



Florida's Conservation Lands: Money, Assessment and Surplus

By Lauren N. Geraci, Maloney Writing Contest Winner (2014), Stetson University College of Law, J.D./M.B.A

I. INTRODUCTION

Florida has long been recognized for its successful history of acquiring land to conserve its natural resources. Throughout the past century, Florida's leaders and constituents have enacted programs to benefit the conservation of natural resources.¹ These programs have purchased land on state and local levels to combat Florida's growing population and the development that goes along with it.² Florida is home to the nation's first wildlife refuge, Pelican Island National Wildlife Refuge, and the Ocala National Forest, the United States' first eastern national forest.³

The past two decades have generated extraordinary programs for land conservation. The great recession which hit in early 2008 substantially affected the posterity of the state's land conservation programs. The most current land conservation program in place, Florida Forever, was once a \$300 million a year project, and now has a drastically decreased budget.⁴

In fiscal year 2013-14, the Florida Forever program was appropriated \$70 million for conservation purposes through the General Appropriations Act, Senate Bill 1500, with \$50 million of that appropriation being generated from the sale of surplus lands.⁵

Surplus is the process of selling state held land determined to be no longer needed.⁶ Section 253.02, F.S., outlines the powers and duties of the Board of Trustees.⁷ More specifically this section gives the State the power to surplus, or dispose of lands held for conservation.⁸ The remaining \$20 million dollars was appropriated from general revenue and the Land Acquisition Trust Fund to go towards specific acquisition projects.⁹ During this fiscal year the Department of Environmental Protection ("DEP") was given the authority to sell as surplus currently owned conservation land to generate up to \$50 million dollars

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From the Chair

by Kelly Samek

As with most professional associations, members are the very lifeblood of ELULS. Unfortunately, as mentioned in the June edition of the Reporter, we're running a few pints low. Whereas a few years ago we hovered closer to the 2000 mark, as I write this today we are a few shy of 1500 Florida Bar-licensed members.

Member dues are critical for sustaining our year-to-year operations, including the many great services we offer attorney, affiliate, and student members as well as the public. Examples of these include affordable and convenient education options on a diverse portfolio of topics, from

our free webinars to our audio webcast series of one-hour lunchtime programs to our traditional full-day live presentations. Other examples include our networking opportunities, our grants for law schools, our multi-volume Environmental and Land Use Law Treatise, and our other substantive publications (like this very newsletter).

Without your support, we would not be able to edit new content for the Treatise. We would not be able to host the eluls.org website and keep it refreshed with new information. We would not be able to pay for the platform with which we bring you

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CHAIR'S MESSAGE

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new webinars, nor for the ELULS email distribution list, nor for the reception you may have enjoyed at The Bar's Annual Meeting, nor for the awards recognizing outstanding professionals in our field.

I hope you'll reflect on the many benefits membership has to offer and do two things. One, make sure your membership is current! Many attorneys are surprised to learn that their memberships have lapsed without their notice, but your Section status is easily ascertained by reviewing your Bar record. Two, encourage someone else to become a member! The practice of law is a people business and

because of that, most everyone has the ability to help sustain this Section into the future. Talk to a colleague, your firm's associates, the law students you teach about joining the Section.

And after checking off items one and two from your do-good list, if you can make room for one more to-do, please add: get involved! Dues are important, but what makes dues meaningful is what ELULS does with them, and that takes enthusiastic, talented volunteers as well. Folks like Vivien Monaco, who is not only the ELULS Secretary this year, but is heading up the CLE Committee as well. Folks like Brooke Lewis and George Cavros, who keep the Energy Committee offering new webinars, content for other CLEs, and substantive articles. Folks like Jonathan Huels, who makes sure your messages make it onto the Listserv while

inappropriate content does not. We always have room for one more capable person, so if you are interested in running a CLE program, recruiting members, writing articles, serving as a link between law students and the Section, please let me know.

* * *

Speaking of great benefits, if you weren't able to join the Energy Committee for its free webinar, "Exploring Florida's Oil & Gas Law," go visit the Section website, where it is available for download. Also, while the whole bundle's a steal, you can join in the Section's audio webcast series anywhere along the way for just \$50 per presentation. The next session, on January 22, will be "Planning for Transportation in the New Normal." You can register for that presentation at <http://tinyurl.com/FloridaBarCLE1791R>.



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DEP Update

by Krystle Hoenstine, Assistant General Counsel

Rulemaking Update:

Rule 62-302.800, F.A.C. (Type II Site Specific Alternative Criteria for pH in Pace Swamp): On May 10, 2013, Pace Water Systems, Inc. (Pace Water), submitted a petition to initiate rulemaking to establish a Site Specific Alternative Criteria (SSAC) for pH in the Simpson River and adjacent wetlands (Pace Swamp) in Santa Rosa County. Pace Water owns and operates a wastewater treatment plant that discharges treated effluent into Pace Swamp, which flows into a portion of the Simpson River. Pace Water has been unable to comply with the Florida Department of Environmental Protection's statewide surface water quality criterion for pH, since it began receiving treated effluent in 1996. Along with its petition to initiate rulemaking to establish a SSAC for pH, Pace Water submitted a detailed report that supports adoption of a pH SSAC in Pace Swamp because it demonstrates that an alternative criterion will fully protect the designed use of the water body. On July 30, a Notice of Proposed Rulemaking was published in the *Florida Administrative Register*, and on August 21, the Environmental Regulation Commission approved the proposed SSAC for adoption. The rule became effective on October 6, 2014.

Rule 62-302-532, F.A.C. (Numeric Nutrient Criteria for Estuaries): As required by Chapter 2013-71, Laws of Florida, the Florida Department of Environmental Protection submitted a report to the Governor and Legislature on August 1, 2013, that contained numeric nutrient criteria (NNC) for those estuaries and coastal areas that do not yet have adopted NNC. Prior to this report submittal, the Department had established numeric nutrient standards for lakes, streams, spring vents, and the majority of estuaries along Florida's coast. Chapter 2013-71, Laws of Florida, also directed the Department, by December 1, 2014, to establish NNC for the estuaries identified in the August 1, 2013 report by rule or final order. Estuaries subject to this rulemaking include portions of the Big Bend from

Alligator Harbor to the Suwannee Sound, Cedar Key, St. Marys, Southern Indian River Lagoon, Mosquito Lagoon, several portions of the Intra-coastal Waterway (ICWW) connecting estuarine systems, and a variety of small gaps. The report also included numeric interpretations of the narrative nutrient criteria for some estuaries with nutrient Total Maximum Daily Loads (TMDLs). This rulemaking will adopt these nutrient TMDLs as estuary specific numeric nutrient criteria in Rule 62-302.532, F.A.C. The Environmental Regulation Commission is scheduled to consider the proposed NNC for the above listed estuaries at a public hearing on November 19, 2014.

Litigation:

State of Florida v. State of Georgia: In October 2013, the Florida Governor and Attorney General filed a motion in the United States Supreme Court to authorize the filing of a Complaint against the State of Georgia. The motion follows decades of unsuccessful negotiation and piecemeal litigation regarding the use of waters in the Apalachicola-Chattahoochee-Flint (ACF) River system. In the proposed complaint included with that motion, the State of Florida requests that the Court exercise its original jurisdiction to apportion waters within the ACF basin. The State of Georgia filed a response in opposition to the motion, arguing that the motion was premature and that the Court lacked subject matter jurisdiction over the matters alleged in the complaint. The United States Solicitor General filed a brief arguing that the Court should accept jurisdiction but postpone equitable apportionment proceedings until the Corps of Engineers completes revisions to its Master Manual for the ACF system. On November 3, 2014, the Supreme Court granted Florida's motion for leave to file the complaint and allowing the State of Georgia thirty days to file an answer.

