

STATE OF FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

Pelican Island Audubon Society,)
 and)
Friends of St. Sebastian River)
 and)
David Cox)
 Petitioners,)
)
vs.)
)
St. Johns River Water Management)
District)
)
 Respondent.)
_____)

**PETITION FOR REVIEW OF A FINAL ORDER OF THE ST. JOHNS
RIVER WATER MANAGEMENT DISTRICT**

1. This petition requests review, pursuant to Section 373.114, Fla. Stat., of a final order of the St. Johns River Water Management District (District) approving an exchange of real property.
2. The District's address is 4049 Reid Street, Palatka, FL 32177.
3. The land exchange that is the subject of District Final Order Number is SJR2007-87, a true copy of which is attached hereto, was approved by the District's Governing Board at its regulatory meeting on September 11, 2007. Pursuant to this Final Order the District has given approval to

the exchange approximately 1,265 acres of conservation land known as the “Sand Lakes tract” and a payment of \$657,300.00, for 460 acres of land in fee simple, a 20 acre Flowage Easement, a “Release on Hold Harmless Agreement”.

4. This petition is filed on behalf the Pelican Island Audubon Society (PIAS), a Florida non-profit corporation whose mission is to preserve and protect the animals, plants, and natural communities in Indian River County through advocacy, education, and public awareness. Pelican Audubon Society has been a Chapter of Audubon of Florida, originally Florida Audubon Society, since 1964. It is the mission of Audubon of Florida and Pelican Island Audubon Society to conserve and restore natural ecosystems, focusing on birds and other wildlife for the benefit of humanity and the earth's biological diversity.
5. This petition is also filed on behalf of Friends of St. Sebastian River, a Florida non-profit corporation whose mission is to maintain and improve the health and beauty of the St. Sebastian River and its watershed. Among its stated goals are to promote and protect the environment and recreational opportunities of the St. Sebastian River and tributaries and to support the restoration and preservation of the St. Sebastian River and tributaries to their natural state.

6. Petitioner David Cox is a citizen of Indian River County. Mr. Cox is an avid outdoorsman and nature photographer that has visited the Sand Lakes tract to observe its flora and fauna. Mr. Cox will continue to visit and enjoy the Sand lakes tract if it remains in public ownership.
7. Petitioners are represented by Marcy I. LaHart, Marcy I. LaHart, P.A., 711 Talladega Street, West Palm Beach, FL 33405, Telephone (561) 655-9537, Facsimile: (561) 655-9561.

PETITIONERS' INTERESTS ARE AFFECTED BY THE LAND EXCHANGE

8. Petitioner Pelican Island Audubon Society is a “party” that may request review by FLAWAC because members and officers of the Pelican Island Audubon Society submitted testimony and written comments of a substantive nature which stated with particularity Petitioner’s objections to the land exchange at the District’s regulatory meeting at which the land swap was approved. Pelican Island Audubon Society President Richard Baker spoke at the District meeting regarding the land swap, and a written statement was directed to the Governing Board and made part of the record.
9. The challenged order affects the interests of the Petitioner PIAS and its individual members in that it strips the protected status of the Sand Lakes tract, a 1265 acre parcel of conservation land containing a diverse

mosaic of upland and wetland habitat types that are utilized by numerous listed species, including scrub jays and wood storks. In furtherance of its goals to conserve animals, plants, and natural communities in Indian River County through public education and awareness, PIAS frequently organizes and sponsors field trips for its members to natural areas within Indian River County, including canoeing, hiking and bird watching outings, particularly to publicly owned conservation areas. A substantial number of PIAS members enjoy observing and photographing wildlife species that depend upon the habitat types encompassed in the Sand Lakes, and would engage in activities such as bird watching, hiking and nature photography on the Sand Lakes tract if it were not developed. Additionally PIAS participates in the annual Audubon Christmas Day Bird Count, which would be adversely impacted by the exchange and future development of the Sand Lake tract, which provides nesting, roosting and foraging habitat to numerous species of migratory and non migratory birds.

- 10.** The subject matter of this challenge, protection of conservation lands and the plant and animal communities encompassed therein, is germane to PIAS's scope of interest and activity. Because of their special interest in bird watching and wildlife conservation, PIAS members are affected by

the disposal of the Sand Lake tract more than members of the general public. Finally, the type of relief requested by Petitioners, that the Florida Land and Water Adjudicatory Commission rescind the challenged final order, is an appropriate type of relief for PIAS to seek on behalf of its individual members.

