

# Holland & Knight

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August 29, 2013

Herschel T. Vinyard, Jr.  
Secretary  
Department of Environmental Protection  
3900 Commonwealth Blvd., MS 25  
Tallahassee, FL 32399

Re: Proposed Surplus of Lands Within Allen David Broussard Catfish Creek Preserve  
State Park

Dear Secretary Vinyard:

It is my pleasure to represent Dr. William Broussard and his wife Margaret who are true conservation heroes in Florida. They have been recognized by many conservation organizations for their deep commitment and extraordinary actions to protect special places in our state. Their Forever Florida Preserve, which includes sections of the Florida National Scenic Trail, is an inspiring project and a lasting legacy for conservation.

The purpose of this letter is to register a very real and personal objection to the proposed surplus of lands within the Allen David Broussard Catfish Creek Preserve State Park. "Allen's Preserve," as they call it, is named for their son who was a gifted wildlife biologist who died shortly after his 29<sup>th</sup> birthday. Dr. Broussard and Margaret worked very closely with The Nature Conservancy to establish a memorial fund in their son's name for acquisition of high value scrub on the Lake Wales Ridge.

In 1990, TNC sponsored Catfish Creek as a Preservation 2000 project in order to protect lands "inhabited by plants and animals found nowhere else." Donations from the Broussard Memorial Fund, including significant personal donations from Dr. Broussard and Margaret, allowed TNC to acquire the initial 1100 acres of Catfish Creek in 1990. In 1991, TNC conveyed the property to the State of Florida and the Legislature designated it as the Allen David Broussard Catfish Creek Preserve and later as a State Park. This designation by the Legislature honors the personal commitment by the Broussard Family for protection of this rare and unique site. Catfish Creek is

legacy that all Floridians can enjoy made possible initially through the generosity and commitment to conservation of the Broussard Family.

Today, Allen's Preserve includes over 10,000 acres and protects habitat for at least 19 rare plant and animal species, many of which are protected under the Endangered Species Act. The primary goal of the management of the Preserve is to "protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna representing a natural area unique to, or scarce within, a region of this state or larger geographic area; to conserve and protect significant habitat for native species or endangered and threatened species..."

The lands proposed for surplus are within the approved project boundaries of Catfish Creek and within the optimum boundaries identified in the Unit Management Plan. Indeed, the approved Management Plan makes no mention of the need to surplus any lands within the Preserve. The lands proposed for surplus are no different in kind than other lands within the Preserve and as such serve as habitat for the rare and imperiled species found there. To that end, it is impossible to objectively conclude that these lands are "no longer needed for conservation purposes" as required by the Florida Constitution.

Personally and professionally, I am deeply troubled by this very rushed effort to sell off portions of the legacy of Florida's irreplaceable conservation lands. As the draftsman and sponsor of Article XI, Section 18 Florida Constitution, I can tell you the stated intent of this section was to "establish a Public Trust Doctrine for public lands" such that lands could only be disposed of "when no longer required for the purposes for which they were acquired." While the Legislature has not attempted to define what "no longer needed for conservation purposes" means, it has essentially included this Public Trust Doctrine in the statutes. Section 253.034(6)(e) Fla. Stat. requires a determination by the Council as to "whether the request for surplus is compatible with the resource values of and management objectives for such lands." Lands within the Broussard Preserve were acquired under Preservation 2000 which pre-dates Art. XI, Sec. 18. Fla. Con. The surplus standard for lands acquired under Preservation 2000 is, "that such land no longer needs to be preserved in furtherance of the intent of the Florida Preservation 2000 Act." (Sec. 259.101(6)(b), Fla. Stat.) By definition, lands acquired within an approved P2000 project boundary developed for a specific conservation purpose which still contributes to that conservation purpose, cannot be surplus because it remains consistent with the purposes for which it was acquired. To do otherwise would run contrary to the Public Trust.

Simply stated, the lands proposed to be surplus within the Broussard Preserve contain rare habitat for imperiled species consistent with the overall purpose of the Preserve. If the Broussard Preserve is still required for conservation purposes, it only follows that all those lands within the approved project boundary are still required for conservation purposes.

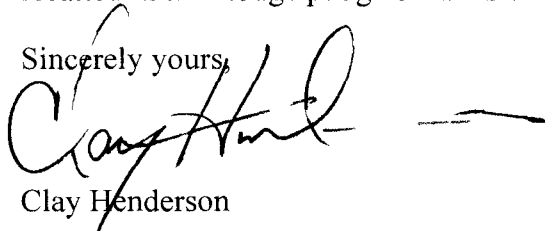
Beyond this, I am troubled by the use of a GIS Computer Model to essentially create a standard for interpreting the Constitution. As described on your web site, the model was developed from use of "dots," a "point system," a "course filter," and "criteria weighted models," among other

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things. There is no basis in law or rule for the use of such a computer model to support a finding that lands are "no longer needed for conservation purposes." While we understand that this action is taken pursuant to proviso language in the Appropriations Act to require an "assessment," there is no policy guidance as to standards and criteria. As such the use of the computer model and weighted criteria appears to be incipient agency policy for which rule making should be required.

For these reasons, we object to further listing of lands within the Allen David Broussard Catfish Creek Preserve State Park for surplus. We specifically call upon DEP and the Acquisition and Restoration Council to remove this from further consideration for surplus. We also call upon Acquisition and Restoration Council to seriously question the very rushed process which has resulted in this hodge podge of lands being proposed for surplus.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Clay Henderson", followed by a horizontal line.

Clay Henderson

CH:wgs

cc: ARC members  
Susan Grandin  
Marianne Gengenbach  
Shelly Lakly  
Sen. Thad Altman