DEP v. BP: As part of the Early Restoration process agreed to by the NRDA states and federal Trustees and BP, the Department has been

developing restoration projects for the Florida panhandle area to compensate the public for damaged ecological resources and the loss of use of resources in the Gulf of Mexico. To date, there have been two phases of restoration projects that have gone through the internal Trustee process, negotiations with BP, and the public review process. The projects in the first two phases have been funded and are well under way to being completed. On October 2, the Trustees completed similar processes as the first two phases of Early Restoration for the phase III slate of Early Restoration projects by executing a Record of Decision and stipulations with BP for over \$600 million in restoration projects across the Gulf, with over \$105 million of those projects to be developed in Florida.

Amanda Pope & Anastasia, Inc. v. Daniel & Donna Grace, et al.: After an administrative hearing, the Department issued a final order holding that Grace's project to repair an existing dune walkover structure in Crescent Beach, St. Johns County, was exempt from the need to obtain a Coastal Construction Control Line (CCCL) permit under chapter 161, Florida Statutes. Amanda Pope & Anastasia, Inc., appealed to the First District Court of Appeal of Florida seeking to overturn the Department's final order.

At issue was whether the Department's interpretation of section 161.053(11)(b), Florida Statutes, which exempts from permitting "activities" that do not "cause a measurable interference with the natural functioning of the coastal system" was clearly erroneous. In the recommended order, the administrative law judge found that the project was not exempt from the requirement to obtain a CCCL permit on the basis that the Department could not apply the exemption under subsection 161.053(11)(b), Florida Statutes, but could only apply the "existing structures" exemption in subsection 161.053(11)(a), Florida Statutes, because the "existing structures" exemption controls over

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DEP UPDATE

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the more general exemption dealing with “activities” that cause no “measurable interference with the natural functioning of the coastal system” found in subsection (11)(b). The Department’s final order rejected the administrative law judge’s legal interpretation concluding that the only issue was whether the repair of the existing dune walkover structure, while not exempt under the “existing structures” exemption in subsection 161.053(11)(a), Florida Statutes, would nonetheless qualify for an exemption under subsection 161.053(11)(b), Florida Statutes, if the repair of the existing dune walkover structure would cause no “measurable interference with the natural functioning of the coastal system.” On November 6, 2014, the Court issued a written opinion affirming the Department’s final order and concluding that the exemption under subsection 161.053(11)(a), Florida Statutes, for “existing structures” does not preclude an exemption under subsection 161.053(11)(b), Florida Statutes, as such provisions easily coexist.

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December 2014 Florida Case Law Update

by Gary K. Hunter, Jr., Hopping Green & Sams

Riparian rights include the common law right to construct upon privately owned submerged lands: 5F, LLC v. Dressing, 142 So. 3d 936 (Fla. 2d DCA 2014)

The property owners, hereinafter (Property Owners) of a waterfront property built a pier extending onto submerged land previously owned by the State, but conveyed to 5F, LLC. The Property Owners obtained a permit to build a pier extending from their property to the submerged land owned at the time by 5F's predecessor. Seven months after the pier was constructed, 5F objected to the construction and sued the Property Owners. The lower court ruled in favor of the Property Owners, finding that riparian owners had a common law right to build the pier and that 5F's claims were barred by the doctrine of collateral estoppel based on two law suits involving 5F's title predecessor. 5F appealed the judgment to the Florida Third District Court of Appeal.

The Third District held that there is a common law riparian right to construct piers or wharves from the riparian owner's property onto submerged land to the point of navigability that is subject to the public trust doctrine. First, the Court held that because riparian rights are unique to the riparian upland, the Property Owners clearly had non-severable riparian rights and could construct the pier. In determining the extent of the Property Owner's rights to construct on 5F's submerged land, the Court examined the basis for State restrictions on construction since the property was originally owned by the State. The court explained the doctrine of the public trust doctrine grants title to lands under navigable waters to the state in trust for the public. The Third District established that under the public trust doctrine, the rights of the public are superior to those of owners of riparian owners or submerged land owners. Even if the land is privately owned, the State does not lose its authority to control such lands and water thereon.

Therefore, although 5F owned the submerged land, it did not argue that the pier interfered with the public's superior right to the land, and as such, the Property Owners had a right to construct the pier.

The Court further held that the lower court erred in finding that 5F's claims were barred by collateral estoppel. The Third District concluded that collateral estoppel requires mutuality of the parties in order to bar a claim. Although, 5F's predecessor lost in two lawsuits regarding the same issue litigated by 5F, since the parties were different in this case and there was no other relationship between the Property Owners and the prior litigants, collateral estoppel was inapplicable. Though collateral estoppel did not bar 5F's claims, the Third District affirmed the judgment because the Property owners had a common law right to construct the pier.

Environmental groups lacked standing to challenge a settlement agreement because the agreement did not fall within Section 403.412(6), Florida Statutes (2010): Conservation Alliance of St. Lucie County Inc., v. Florida Department of Environmental Protection, 144 So. 3d 662 (Fla. 1st DCA 2014)

The Conservation Alliance of St. Lucie County, Inc., (Conservation Alliance) appealed the Florida Department of Environmental Protection's (FDEP) final order dismissing its petition for a formal administrative proceeding. In 2010, Allied Universal Corporation (Allied) and Chem-Tex Supply Corporation (Chem-Tex) entered into an agreement with FDEP to remediate soil and groundwater contamination at a facility owned by Allied and Chem-Tex. Disgruntled with the agreement, Conservation Alliance petitioned for an administrative hearing to challenge the agreement. An administrative law judge (ALJ) entered a recommended order of dismissal, because Conservation Alliance lacked standing under

section 403.412(6), Florida Statutes (2010). Section 403.412(6) allows Florida non-profit corporations to initiate an administrative hearing "provided that the Florida corporation not for profit was formed at least 1 year prior to the date of the filing of the application for a permit, license, or authorization..." The ALJ concluded that because the settlement agreement does not constitute a *permit, license or authorization*, Conservation Alliance lacked standing.

The First District reviewed the case *de novo*, and in so doing deferred to the agency's interpretation of the statute. The court held that the FDEP's reading of section 403.412(6) was reasonable, and thus, affirmed the order dismissing the administrative petition for lack of standing. Further, because the language of the statute was not ambiguous, the court did not need to go further in its analysis. The statute is expressly premised on the *application for the permit, license, or authorization* that the complaining party seeks to challenge, and the present case does not involve any of the three scenarios.

A Proposed Order approving an initial application for a PUD is not altered by a subsequent order granting a "Detailed Plan" relating to the same development. Thus, any challenge to the subsequent order must be based on matters not addressed in the initial order: O'Neil v. Walton County, No. 1D13-4545, 2014 WL 4628505 (Fla. 1st DCA Sept. 16, 2014)

O'Neil, individually and through his corporation, owns a beach view property in Walton County. He challenged the County's 2013 approval of a 20-unit planned unit development (PUD) immediately seaward. O'Neil argued that pursuant to section 163.3215, Florida Statutes (2013), the order granting the PUD conflicted with the county's comprehensive plan by approving new lots seaward of the construction control line (CCCL) and approving construction within

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the primary dune within the Coastal Protection Zone (CPZ). The circuit court granted summary judgment to the County, and O'Neil appealed to the Florida First District Court of Appeal.

