh, shallow marsh, wet prairie, hydric hammock, pine flatwoods, dry prairie, and scrubby flatwoods. (R. 15.) The District goes on to say that wildlife typically found in these types of vegetative communities have been observed on site. State listed species reported on the Sand Lakes tract include wading birds such as the white ibis, snowy egret, tricolored heron and little blue heron. Non-nesting sandhill cranes have also been observed and there are gopher tortoises in the uplands. The federally listed species reported within Sand Lakes include the peregrine falcon, snail kite, wood stork and Florida scrub-jay. (R. 15-16.)

Despite the numerous state and federally listed species of animals found on the property, the District attempts to convince the decision maker the parcel is not environmentally

significant. In the Assessment of the Need to Retain The Sand Lakes Tract For Conservation Purposes, District staff states "the most significant conservation feature of the property is an approximately 50-acre area on the *eastern* ridge portion of the property." (emphasis added) (R. 16.) On the next page however, District staff cites a study initiated in 1990 by the Fish and Wildlife Conservation Commission which identified Strategic Habitat Conservation Areas for the Sand Lakes tract and claims that all of the Strategic Habitat Conservation Areas are on the *western* margin of the tract. (emphasis added). (R. 17.)

The District cites to the study for the proposition that only 8.5% of Sand Lakes was found to be a Strategic Habitat Conservation Area. This study did not identify any of the eastern ridge, associated with high conservation value by the FNAI and the District itself, with having any Strategic Habitat Conservation Areas. (R. 17.) District Staff summarizes their analysis finding the Sand Lakes tract *contains conservation value*, but that the value is not "extraordinary". (R. 19.) The District concludes that a 50-acre conservation easement over part of the eastern portion of the tract, along with existing regulatory programs to protect wetland resources, demonstrate that the property is no longer needed for conservation. (R. 19.)

Indian River County asserts that based on the listed species found onsite and the natural characteristics of the

property, the Sand Lakes tract is environmentally significant at a regional and statewide level and should continue to be held in public ownership for conservation.

Second, the District's Order substantially affects natural resources on a regional and state level by disposing of land identified by the Florida Ecological Greenways Network Critical Linkage and Prioritization Map produced by the University of Florida as being an essential wildlife corridor. (R. 19.) One of the leading theories developed during the last twenty years in conservation biology is the importance of corridors and linkages between conservation areas. (R. 19.) The Sand lakes tract is designated as part of the corridor stretching from the critical St. Johns River marshes northeasterly through the St. Sebastian River Preserve State Park in northern Indian River County and southern Brevard County and on to the Indian River Lagoon. (R. 20.)

The District acknowledges this was part of the conservation value when it purchased the property. (R. 21.) The District, however, says the time to complete the corridor appears to have passed. Property to the north of Sand Lakes was annexed into the City of Fellsmere and currently is in the process of obtaining Development of Regional Impact (DRI) approval. Property to the south is the Corrigan ranch, and they have expressed no interest in a conservation sale. (R. 20.) Therefore, the District

summarizes the likelihood for completing the corridor is remote, and Sand Lakes is now expendable. (R. 20.)

It is hard to believe that out of tens of thousands of undeveloped acres, much of it being annexed into a municipality, all of it coming under review of the DRI process, that the District believes establishing a wildlife corridor is "extremely remote". Either this conclusion speaks to the poor nature of the current development process, or it is a self-serving statement seeking to justify the means as a way to the ends. Regardless, Indian River County urges FLWAC to reject this rationale.

**THE DISTRICTS ORDER RAISES SIGNIFICANT ISSUES OF POLICY**

*The Micro Affect*

The factual situation surrounding the land exchange is troublesome. For their part of the consideration, the District proposes to give the Corrigan family the 1260-acre Sand Lakes tract- subject to a 50-acre conservation easement- along with \$657,300 cash. (R. 4.) In exchange, Corrigan will deed in fee simple 460 acres of flooded land along with a flowage easement in favor of the District over an additional 20 acres that runs along the southern boundary of the 460 acres, and a Hold Harmless Agreement over approximately 7,171 acres. The 7,171 acres includes the 1260-acre Sand Lakes tract. (R. 4.)

According to the District, the exchange will settle a long-standing dispute with the Corrigan family. (R. 6.) In the late 1980's, the district purchased most of the property needed to create the Blue Cypress Water Management Area ("BCWMA"). The BCWMA and the Corrigan ranch share a boundary of almost 2.25 miles. An approximate 3.25-mile long levee on the Corrigan property prevents water from moving from the District property onto the Corrigan Property. The approximately 460 acres of the Corrigan property subject to this exchange is *waterward* from this levee. (R. 6.) The 20 acres containing the flowage easement is apparently associated with the flooded 460 acres. (R. 4.)

