

**AUDUBON OF FLORIDA - DEFENDERS OF WILDLIFE –
EARTHJUSTICE - FLORIDA WILDLIFE FEDERATION -
GULF COAST CONSERVANCY -
GULF RESTORATION NETWORK -
HERNANDO AUDUBON SOCIETY -
THE NATURE CONSERVANCY**

03/30/2009

Governing Board of the Southwest Florida Water Management District
Staff of the Southwest Florida Water Management District

RE: Item 50, March 31, 2009 Agenda, Appraisal and Exchange Agreement—Weekiwachee Preserve, SWF Parcel Nos. 15-773-201, 15-773-207S and 15-773-209

Dear Governing Board Members and District Staff,

Representatives of the undersigned organizations have reviewed the proposed land exchange referenced in Agenda Item 50 on the March 31 Governing Board meeting. The proposed exchange raises serious questions about the disposition of conservation lands. We do not believe that the proposed exchange meets the test of Article 10 Section 18 of the Florida Constitution.

In 1998 voters overwhelmingly approved the Conservation Amendment which included two important provisions relating to environmental lands. The Amendment authorized state bonds for purchase of lands "for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation." This language became the basis for the Florida Forever Program which was enacted by the Legislature the following year resulting in hundreds of thousands of acres of lands acquired for "conservation purposes."

In tandem with this constitution provision was another section designed to protect lands acquired for conservation purposes from being disposed of by subsequent policy makers. This provision was the direct result of concerns that lands purchased for conservation purposes could be subsequently diverted to other uses. Article X Section 18 provides as follows:

SECTION 18. Disposition of conservation lands. - The 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 the 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.

In 1999 the Florida Legislature implemented this provision by stating that all lands acquired

under Florida Forever were acquired for "conservation purposes." Section 373.089 (6) provides *"For those lands designated as acquired for conservation purposes, the governing board shall make a determination that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote."*

Section 18 creates a new constitution standard relating to disposition of lands acquired for conservation purposes. It upholds the public trust by making it much harder to alienate conservation lands bought for perpetual protection. It imposes a higher standard on governing boards and the Cabinet relating to conservation lands. It requires them to pause and make a specific finding that "the lands are no longer needed for conservation purposes." Because it requires a supermajority vote, it raises the bar for projection of these lands. While the governing board may make a subsequent determination of whether to make an exchange of property this is not appropriate until the board first makes the determination that the property is no longer needed for conservation purposes.

In this case, the property was acquired for conservation purposes associated with the Florida Forever Program and the sole issue now is whether the property is no longer needed for conservation purposes.

In process and in fact the staff recommendation does not meet the test of determining that the land is no longer needed for conservation. The report prepared by SWFWMD District staff titled "Evaluation of the Need to Retain the Wooley Tract for Conservation Purposes", dated February 21, 2009 makes a disputable claim that attaining equivalent or higher conservation value is justification for an exchange. We are concerned that rather than the constitutional test approved by voters that opportunity will become the test that determines whether land is no longer needed for conservation purposes.

Both the Constitution and Section 373.089 (6) require that the specific lands to be declared surplus and disposed of (in this case the Wooley Tract) must be determined to be "...no longer needed for conservation..." If disposition of Conservation lands through a declaration of surplus, and a subsequent sale or exchange of those lands is to be supportable, we believe that both the Constitution and Section 373.089 (6) require a first threshold determination that the land to be conveyed out of the state conservation land inventory is itself so diminished in conservation value that had those conditions been the case at the time of acquisition, the property to be released from state ownership would never have been purchased in the first place, and therefore no longer needed for conservation.

The District staff bases its justification of the proposed land exchange on a comparative benefits analysis in which the conservation values of the Wooley Tract and potential exchange parcels are ranked and discussed. This comparative analysis is the singular measure of the District's proposed determination. In fact the District's document "Evaluation of the Need to Retain the Wooley Tract for Conservation Purposes" never reaches a conclusion on the issue of whether or not the Wooley Tract, within its own boundaries, is "...no longer needed for conservation".