The First District affirmed the order because it did not materially alter the development and an order had approved the developer's first-step PUD in 2010. The court examined the 2010 Order and 2013 Order. In 2010, the County approved the developer's first step application subject to several conditions and the final order was recorded. Then in 2012, the developer submitted a "Detailed Plan" that was also approved by the County. Neither the Detailed Plan nor the 2013 Order approving it stated that the development would materially alter the CCCL, CPZ, or primary dune.

The Court stated that O'Neil failed to prove that the PUD materially altered the comprehensive plan. Further, O'Neil's challenge was untimely since it was made after the 30-day statutory deadline for challenging the 2010 Order. O'Neil should have challenged the 2010 Order instead of the 2013 order, because the 2010 Order had approved the initial PUD plan. The 2013 Order was not the first opportunity that O'Neil had to challenge the PUD because the 2010 Order fell within the section 163.3215's definition of "proposed order." A "proposed order" refers to any order granting or denying an application for a development permit, and as such, the 2010 Order was within this definition. Further, simply because the developer filed a subsequent plan, the 2010 Order is not altered. Notably, the Court stated that O'Neil's only challenges of the 2013 Order could relate to matters not specifically addressed within the 2010 Order, which he failed to do.

Environmental Resource Permit is unnecessary where the construction does not create a navigational hazard: *Padron v. State Dept. of Environmental*

***Protection*, 143 So. 3d 1037 (Fla. 3d DCA July 23, 2014)**

Padron appealed a Final Order of the Florida Department of Environmental Protection (FDEP) allowing an applicant to install a cradle boat lift adjacent to an existing pier without an Environmental Resource Permit (ERP). Padron and the applicant owned adjacent lots in Islamorada. Both properties had docks that ran along their respective shorelines. Padron owned the pier. However, Padron's predecessor granted the applicant an easement to the pier, which allowed him to dock his boats on the north side of the pier.

The applicant applied for an ERP but the FDEP notified him he did not need a permit because he met the criteria set forth in Rule 40E-4.051(3) (b). Padron petitioned for an administrative hearing, where the Administrative Law Judge (ALJ) determined that the boat cradle wouldn't create a "navigational hazard." Padron appealed to Florida's Third District Court of Appeal.

The primary issue for the Third District was whether the ALJ's finding that the proposed cradle boat lift did not create a "navigational hazard" was based on competent, substantial evidence. The Court determined that the ALJ's finding was based on competent, substantial evidence because it relied on both the DEP's and Padron's expert witnesses to define "navigational hazard." Further, the Court addressed the validity of the Padron's argument that a "navigational hazard" is present when access to one side of a pier is impeded. The Court did not accept Padron's argument, reasoning that Padron was confusing a "navigational impediment" with a "navigational hazard."

Application of section 95.231 and 95.11(3), Florida Statutes to a dispute over ownership of waterfront strip: *Hardey v. Shell*, 144 So. 3d 668 (Fla. 2d DCA August 13, 2014)

This case stems from a disagreement regarding the ownership of a waterfront strip of property. The Hardeys and the Shells owned adjacent properties. The Hardeys owned the southern lot and the Shells owned

the northern lot. In 2010, Mr. Shell claimed that he owned the Hardeys' entire waterfront and dock because they were included in the legal description on his deed for the property. The Shells proceeded to erect a fence across the Hardeys' entire waterfront. The Hardeys sued the Shells. The trial court granted the Shells' motion for summary judgment, determining that the Hardeys were precluded from proceeding with the law suit because the suit was barred by Florida Statutes 95.231 and 95.11(3) statutes of limitations. The Hardeys appealed to the Florida Second District Court of Appeal.

The Second District began its analysis by examining the history of the properties and the source of the legal description issue. In 1997, the Hardeys commenced a lawsuit against the previous owner of the Shell's lot. In that law suit, the court found that there had been a scrivener's error on the legal description of the northern lot, and as such the tax map was corrected by the Lee County Property Appraiser. However, the Shells took title of the property with the defective legal description.

The Court then addressed whether the trial court had erred in finding that the Hardeys' claim was barred by the four year statute of limitations in section 95.11(3). The Second District concluded that the statute of limitations of section 95.11(3) did not start running in 1997 but rather in 2010 when the Shells first asserted their claim to the waterfront property. As such, the Hardeys' claim wasn't barred under section 95.11(3).

Further, the Second District addressed whether the trial court had erred in finding that the Hardeys' claim was barred by the twenty year statute of limitations in section 95.231(2), which bars actions 20 years after the recording of a deed, because the statute functions only to correct technical defects in an otherwise valid deed. Section 95.231(2) cannot be used to create title where none existed. Thus, the Shells could not use the statute to assert ownership of the waterfront because they did not show that the deed specifically conveyed the Hardeys' waterfront.

On Appeal

by Larry Sellers, Holland & Knight

Note: Status of cases is as of November 5, 2014. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Wakulla Fishman Ass'n, Inc., et al. v. Florida Fish and Wildlife Conservation Commission, Case No. SC 14-1550. Petition for review of 1st DCA decision reversing trial court's final judgment enjoining any and all further enforcement of the net ban amendment as set forth in Article X, §16, the Commission's authority to adopt rules to regulate marine life with respect to the use of a "gill net" or an "entangling net" pursuant to Article IV §9, and Rules 68B-4.002, 68B-4.0081 and 68B-39.0048, Fla. Admin. Code. 39 Fla. L. Weekly B1407a (Fla. 1st DCA 2014). Status: Notice filed August 6, 2014.

DOT v. Clipper Bay Investments, LLC, Case No. SC 13-775. Petition for review of 1st DCA decision determining that the Marketable Record Title Act's exception for easements in right-of-ways is applicable to land held as a fee estate for the purpose of a right-of-way, so long as competent substantial evidence establishes the land is held for such a purpose. The court reversed the trial court's award of a portion of the land north of the I-10 fence line and remanded with instruction to quiet title to all of the land north of the I-10 fence line in Clipper Bay, except for the portion used by Santa Rosa County. 38 Fla. L. Weekly D271a (Fla. 1st DCA 2013). Status: Oral argument held on April 8, 2014. Supplemental briefs requested and filed.

FIRST DCA

Ahler, et al. v. Scott, et al. Case No. 1D14-3243. Appeal from final judgment denying petition for writ of mandamus seeking to compel defendants to require Georgia-Pacific to obtain authorization for the use of mixing zones associated with its discharge

to the lower St. John's River. Status: Notice of appeal Filed July 18, 2014.

SECOND DCA

Florida Audubon Society v. Sugar Cane Growers Cooperative of Florida, United States Sugar Corporation, Sugar Farms Co-Op and SFWMD, Case No.: 2D14-2328. Appeal from final order renewing Everglades works of the district permits for the United States Sugar Corporation, Sugar Farms Co-Op and Sugar Cane Growers Cooperative of Florida. Status:

Notice of appeal filed May 15, 2014. Appellant's Initial Brief filed July 23, 2014. Appellees' Answer Briefs filed November 10, 2014.