11. Friends of St. Sebastian River and its members were represented at the September 11, 2007 Governing Board meeting. Members Russell Hermann and Kathy Wegel, and Vice President Frank Wegel spoke in opposition to the land exchange. Friends of St. Sebastian River and a substantial number of its members are adversely affected by the land exchange because the St. Sebastian River is bordered by several pieces of property that are publicly owned for conservation or recreation. The precedent set by this land exchange jeopardizes the continued conservation status of those lands that are critical to the protection of the St. Sebastian River. Further, the challenged land exchange strips the Sand Lakes tract of its protected status. Finally, stormwater from the site if developed will discharge through the Red Barrow Slough to the South Prong of the St. Sebastian River – a historic drainage pattern in this area, further degrading the river in which members swim, fish, canoe, and frequent to observe birds and other wildlife.

12. Because of their special interest in protection of the St. Sebastian River and its resources, Friends of St. Sebastian River and its members are affected by the disposal of the Sand Lake tract more than members of the general public. Finally, the type of relief requested by Petitioners, that the Florida Land and Water Adjudicatory Commission rescind the challenged final order, is an appropriate type of relief for Friends of St. Sebastian River to seek on behalf of its individual members.

13. David Cox also provided detailed testimony regarding the ecological value of the Sand Lakes tract at the September 11, 2007 Governing Board meeting. David Cox is affected by the challenged final order in that he is an avid outdoorsman, wildlife photographer and bird watcher who visited the Sand Lakes tract and wishes to do so in the future. If the tract conveyed to a private entity and subsequently developed, the resources that he has enjoyed and hopes to observe in the future will be destroyed.

The Final Order Substantially Affects Natural Resources of Regional and Statewide Significance

14. The Sand Lake tract includes approximately¹ 170 acres of hydric

¹ Petitioners can only approximate the acreage of habitat types because the District did not provide a detailed delineation of onsite wetland features or Florida Land Use and Cover Classification System (FLUCCS) codes for onsite habitat. Further,

hardwood hammock, 185 acres of “relatively unaltered” marsh and wet prairie, and 650 acres of flatwoods, scrubby flatwoods, and dry prairie with scattered depressional wetlands and hydric hammock. The remainder of the property consists of long ago abandoned agricultural fields upon which native vegetation is naturally reestablishing.

15. The site contains habitat types utilized by a variety of listed species, including peregrine falcons, snail kites, wood storks, Florida scrub jays, sand hill cranes, crested caracaras, gopher tortoises, indigo snakes and wading birds such as little blue herons, and tri-colored herons.
16. Further, the land is strategically located to serve as a corridor for movement of wildlife to other undeveloped tracts of land. The Sand Lakes tract is a critical link needed to preserve a viable wildlife corridor connecting the St. Johns River Upper Basin area with the Sebastian River and the Indian River Lagoon.
17. The Sand Lake tract contains a significant region of scrub habitat. Because scrub lands are well drained, and do not enjoy the same regulatory protections as wetlands, they are often targeted as prime development land. Accordingly, native scrub habitat is considered to be the most endangered of major ecosystem types in Florida. Although the

a comprehensive wildlife survey was not conducted, so the actual level of

District has required a conservation easement to be placed over 50 acres of the Sand Lake tract because of its significance as scrub jay habitat, the habitat value of the scrub habitat contained within the Sand Lake tract will be significantly devalued if the surrounding lands are developed.

18. District staff asserted that the only “unique characteristic” of the Sand Lake tract is the scrub habitat, and has repeatedly emphasized that the Sand Lake tract does not contain any resources atypical “of this type of land in this region of the county”. However, whether the vegetation community types are “unique” or common in relation to the surrounding regional landscape is wholly irrelevant without knowing the level of protection, if any, afforded to the supposedly similar lands.
19. The District stated in its “Assessment of the Need to Retain The Sand Lakes Tract for Conservation Purposes” (June 15, 2007) that “[t]he 1265-acre Sand Lakes tract has intrinsic conservation values similar to the approximately 10,000 acres of partially intact ranchlands to the north and south. It contains substantial acreage of relatively healthy wetland resources and a small area of scrubby flatwoods formally occupied by Florida scrub-jays, which will be protected through a conservation

utilization of the Sand Lakes Tract by listed species is not documented.

easement.”