The fact that the district followed this approach is made clear by a direct admission contained in the report itself. At page 3, the report reads:

The proposed exchange involves, in part, the divestiture of the Wooley tract and its current conservation value to obtain a broader, long term net gain in conservation value in the future. In other terms, the District will use the Wooley tract's conservation value as a capital investment to achieve a greater net conservation return on the lands that will remain in conservation, or be placed under conservation in the future. Therefore, it is not useful to analyze the Wooley tract's present conservation value in justifying its disposition. To determine the value of Wooley for conservation in light of the county's modified land use vision, we compared the overall conservation value of the south Aripeka Greenway extension under two post-development scenarios: 1) the exchange scenario, and 2) the no exchange scenario (Figure 1) (Emphasis added).

What the District Staff has done is to articulate an alternative test for the disposal of Conservation Lands that is foreign to the Constitutional requirements under Section 18. This alternative test, under which the District's initial and singular approach to the evaluation of the need to retain the Wooley tract for conservation is that "...the District will use the Wooley tract's conservation value as a capital investment to achieve a greater net conservation return..." is not anticipated under either the Constitution or Florida Statute 373.089(6).

While the undersigned organizations would agree that the District and other state agencies owning and managing Conservation Lands within the meaning of the Constitution, Article 10 Section 18 and Florida Statute 373.089(6) FS. ultimately **DO** have authorization to consider possible land exchanges of Conservation Lands, the decision to swap can be made collaterally only if the decision on no conservation value stands on its own. We believe that the consideration of such exchanges must only follow after, and be secondary to a determination limited to the conservation values of the parcel to be disposed of itself. The required initial determination (specified clearly in Article 10 Section 18 and Florida Statute 373.089 (6)) must find that within the boundaries of the parcel to be declared surplus standing alone, that this particular parcel itself "...is no longer needed for conservation". If this primary evaluation is to be influenced by other considerations, which amount to expression of a desire for, or a comparative analysis of the values of other parcels that might be sought in an exchange, the determination of no conservation value must be able to stand on its own.

The Wooley Tract maintains the current conservation values for which it was purchased and arguably even has elevated in importance due to the encroaching development. It is only necessary to review the remainder of the lands in the Weekiwachee Preserve in comparison to the varying degree of existing and proposed development that interfaces with such lands to see that the Wooley Tract would continue to fit comfortably within the range of the conservation values provided by retention of many other portions of the Weekiwachee Preserve even after the Sunwest Harbortowne development is completed as proposed.

If, in fact, the degree of loss to the conservation values of the Wooley Tract due to the adjacent Sunwest Harbortowne DRI rises to the level to justify a finding that Wooley is "...no longer needed for Conservation" it would appear that large portions of the remainder of the Weekiwachee Preserve would also be susceptible to being declared surplus under the very same

test, either immediately, or over time as development continues to encroach on the boundaries of the Preserve or within inholdings surrounded by the Preserve.

The groups that are signatory to this letter believe that the proposed determination of "...No longer needed for Conservation." For the Wooley tract constitutes a legally incorrect decision that poses great risk for the future of other conservation lands acquired under Florida Forever and Preservation 2000. The laudable motivation to acquire larger, and perhaps even more ecologically valuable tracts than those previously purchased under Florida Forever and Preservation 2000 will always be present. The long term stability of preservation already achieved should not be undermined by converting the lands currently in the conservation inventory to mere "capital investments" seen as freely exchangeable tradelands to be used as an economic resource to acquire other parcels. This, in fact, is the very scenario that the Amendment 5 to the Florida Constitution approved by an overwhelming majority of Florida voters in 1998 was intended to avoid.

We have consulted with Mr. Clay Henderson, a member of the Constitutional Revision Commission, who was the primary author of Amendment 5. Mr. Henderson agrees with the conclusions and recommendations in this letter.

For these reasons, the undersigned organizations urge that the Governing Board to vote not to accept the proposed determination that the Wooley tract is "no longer needed for conservation", and to reject the proposed exchange.

Sincerely,

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Laurie Macdonald, Florida Director, Defenders of Wildlife

David Guest, Esq., Managing Attorney, Earthjustice

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