THIRD DCA

Miami-Dade County, et al. v. Florida Power & Light Co., et al. Case No.: 3D14-1467. Appeal from final order of the Siting Board certifying two nuclear units at Turkey Point as well as proposed corridors for transmission lines. Status: Notice of Appeal filed June 16, 2014.



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Law School Liaisons

Fall 2014 Update from the Florida State University College of Law

by David Markell, Associate Dean for Environmental Programs and Steven M. Goldstein, Professor

This column highlights the environmental, energy, and land use programs the College of Law is hosting this fall. We hope Section members will join us for one or more of them. The column also features updates on student and alumni accomplishments.

Fall 2014 Events

Energy Day at Florida State: November 5

The College of Law is hosting two events on November 5 that focus on energy law and policy issues. The Environmental Law Society is hosting a lunch meeting on the siting of renewable energy projects that features **Doug Roberts** of Hopping Green & Sams as a guest speaker. In addition, the College of Law's Fall 2014 *Environmental Forum on Florida Renewable Energy* will begin at 3:30 on November 5th in Room 208 of Roberts Hall, 425 W. Jefferson St., followed by a reception. A panel of leading experts, including **Patrick Sheehan**, Executive Director of the Florida Office of Energy; **Mary Anne Helton**, Deputy General Counsel of the Florida Public Service Commission; **Michael Sole**, Vice President, State Government Affairs, Florida Power & Light Company; and **Barry Weiss**, Attorney at Law and former partner, Greenberg Traurig LLC and Squire Sanders LLP, will discuss the availability of renewable resources within our state, recent and current laws and



Professor David Adelman

policies that impact renewable energy development, and the likely trajectory of renewable development in Florida. CLE approval is pending. Professor **Hannah Wiseman** will moderate the program.

Fall 2014 Distinguished Lecture

David Adelman, Harry Reasoner Regents Chair in Law at the University of Texas at Austin School of Law, was the College of Law's Fall 2014 Distinguished Lecturer. Professor Adelman presented his paper "Environmental Federalism: When Numbers Matter More Than Size." The Lecture is available via the following link for Section members who were not able to attend.

<http://mediasite.apps.fsu.edu/Mediasite/Play/2efd3c5b838047aeb8b2fea23513501d1d>

Environmental Certificate and Environmental LL.M. Enrichment Series

The Environmental Certificate and Environmental LL.M. Enrichments Series features two additional distinguished speakers this fall: **Vicki Tschinkel**, Vice Chairman, 1000 Friends of Florida (November 13); and **Hari Osofsky**, Professor of Law, 2013-14 Fesler-Lampert Chair in Urban and Regional Affairs, and Director, Joint Degree Program in Law, Science & Technology, University of Minnesota Law School (November 19). **Vinette Godelia**, Partner, Hopping Green & Sams (September 18) and **Tom Kay**, Executive Director, Alachua Conservation Trust (October 9) also participated in this fall's Enrichment Series.

Student Achievements

We are pleased to feature recent accomplishments by several of our College of Law students:



Patrick Sheehan



Mary Anne Helton



Michael Sole



Barry Weiss



Hannan Wiseman

Law School Liaisons continued...

LAW SCHOOL LIAISONS

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Vicki Tschinkel



Hari Osofsky



Vinette Godelia



Tom Kay

• **Claire Armagnac** earned 3rd place in the Environmental and Land Use Law Section (ELULS) Maloney Contest for her paper entitled *Worse than the Tourists: Non-Native Invasive Species in Florida, Lionfish, Pythons, and What New Laws and Federal Funding Can Do to Help*.

• **JD Benton's** article, entitled *Oil is the New Orange: A Look at Why Florida's Ancient Oil and Gas Regulations are Causing Growing Pains*, was published in the OIL & GAS COMMITTEE NEWSLETTER (ABA Section of Env't, Energy, & Res., Chicago, Ill, Aug. 2014).

• **Davis Moye, Daria Sakharova, and Nemi Cole** tied for 3rd place in the Air and Waste Management Association Environmental Challenge International.

• **James Parker-Flynn** has had three articles accepted for publication: *A Race to the Middle in Energy Policy*, 15 SUSTAINABLE DEV. L. & POLY __ (forthcoming 2014); *The Intersection of Mitigation and Adaptation in Climate Law & Policy*, 38 ENVIRONS:

ENVTL L. & POLY J. __ (forthcoming 2014); and *The Fraudulent Misrepresentation of Climate Science*, 43 ELR 11098 (2013).

• **Theodore Stotzer** coauthored *Statewide Environmental Resource Permitting*, in FLORIDA TREATISE ON ENVIRONMENTAL AND LAW USE LAW 9.15-1 (June 2014) (with Amelia Savage of Hopping Green & Sams). His case summary of *Friends of Merrymeeting Bay v. Hydro Kennebec, LLC* (1st Cir. 2014) was published by the ABA Section of Environment, Energy, and Resources (Sept. 24, 2014).

• **Robert Volpe** has had an article accepted for publication: *The Role of Advanced Cost Recovery in Nuclear Energy Policy*, 15 SUSTAINABLE DEV. L. & POLY __ (forthcoming 2014).

Alumni Accomplishments

• **Howard Fox** ('09) earned an AV rating in Environmental Law by Martindale. He also was a speaker at the University of Miami Law School and at the annual conference for the National Association of Environmental Professionals.

• **Travis Miller** ('94), a shareholder and President of Radey Law Firm, has been selected for inclusion in the 2015 edition of *The Best Lawyers in America*. Miller is listed in the practice area of insurance law. He was also recognized in the 2014 edition of the *Chambers USA* Guide for his diverse practice in insurance regulation.



Susan Stephens



Evan Rosenthal



Howard Fox



Cindy Parnell



Travis Miller

• **Cindy Parnell** ('06) works for Restovich Allen, which was selected to serve as city attorneys for The City of Ellisville. She consults for the City on all land use decisions.

• **Evan Rosenthal** ('13) was recently featured in an article titled "Lawmakers, Homeowners Fight Rules Saying Solar Is Too Ugly To Install," regarding solar installations and homeowners associations.

• **Luke Clinton Savage** ('06) was recently selected for recognition by the Cystic Fibrosis Foundation as one of "40 Under 40 Outstanding Lawyers of South Florida." The Cystic Fibrosis Foundation's selection committee, comprised of well-known local attorneys and community leaders, selects recipients based upon demonstrated excellence in the legal field and contributions to the community.

• **Susan Stephens** ('93) is now board certified in State and Federal Administrative and Government Practice by the Florida Bar.

Upcoming Events

For information about upcoming events, please visit: http://www.law.fsu.edu/academic_programs/environmental/events.html

College of Law Alumni Listserv

The Environmental Law Program at Florida State University shares job opportunities and news about upcoming events with members of its Environmental Alumni listserv. Please e-mail lhatcher@law.fsu.edu to join the listserv.

ALUMNI NEWS WANTED

The College of Law wants to hear from alumni!

Please send accomplishments and updates to lhatcher@law.fsu.edu.

We look forward to sharing your news.

Law School Liaisons continued....

UF Law Update

Submitted by Mary Jane Angelo, Director, Environmental and Land Use Law Program, University of Florida Levin College of Law

Environmental Conference Scheduled for February

“Powering the Planet: Energy for Today and Tomorrow” is the theme of the 21st Annual Public Interest Environmental Conference, scheduled February 12-14, 2015, at the Levin College of Law. The conference will address energy: how it’s made, how it’s used, and the effects that energy production and use has on humans and our environment. As always, the conference will include exciting panel discussions, special events and activities, citizen and attorney skills trainings and Continuing Legal Education opportunities provided by the Florida Bar Association ELULS Public Interest Committee, and plenty of networking. For further information, please contact Adrian Mahoney, Co-Chair (amahoney@ufl.edu) or Elizabeth Turner, Co-Chair (elizabeth.turner@ufl.edu).

