

**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA**



**COMMISSION AGENDA
PUBLIC WORKSHOP**

WEDNESDAY, JUNE 6, 2007 - 2:00 P.M.

**County Commission Chamber
County Administration Building
1840 25th Street, Vero Beach, Florida, 32960-3365
WWW.IRCGOV.COM**

COUNTY COMMISSIONERS

Gary C. Wheeler, Chairman	District 3	Joseph A. Baird, County Administrator
Sandra L. Bowden, Vice Chairman	District 5	William G. Collins II, County Attorney
Wesley S. Davis	District 1	Jeffrey K. Barton, Clerk to the Board
Joseph E. Flescher	District 2	
Peter D. O'Bryan	District 4	

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- | | | | <u>PAGE</u> |
|-----------|--|-------------------------|--------------------|
| 1. | <u>CALL TO ORDER</u> | <u>2:00 P.M.</u> | |
| 2. | <u>PLEDGE OF ALLEGIANCE</u> | | |
| 3. | <u>PRESENTATION BY ST. JOHNS RIVER WATER MANAGEMENT DISTRICT</u> | | |
| | Proposed Land Exchange between the St. Johns River Water Management District (SJRWMD) and Corrigan Family Partnerships - Robert Christianson, Director, SJRWMD Department of Operations and Land Resources | | 1-9 |
| 4. | <u>BOARD DISCUSSION</u> | | |
| 5. | <u>PUBLIC COMMENTS</u> | | |
| 6. | <u>ADJOURNMENT</u> | | |

NOTICE: All proceedings before this Board are electronically recorded. Any person who decides to appeal any action taken by the Board at these meetings will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made. Anyone who needs a special accommodation for this meeting may contact the County's Americans with Disabilities Act Coordinator at 226-1223, (TDD # 772-770-5215) at least 48 hours in advance of the meeting.

MEMORANDUM

**LA 1999-005 (a) (b)
LA 2001-046**

DATE: May 8, 2007

TO: Governing Board

THROUGH: Kirby B. Green, III
Executive Director

David W. Fisk
Assistant Executive Director

Robert A. Christianson, Director
Department of Operations & Land Resources

Raymond B. Bunton, Jr., Director
Division of Land Acquisition

FROM: Leota D. Wilkinson, Sr. Land Acquisition Agent
Division of Land Acquisition

SUBJECT: Proposed Land Exchange for the remaining portion of the District-owned Berry Groves property, LA#1999-005 and Corrigan Property, LA#2001-46, Indian River County, Florida

RECOMMENDATION

Exchange of approximately 1,265 acres, of the District's remaining portion of the Berry Groves property, LA 1999-005 for approximately 460 acres, owned by Pat Corrigan Family Partnership and Hugh Corrigan Family Partnership ("Corrigan"), LA# 2001-46, in Indian River County:

- 1) Approval to execute an Agreement for Exchange;
- 2) Execute and deliver a Quit Claim Deed from the District conveying approximately 1,265 acres to Corrigan in exchange for acceptance of a Deed from Corrigan conveying 460 acres to the District and a covenant protecting the District on an additional approximately 5,900 acres of Corrigan land;
- 3) Designation by the Governing Board that the Berry Groves exchange property is no longer needed for conservation purposes, pursuant to Section 373.089, F.S.;
- 4) Designation by the Governing Board that the Corrigan property to be acquired by the District is being acquired for conservation purposes, pursuant to Section 373.089, F.S.; and
- 5) Authorization to execute and deliver the Deed of Conveyance, and other documents and affidavits as may be required to close under the terms of the Agreement.

BACKGROUND

This proposed exchange will resolves a long-standing dispute between the Corrigan family and the District relating to disputes over flooding issues. In 1989, the District acquired the approximately 10,665 acre property now know as the Blue Cypress Water Management Area within the Blue Cypress Marsh Conservation Area (BCMCA) adjacent to the Corrigan Ranch in Indian River County. These two large tracts of land share a common boundary of almost 2 1/4 miles. All but approximately 460 acres of the Corrigan Ranch are separated from the District

property by a levee on Corrigan property. This levee prevents water from moving from the District property onto the Corrigan property.