20. Based upon the supposed commonness of the Sand Lake tract, the District makes the amazing leap of faith that the 1265 acres are not worthy of continued protection. Regardless of its whether its wetland and scrub resources are strikingly different from those of the neighboring 10,000 acres, the Sand Lake tract’s natural communities are unique so long as the land is in public ownership because they are protected from future development. The Sand Lakes tract is subject to management practices intended to address invasive species, re-establishing a fire management regime and re-hydration of degraded wetlands. This is in stark contrast to the 10,000 acres of supposedly relatively similar “ranchlands” to the north and south in private ownership, that are managed not for conservation purposes but for cattle or agriculture, and which can be the subject of an application for yet another gated golf course community or Wal-Mart at any moment.
21. The regional significance and continued conservation value of the Sand Lakes tract is clearly demonstrated by an analysis performed using the Integrated Wildlife Habitat Ranking System (IWHRS), a recent, widely cited assessment tool developed by the Florida Fish and Wildlife Conservation Commission (FWC). This GIS-based habitat model

incorporates a wide variety of land cover, and wildlife species data, and was designed as a way to identify ecologically significant lands in the state. Pursuant to IWHRS, areas encompassed in the Sand Lakes tract were ranked from 1 (lowest) through 9 (highest). According to this independent scientific assessment, the Sand Lake tract contains over 1100 acres of land ranked “high quality,” meaning equal to or greater than 6, yet the District would pay \$657,300 in order to trade it for a paltry 460 acres fee simple and other interests of dubious value.

22. Further, Florida Natural Areas Inventory (FNAI) submitted an independent assessment of the conservation value of the property, including a Biodiversity Matrix Analysis which reported 22 listed species as Likely or Potential on the site, and additionally noting several Element Occurrences of rare species that occur on or near the site. FNAI’s independent scientific assessment recognizes the Sand Lakes tract as a significant region.
23. While the District has repeatedly characterized the Sand Lake tract as “typical”, it is in fact a significant asset to the region because of its diversity of natural community types, including significant portions of relatively undisturbed wetlands, a hardwood hammock and a rare tract of scrubby flatwoods, all of which support endangered wildlife and plant

species.

The Final Order Raises Issues of Policy and of Statutory Interpretation that have Regional and Statewide Significance From the Standpoint of Agency Precedent

24. Florida is still one of the fastest growing states in the nation, meaning that there is intense pressure to develop agricultural lands and rural lands, and that our conservation lands are very precious indeed. This was recognized by the Florida Legislature by the enactment of the Conservation and Recreation Lands Trust Fund, § 259.032, Fla. Stat., the Florida Preservation 2000 Act, § 259.101, Fla. Stat., and the Florida Forever Act, § 259.105, Fla. Stat. These important laws recognize the critical need to purchase and protect in perpetuity lands and water areas for conservation, restoration and recreation in order to protect the quality of life of Florida's citizens.
25. The District's final order divests the citizens of Florida of its ownership of the Sand Lake tract, and places those 1,265 acres of conservation lands in private ownership to be developed, based upon an inaccurate and deeply flawed determination that the lands are no longer needed for conservation by Florida's citizens. The resources that existed on the

Sand Lakes tract when it was purchased in 1999 are still present and still valuable and worthy of protection.

26. Protection of public conservations lands is a matter of great public interest and concern, as demonstrated by the amendment to Florida's state Constitution that raised the bar for an agency's determination that lands are no longer needed for conservation purposes. The District's disposal of the Sand Lake parcel is the most significant determination regarding the disposal of public lands acquired for conservation since the Constitutional amendment, and sets a terrible precedent for future decisions regarding preservation of public land.
27. The threshold consideration for the District, before it considered the relative rarity of the habitat types encompassed in the Sand Lakes tract, or how great a deal it can get in exchange for the public's land, is whether or not the Sand Lake tract is "no longer needed for conservation purposes."
28. As discussed above, the natural resource value that led to the purchase of the Sand Lakes tract with P2000 funding in 1999 still exists today, and in fact has likely improved to due controlled burns and exotic species eradication. The fact that the District's motivations for holding this land may have changed due to threatened litigation does not constitute a valid

reason to determine that a piece of land purchased for conservation, and in the same or better ecological condition as the day it was purchased, is “no longer needed for conservation.” If that were the case an agency could sell or trade away any piece of conservation land, regardless of the ecological condition, by simply saying that “our priorities have changed.” This is not what the Constitutional Amendment was intended to accomplish. Rather, it was intended to relate to the specific condition of a parcel of conservation land and allow it to be declared surplus only if its prior conservation value no longer exists. Just the opposite is true of the Sand Lakes tract, it is in better ecological condition that when it was purchased.