Environmental Capstone Colloquium Discusses Sustainable Energy

“Sustainable Energy and Land Use” is the theme for the 2015 Spring Environmental Capstone Colloquium, as announced by Christine Klein, Chesterfield Smith Professor and Director of the LL.M. Program in Environmental and Land Use Law. Colloquium sessions will be held January 15-March 12, 2015, at the University of Florida Levin College of Law.

Speakers, topics and schedule include:

- Amy Stein, Associate Professor of Law, University of Florida Levin College of Law, “Sustainable Energy 101,” January 15;
- Bruce Huber, Associate Professor of Law, Notre Dame Law School, “Nuclear Property,” Jan. 22;
- Sara Schindler, Associate Professor of Law, University of Maine School of Law, “Emerging Issues of Sustainability in Land Use Law,” Jan. 29;

• Uma Outka, Associate Professor of Law, University of Kansas School of Law, “The Energy-Land Use News,” Feb. 5;

• Ashira Ostrow, Associate Professor of Law, Maurice A. Deane School of Law at Hofstra University, “Capturing the Wind: Overcoming Barriers to Siting Wind Energy Facilities,” Feb. 19; and

• Jason Fults, Gainesville Loves Mountains, “Energy Strategies for Resilient Communities,” March 12.

The Capstone Colloquium is funded by contributions from Alfred J. Malefatto, Shareholder, Lewis, Longman & Walker, P.A., West Palm Beach, and Hopping Green & Sams, Tallahassee. All presentations will be held at 3 p.m. in Room 270, Holland Hall. For additional information, please contact Professor Klein at kleinc@law.ufl.edu.

Sustainable Development Spring Break Course Offered

UF Law will offer a Sustainable Development Field Course during spring break, focusing on South Florida and the Bahamas. The course “Law, Policy and Practice” offers two credits and will focus on the South Florida – Bahamas Ecoregion, and the efforts on both sides of the Gulf Stream to grapple with development pressures and climate impacts to fisheries and coral reef management, among other issues. In addition to U.S. and Bahamian domestic law and international development policy, students will be exposed to the unique legal framework of the commonwealth Caribbean and role of small island developing nations in international treaty negotiations.

The course covers most travel and related expenses and students must make their own international travel arrangements. Enrollment will be limited to 12-15 students. Registration priority will be given to students enrolled in the College of Law’s Environmental and Land Use Law Certificate

Program, but others may apply on a space-available basis.

The Conservation Clinic and Florida Sea Grant have been working closely with the Bahamas National Trust, which manages the national parks and marine protected areas of the Bahamas. Interested students can contact Clinic Director Tom Ankersen (ankersen@law.ufl.edu).

Costa Rica Summer Program Outlined

The UF Law Costa Rica summer program features practicums and a field based approach. The program, which runs May 31 – June 30, 2015, partners with the [Organization for Tropical Studies \(OTS\)](#) and the UF Center for Latin American Studies Tropical Conservation and Development Program, building interdisciplinary bridges between law, policy and the social and natural science of conservation and sustainable development. Students develop their knowledge and skills through an integrated, suite of courses that coalesce around efforts to find practical, policy-relevant solutions to issues of immediate importance to the conservation and sustainable development community. Each week the Program will embark on extended visits to OTS field stations and their Neotropical context – rivers, wetlands, forests (wet, dry and cloud), beaches and mountains. Students will also visit indigenous communities, meet with farmers and land owners, and encounter unique sustainable development projects – all grist for collaborative problem-solving approaches.

Klein Book Examines Mississippi River Tragedies

Christine A. Klein, Chesterfield Smith Professor of Law and Director of the LL.M. Program in Environmental & Land Use Law, published *Mississippi River Tragedies: A Century of Unnatural Disaster* (NYU Press

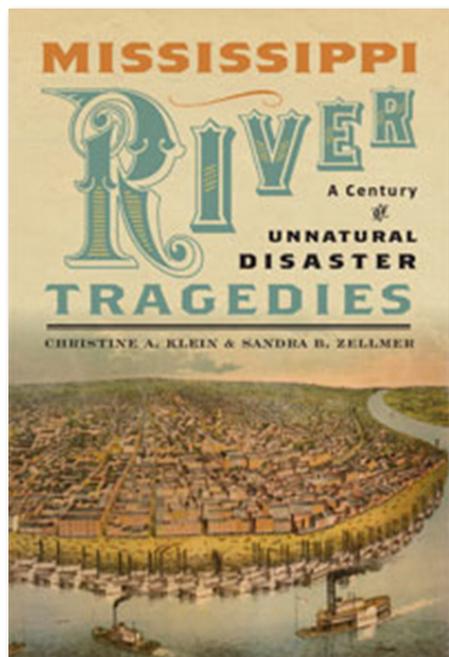
Law School Liaisons continued....



UF law students in the Costa Rica summer program, 2014

2014, with Sandra Zellmer). The book reveals how humans — often with the best of intentions — remade the Mississippi into an unnatural river. This transformation had the unintended consequence of magnifying the impacts of otherwise natural storms and hurricanes, thereby setting the stage for “unnatural disaster.”

She discussed her book at three



recent meetings: Society of Environmental Journalists, Annual Conference, New Orleans, Sept. 7, 2014; Big Muddy Speaker Series, St. Charles, Missouri, May 14, 2014; and Association for Law, Property, and Society, Fifth Annual Meeting, Vancouver, British Columbia, May 2, 2014 (presenter and panel organizer). She also participated as a senior reviewer at the University of Washington School of Law’s Junior Environmental Law Faculty Workshop, Seattle, July 9-11, 2014.

Environmental Law and Land Use Law Society Hosts Panel on Mountaintop Mining

UF Law’s Environmental and Land Use Law Society and Conservation Clinic hosted a panel on “Mountaintop mining” in Appalachia and on local efforts to enhance energy efficiency in Gainesville. The panel featured Jason Fults, founder of Gainesville Loves Mountains; Dr. Matt Wasson, Director of Programs for Appalachian Voices; and Ann League, Tennessee Campaign Coordinator for Appalachian Voices. UF Law Professor Amy Stein moderated.

Fults discussed Gainesville Loves Mountains and its recent work with the UF Law Conservation Clinic to draft an energy conservation ordinance

in Gainesville. He also described his group’s work on Property Assessed Clean Energy (PACE) financing, which is designed to encourage the installation of renewable-energy systems and improve energy efficiency by helping property owners overcome the barrier of high up-front energy equipment and installation costs.

Two representatives from Appalachian Voices discussed efforts around mountaintop removal. Wasson has worked with the organization Appalachian Voices since 2001 and has studied all aspects of the “coal cycle” — from mining, transportation and combustion of coal to the disposal of power plant waste. League became involved in the campaign to end MTR mining when the 2,200-acre Zeb Mountain mine was permitted near her home in Campbell County, Tennessee.

Smith Joins LLM Class

We welcome incoming LL.M. student David Ashley Smith, who serves as an Assistant General Counsel with the St. Johns River Water Management District. Ashley received his J.D. degree from Regent University and his undergraduate degree in international business and management from King College.