In the late 1980's, the District began to manage water levels within the BCMCA as part of the Upper St Johns River Basin federal flood control project for which the District is the local sponsor. Water levels are managed in accordance with the US Army Corps of Engineers approved regulation schedule for the project. This water level regulation schedule results in flooding of the BCMCA at levels higher in elevation for longer periods of duration than that which existed prior to the District's involvement for most periods of time and lower water levels during extreme flooding events.

For the approximately 460-acre portion of the Corrigan property waterward of their levee, the District's actions have led to increased flooding when compared with conditions that existed on the property prior to implementation of the Upper St. Johns River Basin project in this area and the District acknowledges that it has a responsibility to compensate the Corrigans for this impact. The District and the Corrigans have had discussions on and off over the years to resolve this issue without success. Recently, the Corrigans have asserted claims that the District's water management practices have adversely affected not only the approximately 460-acre property discussed above, but also a substantial portion of their property landward of their levee due to seepage. The District does not agree with these additional flooding claims asserted by the Corrigans but has engaged in settlement discussions to explore whether a resolution of all issues can be reached.

In March, 1999, the District acquired 3,283 acres of property north and west of the Corrigan Ranch known as the Berry Groves property. This acquisition was for the purpose of building a reservoir for agricultural water supply and water storage. The Berry Groves property consists of citrus groves, former agricultural fields, pasture land and some relatively undisturbed natural areas. During the early 2000's, the District had the opportunity to acquire additional lands nearby that presented a much superior location for the reservoir project. This resulted in the District no longer needing the Berry Groves property. In January 2006, the District disposed of the western-most 2018 acres of the Berry Groves tract in an exchange for other properties to the west. The remaining 1265-acre portion of the Berry Groves tract is the subject of this proposed exchange with the Corrigans.

DISCUSSION

In late 2005, District staff and the Corrigans agreed in concept to a settlement of all matters described above. In exchange for the District conveying the 1265 acre Berry Groves remainder property to the Corrigans, the Corrigans will convey the 460 acre tract westward of their levee to the District and release the District from all claims, past and future, for damage from flooding or seepage by the District over the approximately 5,900 acres of their ranch west of I-95.

The District's Governing Board Legal Counsel, in cooperation with Corrigan's Legal Counsel, secured an appraiser to determine the value for both properties. Philip M. Holden, MAI, of S.F. HOLDEN, INC, appraised the subject exchange properties in December 2005. The Highest and Best Use of the Corrigan property is considered by the appraiser to be continued agricultural and recreational utilization with future residential development. The Highest and Best Use of the Berry Groves tract is considered by the appraiser to be continued agricultural and recreational utilization with long-term speculation.

Based on the appraisal results, District staff is of the opinion that this exchange as presented below is a value for value exchange. EXCHANGE

1,265 acres of the remaining District owned Berry Groves property, plus an additional contribution of \$657,300 cash by the District, for approximately 460 acres of the Corrigan property and a General Release from the Corrigan Family eliminating all past, present and future claims associated with flooding or seepage arising from the District's operation of the Upper St. Johns River Basin Project. This General Release applies to approximately 5,900 acres of Corrigan Property.

SPECIAL CONDITIONS

This exchange is made subject to the following special conditions:

1. District to assign an access easement over existing roads to the northwest corner of the Berry Groves tract.
2. Corrigan to provide the District with a perpetual drainage and flowage easement over the adjacent south 150 feet of the Corrigan property.
3. Corrigan executes a General Release eliminating all claims associated with flooding or seepage for all past, present and future claims arising from the District's operation of the Upper St. Johns River Basin Project.
4. Corrigan shall retain the right to flow water onto the Corrigan exchange property subject to any and all permit requirements.

CONTINGENCIES

This exchange is made subject to the following contingencies:

1. Final approval of an Agreement for Exchange of Real Property by the Governing Board of the SJRWMD.
2. A survey, title insurance policy and a Phase I Environmental Site Assessment acceptable to the SJRWMD.
3. Availability of Ad Valorem funds.