29. Perhaps a finding that the Sand Lakes tract is not needed for conservation could be justified by a scientifically based determination that so much land had been acquired in the vicinity of the Sand Lakes tract, in fee simple, along with a set aside funds to manage such lands in perpetuity, that ample habitat is available to support viable populations of all listed species that would potentially use the Sand Lake tract, as well as provide adequate outdoor recreation opportunities to Florida’s current and future citizens. However, the District instead justifies its decision based upon the supposed banality of the Sand Lakes tract and what a great deal it

could get by giving it away. The determination that the land is no longer needed for conservation was a post hoc rationalization based not upon meaningful and unbiased scientific analysis of conservation value, but upon political expediency. The District's sophistry in regard to the Sand Lake tract places protection of all of our state's conservation lands on a very slippery slope.

The Final Order is in Conflict with Sections 259.101, Fla. Stat., 373.016 Fla. Stat., and 373.089, Fla. Stat

A. Conflict with Section 259.101, Fla. Stat.

30. The Florida Preservation 2000 Act recognized the need for an aggressive program of public land acquisition in order to ameliorate the degradation of water resources, fragmentation and destruction of wildlife habitat, the loss of recreation space, and Florida's diminishing wetlands and forests. Section 259.101(2)(a) and (b), Fla. Stat.
31. It was the intent of P2000 that land acquisition efforts focus on protecting the integrity of ecological systems, and providing multiple benefits, including preservation of fish and wildlife habitat, recreation space, and water recharge areas. Section 259.101(2)(c) Fla. Stat.
32. Land such as the Sand Lakes tract, which was acquired with P2000 funds, can be disposed of only if the District determines that such lands no

longer need to be preserved in furtherance of the intent of the Florida Preservation 2000 Act. Section 259.101(6)(b), Fla. Stat. Such a determination would be appropriate only if the ecological value of the land had greatly and irrevocably deteriorated, or if so much land of similar ecological characteristics in near proximity has been preserved in perpetuity that the land's resources are truly redundant.

33. As discussed above, nothing has changed since the acquisition of the Sand Lakes tract that negates or nullifies its value as fish and wildlife habitat, recreation space, or as a water recharge area. The District's failure to invest resources in opening the Sand Lakes tract for recreation does not render the land without recreational value. The Sand Lake tract could be made available for hiking, camping, and nature study if the District chose to do so.
34. Nothing in P2000 authorizes the disposal of P2000 lands because the District has identified another tract of land it wishes to acquire, or in order to avoid a lawsuit. The only possible justification for disposing of the Sand Lake tract under § 259.101(6)(2) Fla. Stat. is that the land no longer needs to be preserved to further the intent of the Act. Given that neither the development of Florida's natural areas or escalating land values have slowed significantly since the Sand Lakes tract was

purchased it can hardly be determined that the land should no longer enjoy conservation status.

35. The District's disposal of the Sand Lakes tract is in conflict with Section 259.101.

B. Conflict with 373.016, Fla. Stat.

36. Section 373.016, Fla. Stat. contains the Legislature's Declaration of Policy regarding Florida's water resources. Among the stated policies of the Legislature are to preserve natural resources, fish and wildlife and to promote recreational development and protect public lands. The disposal of the Sand Lakes tract is wholly contrary to those important policies.
37. The Sand Lake tract is known to provide habitat for numerous listed species. The District has not made a determination that the resources encompassed in the Sand Lakes tract no longer provide habitat for fish and wildlife, or that the Sand Lakes tract habitats are not needed to support recovery of those listed species. Accordingly, the disposal of the 1,265 acres of the public's land conflicts with the Legislative policy of preserving natural resources, fish and wildlife.
38. Furthermore, the Sand Lakes tract is being traded for a parcel of land half its size and not nearly as diverse in terms of habitat types or apparently nearly as rich in terms of wildlife species. If the 460 acres of the

Corrigan Ranch contains valuable natural resources and meets other acquisition criteria, it too should be acquired as public land. Giving away the Sand Lake tract, no matter what the consideration exchanged, is inconsistent with the Legislative policy to protect public land and promote development of recreational opportunities.