Law School Liaisons continued....

Florida International University College of Law

by Lauren Dellacona

The Environmental Law Society (ELS) at Florida International University College of Law has had an active semester. With the primary goal of increasing interest and participation in environmental law, ELS conducted and participated in a variety of events.

On October 8th, several ELS members attended the 22nd Fall Conference of the American Bar Association Section of Environment, Energy, and Resources in Miami, Florida. Over the course of four days, ELS members were paired up with attorneys practicing in environmental fields,

attended seminars, and participated in social events to learn about the different components of environmental law.

On October 14th, ELS welcomed Mr. Lee Paddock, of George Washington University. Mr. Paddock spoke to ELS members and law students about the current state of affairs around the world in environmental and energy law and policy. Mr. Paddock also discussed potential LL.M. opportunities and career opportunities around the country and abroad.

Finally, on October 30th, ELS members and environmental law students

conducted class from an airboat in the Everglades, accompanied by a guide from the Everglades Foundation. Students were given a hands-on look at invasive species harming the Everglades, the effects development has had, and how restoration projects are improving this diverse ecological area.

Through informational meetings in September, an active October, and a commitment to teaming up with other law societies, FIU ELS has increased its member total by more than 30 students in just one semester.



Section Budget/Financial Operations

<u>Environmental Law</u>	<u>2013-2014 Budget</u>	<u>2013-2014 Actual</u>	<u>2014-2015 Budget</u>
REVENUE			
Section Dues	61,600	55,800	58,000
Affiliate Dues	2,500	3,350	1,750
Dues Retained TFB	(27,950)	(27,770)	(25,375)
CLE Courses	1,000	5,418	1,000
Section Differential	5,200	3,700	5,000
Sponsorships	25,000	16,250	16,500
Investment Allocation	<u>4,268</u>	<u>11,357</u>	<u>2,969</u>
TOTAL REVENUE	71,618	68,105	59,844
EXPENSE			
Credit Card Fees	120	112	175
Staff Travel	4,036	2,246	3,020
Internet Charges	420	367	450
Postage	900	149	300
Printing	150	51	250
Membership	1,000	84	500
Supplies	50	48	50
Photocopying	150	51	150
Officer Travel	2,500	650	2,500
Meeting Travel	4,000	0	4,000
CLE Speaker Expense	1,000	0	1,500
Sponsorship Expense	440	0	440
Committees	500	211	500
Council Meetings	2,000	1,162	1,500
Bar Annual Meeting	2,700	2,367	1,910
Section Annual Meeting	20,000	20,897	20,000
Section Service Programs	2,250	2,110	2,250
Retreat	2,000	1,685	2,000
Land Use Law Manual	13,000	12,600	13,000
Pubic Interest Committee	500	425	500
Awards	1,700	800	1,300
Law School Liaison	23,000	20,000	15,000
Dean Maloney Contest	1,000	1,000	1,000
Website	5,200	5,877	7,360
Council of Sections	300	300	300
Operating Reserve	9,528	0	9,094
Miscellaneous	500	68	500
Meetings Administration	1,340	1,427	1,350
TFB Support Services	<u>4,523</u>	<u>5,234</u>	<u>4,600</u>
TOTAL EXPENSE	104,807	79,921	95,499
BEGINNING FUND BALANCE	142,256	143,697	98,960
PLUS REVENUE	71,618	68,105	59,844
LESS EXPENSE	<u>(104,807)</u>	<u>(79,921)</u>	<u>(95,499)</u>
ENDING FUND BALANCE	109,067	116,425	63,305

SECTION REIMBURSEMENT POLICIES:

General: All travel and office expense payments are in accordance with Standing Board Policy 5.61.

Travel expenses for other than members of Bar staff may be made if in accordance with

SBP 5.61(e)(5)(a)-(i) or 5.61(e)(6) which is available from Bar headquarters upon request.

CONSERVATION LANDS

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in revenue.¹⁰ Florida's conservation lands must be deemed "no longer needed for conservation" to be surplus. To make this determination these lands, held by the Board of Trustees, the Governor and Cabinet, went through a strenuous assessment process to determine if they were in fact "no longer needed for conservation purposes."¹¹ Once this determination is made they can be sold as surplus, generating revenue to purchase new, higher quality conservation lands.¹²

The fiscal year 2013-14 legislative appropriation caused a backlash of criticism.¹³ The DEP and its affiliates conducted an extensive conservation land assessment procedure to determine if lands were "needed for conservation."¹⁴ The goal of this process was to sell sites deemed "no longer needed for conservation purposes" upon a final decision by the Board of Trustees.¹⁵ Many attorneys, environmentalists, and individual constituents were concerned this was a politically driven process where the state sought to maximize revenues with little regard for real conservation value.¹⁶ Members of the Florida legislature think this was much simpler and more straightforward than a political agenda.¹⁷ The downturn in the economy has reduced the budget available for conservation land acquisitions. If more conservation land needs to be acquired, the state will have to evaluate currently owned lands to determine if any added revenue can be derived from parcels with little conservation value.¹⁸ Ultimately, this process was terminated after the DEP underwent an extensive assessment process which yielded very few parcels with suitably low conservation value.¹⁹ From this result, the DEP has turned its focus toward the surplus of state held non-conservation lands.²⁰

To fully understand fiscal year 2013-14 appropriations and the termination of the current conservation land surplus proposal, an understanding of the parties involved, the history which led to this point, and the assessment process which the DEP, Division of State Lands

conducted is crucial. Finally, we will look at the assessment process in detail, its problems as posed by various agencies, counties, and individuals around the state, and also why it was a necessary procedure to evaluate this alternative for potential funding. Many questions were raised because of this process, but Florida's constituents must remember the DEP was carrying out a procedure directed by the legislature. This assessment was controversial, however, if done right, had the potential to protect lands with conservation value and dispose of lands with little to no conservation value. By disposing of these lands, the state could properly update the lands which it is responsible for managing. The acreage of land listed as surplus is a fraction of the state's total publically held lands. Approximately 3,406 acres of land were on the list for surplus as of early December 2013.²¹ The DEP focused on conducting their assessment correctly so that sites, which do have conservation value, would not be sold.²² This process had two potential outcomes. The state could have determined that many of the currently held lands have conservation value and little needs to be done. On the other hand, the state could have discovered that certain parcels have little conservation value and need to be sold, consolidating state-held lands to those which provide the needed natural resource services, the purpose of these lands in the first place. It is also important to note that the State's initiative was to raise up to \$50 million from the sale of these lands.²³ The \$50 million mark was not a mandate, but rather a cap on how much could be sold.²⁴ Last fall many felt that this number would be hard to meet, and it seems they were correct. The state's assessment followed the strict scientific criteria and ultimately concluded properties eligible for surplus missed the \$50 million mark by a great deal.²⁵

II. HISTORY OF FLORIDA'S CONSERVATION LAND

Currently in Florida, private citizens hold about 72% of the state's land while the remaining 28% of the state's lands are publically owned.²⁶ Of that 28%, 9% is held by the Board of Trustees, 8% is federally protected land, 6% is held by the state's five water management districts, 3% are

lands held by local governments, 1% is held by other authorities and special districts, and the last 1% is land held by the Fish and Wildlife Conservation Commission.²⁷ One of the most important aspects of comprehending the current situation with Florida's conservation land, is understanding how we got here. Florida created its Board of Trustees of the Internal Improvement Trust Fund in 1855.²⁸ The early 1900's provided minimal efforts to preserve our natural resources, however the mid 1900's produced a plethora of conservation driven programs.²⁹ Finally, in the past quarter century Florida has administered Preservation 2000, a land conservation project which began in 1990; and Florida Forever, which began in 2000.³⁰

In 1968 the legislature began selling bonds in the amount of \$20 million to fund the Land Acquisition Trust Fund, a conservation program.³¹ These bonds were paid for through revenues generated from documentary stamps taxes³² paid on real estate transactions.³³ This has become common in modern conservation programs.