CLOSING COSTS

The following costs of closing shall be paid by the District:

1. Phase I Environmental Site Assessment for the Corrigan property.
2. Preparation of Documents to complete closing
3. Title Insurance for the Berry Groves tract
4. Documentary Stamps on the Deed for the Berry Groves tract
5. Survey for the Berry Groves tract
6. Recording fees for the Berry Groves tract

The following costs of closing shall be paid by Corrigan:

1. Phase I Environmental Site Assessment for the Berry Groves tract, if necessary
2. Pro-rated share of Real Estate Taxes for the Corrigan property

The following costs of closing for the Corrigan property shall be shared equally by the District and Corrigan:

1. Title Insurance
2. Documentary Stamps on the Deed

3. Survey
4. Recording fees
5. Phase II Environmental Site Assessment, if necessary

FUNDING

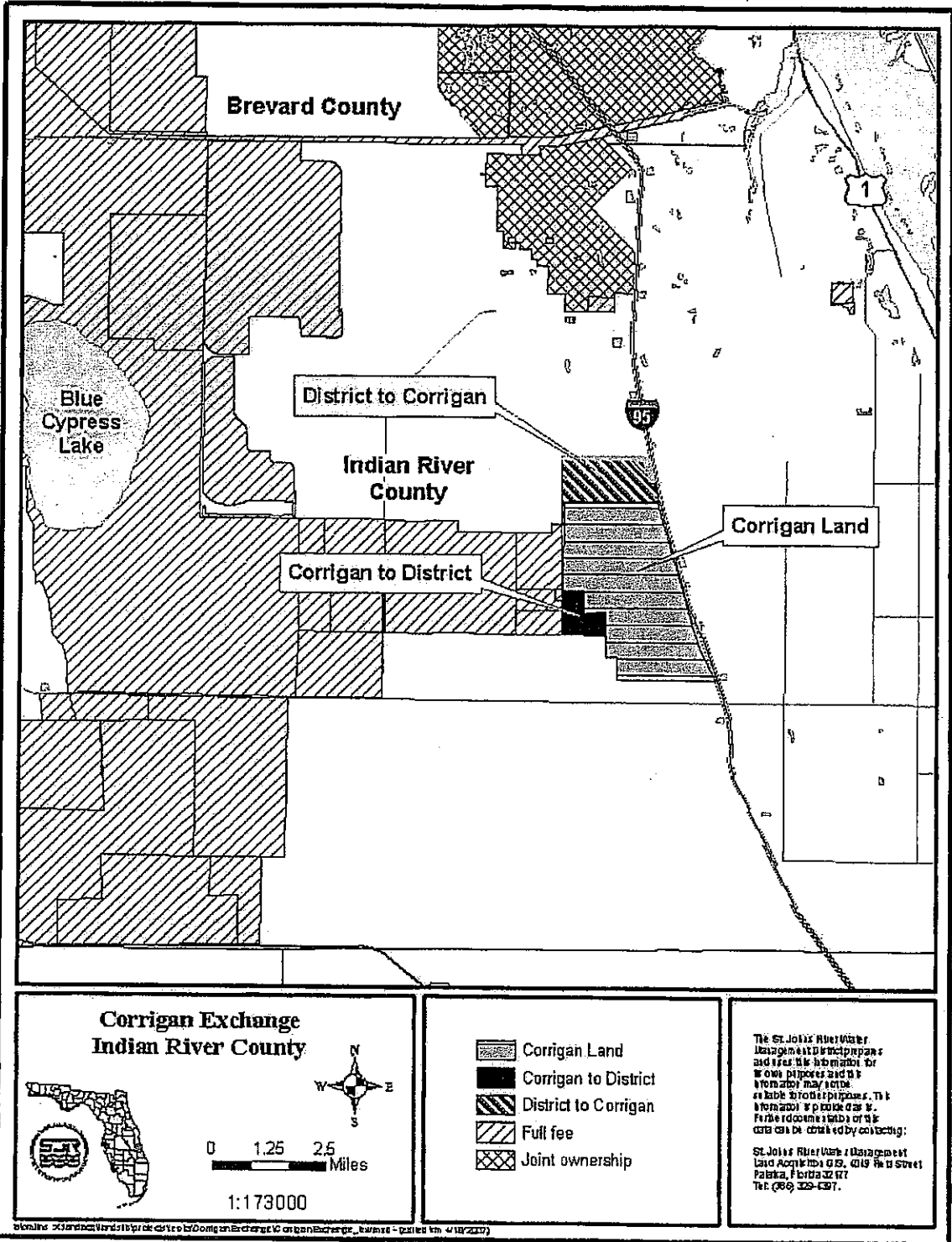
It is anticipated that the primary source of funds for closing shall come from Ad Valorem funds.