The Hold Harmless Agreement is one of the more problematic issues of this deal. Corrigan claims that "seepage" has adversely affected his ranch and therefore, given rise to a legal action. (R. 6.) As of March of this year, the District had yet to *evaluate* the merits of this claim, and as of September 12, stated that potential liability over the seepage was possible. (R. 4.) An important question of policy for the FLWAC is whether a government agency should trade away conservation land because a neighboring land owner has threatened legal action over claims which may only "possibly" be valid.

This is especially important given the fact that Corrigan needs the Sand Lakes tract to annex into the city of Fellsmere. The District attempted to address this issue in the backup

material and completely misrepresented the situation. The backup information presented by the District staff stated the following:

"In fact, though, this exchange would not alter Corrigan's position with respect to physical contiguity to the City of Fellsmere. If annexations currently initiated proceed, the Corrigan property will be adjacent to the City of Fellsmere with or without this exchange. If the currently initiated annexations fail to occur, this exchange would not bring the Corrigan holdings into a position adjacent to the city boundaries." (R. 7.)

It is unclear how district staff came up with this analysis. The Sand Lakes tract shares over a one-mile border with the City of Fellsmere to the North, and over a one-mile border with the Corrigan ranch to the south. (R. 90.) This deal substantially adds contiguity between the city of Fellsmere and Corrigan. In fact, when the District first explained the deal to officials of Indian River County in March of this year, the Sand Lakes tract would have been the only contiguity shared between Fellsmere and Corrigan. Further, without the Sand Lakes tract, an enclave would be created by annexation of the Corrigan property. Such annexations are expressly prohibited by F.S. 177.041(5).

During the public hearing to approve this exchange, Governing Board Member Bill Kerr produced a letter from the Fellsmere City Manager purporting to assert that "if" Corrigan

were to seek annexation into the City of Fellsmere, then the City would set aside Sand Lakes for "...conservation in perpetuity". It is not clear why Bill Kerr was in possession of such a letter, why this letter was not part of the backup material, nor what affect this letter carried with members of the governing board. What is abundantly clear is that such a letter carries no legal authority. Sand Lakes is not in the City of Fellsmere. Not only does the City lack any power to regulate the tract, that letter does not bind any future action taken by the Fellsmere City Council.

Indian River County asserts that consideration of this highly suspect letter does not rise to the type of evidence or indicator that the District board should have considered in reaching its determination and that consideration of it inappropriately contaminated the evaluation which district board members should have been giving to more probative and reliable factual information about the need to retain the property in conservation (such as the GIS data from the Florida Natural Areas Inventory).

*The Appraisal Process:* Indian River County takes issue with the appraisal process utilized by the District for the land exchange. The appraisal for the subject properties occurred in December 2005, almost two years ago. (R. 5.) The appraisal

valued the Sand Lakes tract at \$6,951 per acre, while valuing the Corrigan parcel at \$17,000. (R. 5.) This appraisal lacks any resemblance of logic. The appraiser opined the reason for the difference in value related to access and wetlands. Somehow, the appraiser felt the Sand Lakes tract had poorer access than the Corrigan parcel despite Sand Lakes sharing a one-mile border with the City of Fellsmere. As noted by the District, the property to the north of Sand Lakes is currently in the DRI process. Further, the appraiser felt the numerous wetlands on Sand Lakes diminished its value significantly compared with the Corrigan parcel, even though the entire Corrigan parcel is under water. (R. 5, 59.) The District does not even defend the appraisal and merely recalculates the values to suit their exchange. Rather than valuing the Corrigan parcel at \$17,000 acre, the District identifies it as a value-for-value swap and assigns it a value of \$7,000 an acre. (R. 5.)

Although the District staff conceded the appraisal was extremely suspect, it refused to get a new, updated appraisal. This refusal was in spite of the clear intent of Chapter 373 that requires any lands determined to be surplus and sold by the district to have a certified appraisal obtained within 120 days prior to the sale. F.S. 373.089(1) The significance of this issue cannot be understated. The District is potentially giving away far greater value than the numbers reflect

The final questionable issue pertaining to the details of this exchange relates to the value assigned the Hold Harmless Agreement. The District asserts that it will receive a Hold Harmless Agreement over approximately 7,171 acres of Corrigan land, which includes the 1,265 acres of the Sand Lakes tract. (R. 2, 4.) In the evaluation summary chart presented by the District, the value associated with the Hold Harmless Agreement was \$850 an acre. (R. 6.) This, according to the Valuation Summary, gave the District \$6,095,350 in value. (7171 acres x \$850). The District entered into an exchange where it not only traded away the Sand Lakes tract, but then turned around the gave over ONE MILLION DOLLARS in compensation for a hold harmless agreement over that same tract of land.