In 1989, Governor Bob Martinez took a big stand for the preservation of Florida's natural resources. He appointed a committee to examine the current status of Florida's environmental health and propose solutions.³⁴ The committee found that Florida needed to pick up the pace of conserving lands if it was going to combat the steady increase in population and development throughout the state.³⁵ The committee also noted that land prices were escalating faster than the rate of inflation, making it effective to fund the new program through the sale of long-term bonds.³⁶

In 1990, the Legislature enacted the Preservation 2000 program, which proposed the sale of \$3 billion in bonds over a ten-year period, or \$300 million per year, to buy land and section eight housing with a focus on conservation.³⁷ Preservation 2000 proved to be a colossal success for the State of Florida. Over a ten-year period, just under two million acres of land were preserved through various programs funded through Preservation 2000.³⁸ As the conclusion of Preservation 2000 neared, it became clear that not only environmentalists, but also the general public wanted to see

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funding for land acquisition continue. In 1998, the State was up for a Constitutional Revision meeting.³⁹ The revision implemented Amendment 5, which extended in perpetuity, the state's authority to sell bonds to fund land acquisition.⁴⁰ This amendment also employed a more difficult test to be conducted before public lands may be disposed.⁴¹ With the support of the legislature and the public, it was clear that conservation programs would not stop here.

III. THE FLORIDA FOREVER PROGRAM

The Florida Forever program was enacted by the legislature and Governor Jeb Bush in 1999.⁴² The State was given authority through the Florida Forever program to sell up to \$300 million in bonds over a ten-year period, similar to Preservation 2000, but this funding was to be distributed differently than it was under Preservation 2000.^{43, 44} Florida Forever had the support of the state's constituents, with 78% voter approval.⁴⁵

When Florida Forever was enacted, several changes were made to the then current administration of conservation and recreational land funding.⁴⁶ One of the most radical differences between Preservation 2000 and Florida Forever is the ability for the state to use funds allocated from the program for facilities construction; ecological restoration, such as exotic plant removal; and for best management practices, such as planning and species inventory.⁴⁷ The Florida Forever program provided for more structure in the administration of conservation and recreation land acquisition and management.⁴⁸

The Florida Forever program also implemented the current Acquisition and Restoration Council made up of both agency members and private, at large members.⁴⁹ Political influences are restrained with at large members on the council, especially in situations like the assessment for conservation land surplus, where the legislature and DEP have a clearly stated objective.⁵⁰ The Acquisition and Restoration Council does not approve land

purchases or sales, but rather makes recommendations.⁵¹ In the recent assessment process of conservation land, the Acquisition and Restoration Council received a list of parcels for potential surplus, and went through the parcels site-by-site to make a recommendation on each parcel to the Board of Trustees.⁵² The Acquisition and Restoration Council gathers data from Florida Natural Areas Inventory⁵³ ("FNAI"), a program that gathers data on the state's biodiversity, and is a good resource for the Acquisition and Restoration Council. The Acquisition and Restoration Council relies heavily on FNAI data for evaluation purposes.⁵⁴

IV. THE CURRENT STATE OF FLORIDA FOREVER

Currently, lands held by the state are not being managed to their full potential.⁵⁵ Prior to Preservation 2000, funding was ad hoc and irregular.⁵⁶ The state has developed a procedure where land management agencies are able to get funding as soon as they take over a piece of land, instead of having to wait until the next allocation session.⁵⁷ Although management funding has improved since the enactment of Preservation 2000, public conservation lands are still not managed as they should be.

In 2008, Governor Charlie Crist, in conjunction with the Florida legislature, extended Florida Forever to run through 2020 with the same funding.⁵⁸ With the economic downturn in 2008, funding dried up for Florida Forever and its programs. Revenue from documentary stamp taxes plummeted during this time as a result of the recession.⁵⁹ Documentary stamp revenues for fiscal year 2005-06 were \$4,058,300,000, in year 2008-09 revenues dropped to \$1,015,500,460, and as of fiscal year 2012-13 revenues have risen to \$1,621,236,867.⁶⁰ Until determined otherwise, there will be no more bonding for the Florida Forever Program due to the 6% cap on debt in the State of Florida.⁶¹

Since the economic downturn, funding for Florida Forever has been negatively affected. The last year the state issued bonds for Florida Forever was in fiscal year 2008-09.⁶² In fiscal year 2008-09, the legislature appropriated \$105 million to Florida Forever.⁶³ In year 2009-10, Florida Forever received no funding,⁶⁴ in

2010-11 the program was appropriated \$5,250,000⁶⁵, and in year 2011-12, it again received no funding.⁶⁶ In fiscal year 2012-13, Florida Forever was appropriated \$8,377,966 million.⁶⁷

Finally, in fiscal year 2013-14, the program was appropriated \$70 million, \$10 million from general revenue and \$60 million from the Florida Forever Trust Fund for land acquisition.⁶⁸ Of this \$60 million funded from the Florida Forever Trust Fund, \$10 million in funds transferred from the Land Acquisition Trust Fund to the Florida Forever Trust Fund. These funds may only be used for acquisition projects that provide buffer areas surrounding the state's military installments.⁶⁹ The remaining \$50 Million appropriated was only to be funded by the sale of surplus lands determined to be "no longer needed for conservation purposes" by the Board of Trustees.⁷⁰ These funds were to be used to acquire a less than a fee simple interest in land, such as a conservation easement; to acquire land through a partnership acquisition, where the state pays no more than 50% of the purchase price for the land; or to acquire lands which provide military buffer areas and protect water resources.⁷¹ The legislative appropriations in fiscal year 2013-14 generated criticism over the potential disposal of up to \$50 million in conservation lands, and sent the DEP into a strenuous assessment of whether these publically held lands were in fact needed for conservation based on a scientific model.⁷²

There are two main views concerning the surplus of conservation land to generate funding for more valuable conservation land acquisition. Members of the environmental community, such as Clay Henderson, an attorney with significant conservation lands experience, are steadfast that this process was politically driven.⁷³ Conversely, Senator Alan Hays, a Florida senator from district 11 who initiated and worked to pass the bill, says there was nothing political about this.⁷⁴ For Senator Hays, the legislature's goal in the 2013-14 appropriation was to respond to the continuous demand for conservation land acquisition projects by the only means possible in the current economic recession.⁷⁵ The funding for Florida Forever was not there in excess of the \$20 million for fiscal year 2013-14.⁷⁶ If more funding

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was desired to acquire new projects, this process was an alternate way of doing it.⁷⁷ During the assessment process Senator Hays noted that it is unclear how much revenue will actually be generated, but in his opinion the DEP is doing a diligent job of evaluating the States conservation land.⁷⁸