B. Conflict with 373.089, Fla. Stat.

39. Similar to Section 259.101, Section 373.089(6) Fla. Stat. similarly requires that lands that had been obtained for conservation purposes may be disposed only if the District governing board makes a determination that the lands are no longer needed for conservation purposes by 2/3rd vote.
40. The Sand Lake tract exhibits a mosaic of diverse, predominantly intact natural community types, including significant portions of relatively undisturbed wetlands, a hardwood hammock and a rare tract of scrubby flatwoods, all of which support endangered wildlife species. The District has not and could not make a good faith determination that the Sand Lake tract is not needed for conservation purposes.
41. The District justifies disposing of the Sand Lake tract, at least in part, on the basis that the tract does not contain “unique conservation resources.” However, even if that were true, that is not the standard imposed by

Florida law.

42. The District also asserts that the original conservation purposes that drove the acquisition of the Sand Lake tract, which it claims was the tract's potential for linking other conservation lands, do not support the retention of the land because other key components of its anticipated linkage have not been acquired. First, even without connectivity, the land provides fish and wildlife habitat and retains recreational value. Second, the Sand Lake tract currently does provide a critical link needed to connect the St. Johns River Upper Basin area with the St. Sebastian River and the Indian River Lagoon. The District asserts that the land is no longer needed because it feels that it is "too late" to acquire all of the lands needed to connect the corridor. While it may not be possible to acquire all of the necessary land in fee simple², there are still ample opportunities to preserve viable wildlife corridors on adjacent properties through purchase of conservation easements and/or through requirements for preservation imposed as part of the development review and environmental permitting processes.

² The Corrigan's are the owners of some of the lands needed to complete the corridor, and the District states that they are not willing sellers. Perhaps if they were not the beneficiaries of this sweetheart deal at taxpayer's expense they would be more willing to consider exploring public acquisition of portions of their vast landholdings for just compensation.

43. The District also attempts to rationalize the disposal of the Sand Lake tract by concluding that the deal it has struck creates a so called “net conservation benefit.” While this conclusion is highly specious, even if it were true, that is not the standard imposed by Florida law.
44. Finally, the District refers to the disposal of the Sand Lakes tract, along with a payment of \$657,300.00, as a “reasonable settlement” that furthers the interest of the Upper St Johns River Basin project and the District’s ability to operate the Blue Cypress Water Management Area to benefit the snail kite. The numbers contained in the one and only one appraisal of the relative economic values of the land interests exchanged are totally speculative, as are any economic damages owed to the Corrigan in the event that they prove that their ranch land is wetter for longer periods of time because of District actions. The Corrigan may have enjoyed a level of flood protection to which they were not legally entitled, or there may be a simple surface water engineering fix to address any increase in water levels. Presumably the damages suffered by the Corrigan lands cannot be too onerous given that the condition has been present for over a decade, and that settlement agreement does not in anyway modify the status quo regarding the supposed moistening of their property, but rather holds the District harmless from past and future

damages, if any.

45. However, even if the settlement were “reasonable”, that is not the standard imposed by Florida law. The standard imposed by Florida law is that before the Sand lake tract may be disposed of the District must determine that it is no longer needed for conservation purposes or to further the intent of P2000. The reasons that the Sand Lake tract was acquired, its relatively undisturbed state, its abundance of diverse natural communities, and its value for wildlife and recreation and water recharge, are no less compelling today. Accordingly, the District’s political rather than scientific determination that the Sand Lakes tract is disposable must not stand.

RELIEF SOUGHT

Petitioners respectfully request that Florida Land and Water Adjudicatory Commission rescind the September 12, 2007 Final Order of the St. Johns River Water Management District Governing Board approving exchange of the Sand Lake tract.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by overnight delivery on this ___ day of October, 2007 upon:

Jerry L. McDaniel, Secretary
Florida Land and Water Adjudicatory Commission
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Tallahassee, Florida 32399-0001

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