Indian River County asserts the policy ramifications of allowing a transaction laden with misrepresentations and faulty data would be detrimental to the State of Florida. Transactions involving the rare instances of a government agency disposing of public conservation land acquired with public financing should be held to the highest standard. That standard is not met with the Sand Lakes-Corrigan exchange.

#### *The Macro Affect*

Looking at the whole, one can comprehend how the District's transaction could set a dangerous precedent for all public agencies who hold conservation land for the state. At the mere

threat of a lawsuit, agencies would be tempted to settle by selling or "trading" off public land, as what is happening in the current situation. This would run counter to the intent and purpose of the Article X, Section 18 of the Florida Constitution and that of Chapter 373.089, Florida Statutes. Both require a determination be made that the property is no longer needed for conservation purposes followed by a two-thirds vote by the governing board to dispose of the property.

Indian River County respectfully urges FLWAC to use this appeal as a vehicle to set a precedent that the disposing of conservation land should be reserved for unique circumstances where the land is truly no longer needed for conservation, and the disposition of the land would provide a substantial benefit to the people of this state.

**HOW THE ORDER RAISES ISSUES OF CONSTITUTIONAL AND STATUTORY INTERPRETATION**

The District initially interprets the provisions of the Florida Constitution and Florida Statutes correctly. Land held in conservation should not be disposed unless the land is *no longer needed* for conservation. To determine whether Sand Lakes was needed for conservation, the District evaluated four aspects of the property: I. Intrinsic Conservation Value; II. Regional

Conservation Significance; III. Original Conservation Purpose;  
IV. Net Conservation Benefit. (R. 14.)

After correctly stating the evaluation criteria, the District butchers the analysis. The District acknowledges that Sand Lakes has Intrinsic Conservation Value. (R. 19.) However, despite evidence demonstrating high intrinsic value, the district erroneously finds that the value is not "extraordinary", and therefore the tract can be surplus. (R. 19.)

Next, the District examined the Regional Conservation Significance and found even under its own analysis that regional conservation significance does *currently* exist. However, because the District has little faith in the future development process of the State, it can become part of the problem and dispose of the property. (R. 19-20.)

Subsequently, the District looked back at the original purpose for the purchase of the property. The district acknowledges two reasons to purchase the property in the first place: first was to create a water reservoir; second was to acquire lands towards creating the conservation corridor. The district now asserts that because its water reservoir is no longer needed, it can discount *other* purposes for the purchase that were cited at the time in an effort to justify the expenditure of scarce Preservation 2000 dollars. This is

despite the fact that when the district purchased Sand Lakes, Indian River County was actively pursuing its purchase through the County's own land conservation program. Indian River County did not consider purchasing the property because it hoped to create a reservoir. It sought the property because of the significant environmental attributes. (R. 61.)

Finally, the District examines the Net Conservation Benefit of the exchange. The District admits that the net effect of the exchange will result in nearly 66% less conservation land being retained in public ownership. The "Net Conservation Benefit" in the District's mind exists in no longer having to deal with the threat of legal action. (R. 23.) A legal threat that apparently carries only one remedy. Give up Sand Lakes. If the District's analysis is correct, then the idea of weighing the Net Conservation Benefit of a transaction under similar circumstances will always will end up in favor of surplusizing the land.

In butchering the analysis, the District relegates itself to misinterpreting the purpose and the intent of both the Florida Constitution and of Florida Statutes. By interpreting the law one way, and then by completely disregarding logical analysis and conclusions, the actions of the District prove them inconsistent.

**REQUESTED ACTION FROM THE FLORIDA LAND AND WATER ADJUDICATORY  
COMMISSION**

Dr. Baker of the Pelican Island Audubon Society stated it best when he told the District "We love you St. Johns, but not this exchange!" (R.80.) Having the headwaters of the St. Johns River has presented the District and the County with challenges and opportunities. Indian River County has a long standing successful relationship working with the District and the County hopes to continue that relationship into the future. In all relationships, conflicts will arise, and corrective action will be needed. This land exchange is one such conflict.

Indian River County respectfully request the FLWAC exercise its powers granted under §373.114 F.S. and rescind the District's Order exchanging District owned land known as the Berry Groves ("Sand Lakes") Parcel LA # 1999-005 for Corrigan Parcel LA #2001-46, Indian River County, and other considerations.

Respectfully submitted,

WILLIAM G. COLLINS II  
INDIAN RIVER COUNTY ATTORNEY

By: \_\_\_\_\_

George Glenn  
Assistant County Attorney  
Florida Bar No. 28992  
1840 25<sup>th</sup> Street  
Vero Beach, FL 32960  
(772) 266-1424

Attorney for INDIAN RIVER COUNTY