OTHER:

The Berry Groves property was designated by the Governing Board as being acquired for conservation purposes pursuant to Section 373.089, Florida Statutes. Since a portion of this property is being exchanged, it will be necessary for the Board to make the determination that the exchange parcel is no longer needed for conservation purposes, pursuant to Section 373.089, Florida Statutes. In addition, the Corrigan Property is being acquired for conservation purposes per Section 373.089, F.S.

The parcel is being exchanged in accordance with Section 373.089, Florida Statutes, *Sale or Exchange of Lands*, which outlines the procedures for the sale of land by Water Management Districts and Rule 40C-9.081, Florida Administrative Code.

RAC/dw



LAND ACQUISITION ADVISORY COMMITTEE (LAAC)

The Indian River County (IRC) Land Acquisition Advisory Committee (LAAC) held a Special Call meeting on Wednesday, May 2, 2007 at 1:30 p.m. in the County Commission Chambers of the County Administration Building, 1840 25th Street, Vero Beach, Florida.

Present were members; Chairman Dr. Richard Baker, Pelican Island Audubon Society Representative; Councilmember Sabin Abell, City of Vero Beach Representative; Council Member Andrea Coy, City of Sebastian Representative; Councilmember Frannie Atchison, Town of Indian River Shores Representative; Council Member Susan Adams, City of Fellsmere Representative; Jim Granse, Taxpayers' Association Representative; Lois Work, Board of Realtors Representative; Janice Broda, Mosquito Control District Representative; Louis Schacht, Agriculture Interest Representative; Frederick Dillon, Bonnie Veron and Talmage Rogers, Members-at-Large; Kevin Doty, Civic Association Representative; Toni Robinson, Indian River Land Trust (IRLT) Representative; Michael Walther, IRC Chamber of Commerce Representative and Judy Orcutt, Sierra Club Representative;

Absent were: Vice Chairman Adam Bolinger, Development Community Representative; Councilmember Bud Oatway, Town of Orchid Representative and George Blythe, IRC Historical Society Representative (all unexcused).

Also present was non-voting Commissioner Liaison Peter O'Bryan and IRC staff: Michael Zito, Assistant County Administrator; Marian Fell and George Glenn, Assistant County Attorneys; Bob Keating, Director of Community Development; Roland DeBlois, Chief of Environmental Planning and Phil Matson, MPO Staff Director. Others present: were IRC Commissioners Sandra Bowden and Joseph Flescher; Jason Nunemaker, City Manager, City of Fellsmere; John Kennedy, Consultant, Dean Luethje, Carter and Associates; Ralph Monticello, IRLT; Ruth Stanbridge, IRC Historian; Robert Christianson, St. Johns River Water Management District (SJRWMD); Graham Cox, Audubon Society; and Reta Smith, Recording Secretary.

Call to Order

Chairman Baker called the meeting to order.

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Approval of March 28, 2007 Meeting Minutes

Mr. Rogers noted on page four dealing with the City of Fellsmere City Manager Mr. Jason Nunemaker's presentation on the Fellsmere Preserve, the minutes said the remainder of the funds after the 30% from the County would come from Florida Communities Trust (FCT), and it was his understanding half of the remainder would come from the City of Fellsmere and half from FCT. He pointed out the motion on page six listed the vote as 5 in favor and 7 in opposition, but there were eight people listed as being against the motion, so the vote should have been 5 in favor and 8 in opposition. Mr. Rogers suggested making a note the motion was defeated, because he thought it was very unclear. Chairman Baker related the motion on page eight was listed as 5 in favor and 7 in opposition, when it should be six in favor and seven opposing.

In response to Mr. Rogers' query about page four of the minutes, Mr. Nunemaker clarified the City of Fellsmere was applying for an FCT grant as a small city, which meant they had eligibility for 100% match, and getting some match from the County increased their points. Mr. Rogers asked if the City of Fellsmere was putting up any money towards the purchase. Mr. Nunemaker stated Fellsmere had put up \$30,000 to do the grant work and move it forward, but basically the money they would bring to the table was the enhanced draw back from FCT as a small city. He added he would be reducing the request for the County's share later on in today's meeting.

ON MOTION BY Mr. Rogers, SECONDED BY Mrs. Work, the Committee voted unanimously (16-0) to approve the minutes of the meeting of March 28, 2007, as amended.

Presentation and Discussion on Land Exchange Between the St. Johns River Water Management District (SJRWMD) and Corrigan Family Partnerships – Robert Christianson, Director, SJRWMD Department of Operations and Land Resources

Mr. Christianson advised this was for informational purposes only and the action was scheduled to go before the SJRWMD governing board on May 8, 2007. He reviewed SJRWMD's project for the creation of a reservoir as discussed with LAAC at its February 28, 2007, meeting, a copy of which is on file in the Commission Office.

Mr. Christianson related the proposed exchange of land would resolve a long-standing dispute over flooding the Corrigan family's land had allegedly experienced from the SJRWMD's adjoining properties. He referred to the memorandum dated May 8, 2007, from Leota D. Wilkinson, SJRWMD Senior Land Acquisition Agent, contained in today's backup on file in the Commission Office, and reviewed the information contained therein. Mr. Christianson pointed out the proposed areas for the land swap on the ELMO, noting the Corrigan family would receive 1,265 acres and \$657,300 cash in exchange for acceptance

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of a deed from the Corrigan's conveying 460 acres to the SJRWMD, along with a release of all claims for damages past, present and future for damage from flooding or seepage to the approximately 5,900 acres of the Corrigan ranch west of Interstate 95 (I-95) arising from the SJRWMD's operation of the Upper St. Johns River Basin Project .

A lengthy discussion followed.

Mr. Doty stated he had assigned a value of \$25,000 per acre to all of the acreage involved, and the 1,265 acre parcel would be worth \$33,625,000. Using the same figure on the 460 acres the Corrigan's would convey to the SJRWMD, it would be worth \$11,500,000, with a difference of \$22,125,000 to the Corrigan's' benefit. He noted that was a lot of water damages, and suggested SJRWMD build a dike or levee and save money by not doing the exchange.

Mr. Christianson said the SJRWMD had hired an appraiser and the numbers cited by Mr. Doty were pretty far askew from the appraiser's findings, adding the value the SJRWMD was receiving in the exchange was in excess to the exposure that might come from any legal action from the Corrigan's.

A discussion ensued.

ON MOTION BY Mr. Doty, SECONDED BY Ms. Orcutt, to have the Committee send a letter to the board of the St. Johns River Management District and suggest they get a new appraisal.

Mr. Christianson explained how the SJRWMD had arrived at its appraisal, given the ramifications involved.

Council Member Coy did not think the LAAC should be sending out a letter because it was acting in an advisory capacity, and suggested the letter should come from the BCC.

Attorney Fell noted any member of the LAAC could exercise their First Amendment rights and contact the SJRWMD board with a recommendation.

ON AMENDED MOTION BY Mr. Doty, AMENDED SECOND BY Ms. Orcutt, to recommend the Board of County Commissioners send a letter to the board of the St. Johns River Management District and request they get a new appraisal using a different appraiser.

A lengthy discussion followed.

Mr. Doty withdrew his motion and Ms. Orcutt withdrew her second.

Mrs. Robinson left the meeting at 2:30 p.m.

Mr. Rogers noted the BCC would meet next Tuesday on the same date as the SJRWMD board meeting, so the motion would be moot. Mr. Christianson recalled when he had attended the LAAC meeting on February 28, 2007, a Committee member had requested he come and present the details of the upcoming exchange to the LAAC before it occurred, and he was here today for that reason.

Mr. Walther pointed out control of the land in question remained in part to the County.

ON MOTION BY Mr. Walther, SECONDED BY Ms. Orcutt, the Committee voted unanimously (15-0) to recommend the Board of County Commissioners direct staff to move forward to resolve the Conservation Land designation on the property to appropriately provide for the preservation of the subject lands in the future, even if it was in private ownership.

Chairman Baker recalled the site was part of the old Berry Groves property and at one time it had been on the LAAC list for purchase.

A discussion ensued.

Ms. Orcutt stressed Mr. Walther's motion would also apply to the previous exchange by the SJRWMD as discussed at the February 28, 2007, meeting, and the goal of the motion was to clarify the land use designation in order for land in private ownership to remain in conservation. Mr. Walther agreed.

Commissioner O'Bryan advised according to the State statute it took a two thirds vote in order for the governing board of SJRWMD to surplus lands acquired under conservation, and suggested the Committee members contact all of the members of the SJRWMD board and ask them not to declare the land as surplus.

Ms. Orcutt left the meeting at 2:50 p.m.

Chairman's Matters

(a) Fellsmere Preserve FCT Application and County Funding

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