Others such as Clay Henderson, and members of the Florida Wildlife Federation felt this process would fall short of generating \$50 million in revenue.⁷⁹ They feel this was an arbitrary number with no basis.⁸⁰ It seems to be somewhat agreed upon that the \$50 million mark was not supported by any substantial data. Many environmental figures think the scientific model used for the analysis of potential surplus lands was fundamentally flawed.⁸¹ Clay Henderson argues that there is no standard for “no longer needed for conservation purposes” and poses the question, “If a parcel was acquired within an approved conservation boundary and still functions for the purposes of that conservation project, how can you say it is still no longer needed for conservation purposes?”⁸²

From the legislative prospective, Senator Hays states that although these parcels listed for surplus were purchased as part of various conservation projects, some parcels were only purchased because it was required to purchase the entire tract of land where the desired conservation land was located.⁸³ All are in agreement that in some instances, when the state attempts to acquire a piece of land intended for conservation purposes, a private property owner often negotiates from an “all or nothing” approach.⁸⁴ This approach forces the State to purchase the entire tract when they may have only desired a certain area within the tract for conservation. Sometimes the stray or fragment parcels can become deal breakers.⁸⁵ The number of parcels which are merely remnants of old acquisition projects, as discussed above, is heavily disputed. Senator Hays also points out that land changes over time.⁸⁶ What may have had

conservation value years ago, many now have little to no value due to a variety of changes in the land.⁸⁷ In his opinion these changes arise from factors such as increased surrounding development, expansion of road construction, and drainage changes which alter the make up of the land.⁸⁸ To others, a piece which once had conservation value years ago, must have even more value now.⁸⁹ It is also highly disputed between the environmental community and those who support this process, how much conservation value small parcels have. While some look at these parcels as merely remnants, others look at them as valuable buffer areas.⁹⁰

Those who backed this process feel it was simple. The State of Florida does not have the budget to appropriate more funding toward conservation land acquisition at this time.⁹¹ If the state is going to acquire more lands it must find an alternate means of funding.⁹² Surplus of certain parcels determined to be no longer needed for conservation purposes, was an alternate source of funding, in whatever amount it generates.⁹³ Over the years, Florida has accumulated parcels due to excess purchase of land as part of larger projects, which were not needed, but purchased to facilitate the completion of the acquisition deal.⁹⁴ According to Senator Hays, as a steward of Florida taxpayer resources, he must make wise decisions about expenditures and our state held lands. He notes that our public lands are not properly maintained as it is.⁹⁵

Dr. Peter Frederick, an at large member of the Acquisition and Restoration Council, takes a more neutral perspective.⁹⁶ In his opinion, Florida’s public lands were safe as long as we adhere strictly to the guidance of the legislature, that conservation lands may be sold only if they no longer have conservation value.⁹⁷ To determine this the state needed to focus on the procedure of screening proposed surplus sites.⁹⁸ He states that mixing this objective with the desire to generate money to purchase new, higher quality conservation lands by disposing of less valuable conservation lands was “getting into the weeds.”⁹⁹ Although Dr. Frederick was frustrated that the legislature put the state in this position; he was optimistic stating, “We can look at

this as a chance to inventory our portfolio of lands and see whether there is any stuff we really do not need.”¹⁰⁰ He was of the opinion that at the conclusion of the process there would be very few lands which we do not need.¹⁰¹ Further, the data used to formulate the assessment model is as accurate as possible, but the model, inevitably, still has some holes and inaccuracies.¹⁰² According to Dr. Frederick, one fundamental problem with looking at each parcel on the list individually is that when looking at a large tract project as a whole any particular piece within the project takes on values of the overall property; when looking at parcels individually they may not have high conservation value in and of themselves.¹⁰³ At the termination of this process, few of the listed lands had no conservation value, and it was apparent that the DEP had strictly adhered to their scientific assessment model.¹⁰⁴

The Florida Forever program has been extended to 2020, however, some changes have been made to the underlying fund. As of fiscal year 2013-14, Senate Bill 214 terminates the Florida Forever Program Trust Fund as of July 2014.¹⁰⁵ This is the termination of a specific trust fund within the program which has become obsolete.¹⁰⁶ The Florida Forever Program Trust Fund existed to transfer money to the Florida Communities Trust, when it was a separate program.¹⁰⁷ This program has now become part of the Department of Environmental Protection.¹⁰⁸ Funds from the Florida Forever Program Trust Fund will go into the Florida Forever Trust Fund.¹⁰⁹ Appropriations from 2013/2014 will remain in the fund, and will not be lost at the end of this fiscal year.¹¹⁰ With the termination of the conservation land surplus process these revenues will not be generated however the state is turning its focus toward the sale of other state held non-conservation lands.¹¹¹

V. ASSESSMENT MODEL FOR LAND SURPLUS

In order to determine if publically held lands are no longer needed for conservation, the state must examine each parcel to determine its conservation value.¹¹² The 2013-14 legislative appropriation of up to \$50 million in revenue generated from surplus

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required an extensive assessment of conservation lands.¹¹³

With the level of criticism that surrounded this issue, is it important to remember any revenue generated from surplus would have been deposited into the Florida Forever Trust Fund to be used to acquire new, higher quality conservation land. On the other hand, the state did not have to sell anything if it determined each parcel has some conservation value. The inventory of quality conservation land available for purchase is extensive.¹¹⁴ Ultimately, the state is not selling anything.¹¹⁵

This assessment included lands owned by the Board of Trustees purchased as conservation land.¹¹⁶ The State took into account the conservation value of the land, marketability and potential buyers, the communities' concerns, and title issues when selecting which lands to surplus.¹¹⁷

The state decided that in order to best evaluate the lands held by the Board of Trustees in accordance with the language of the 2013/2014 legislative appropriation, they would create a Technical advisory group ("TAG").¹¹⁸ The TAG was employed to organize scientific data to create a framework for analysis of each property held by the state.¹¹⁹ The TAG is made up of members from DEP's Division of State Lands and Division of Environmental Assessment; Florida Natural Areas Inventory; the Forestry Service; and the Fish and Wildlife Conservation Commission.¹²⁰ Through a set of workshops held during the summer of 2013, TAG was able to formulate a framework of criteria to determine lands that

have the highest and lowest overall conservation value for the State of Florida.¹²¹

The TAG's model started with a filter analysis of all lands title in the Board of Trustees.¹²² In order to apply these filters, the DEP turned to Florida Natural Areas Inventory where they first queried the FNAI Florida Managed Areas Database to identify all conservation lands owned or co-owned by the Board of Trustees.¹²³ Once the master list was generated the DEP subdivided the sites into the smallest possible categories supported by FNAI's Managed Areas Database, removing lands that were previously reviewed in a Land Review Analysis by Division of State Lands in 2012-13.¹²⁴ First, the TAG applied a coarse filter analysis to identified sites that qualified as potential surplus sites.¹²⁵ Next, the TAG used a medium filter to analyze specific resource characteristics on a site-by-site basis.¹²⁶ Finally, a fine filter analysis examined market value to determine if parcels would generate revenue if surplus.¹²⁷

Based on recommendations by the TAG generated from their filter analysis, DEP contracted to have a GIS model created which tested the potential surplus sites for specific criteria.¹²⁸ Under the model, each category had an associated relative weight formulated to help provide an accurate overall outcome.¹²⁹ Each category, although specific, overlapped with others, giving the impression that the model was thorough.

The first category applied to each site was connectivity.¹³⁰ This category analyzed each site's adjacency to other conservation areas, such military base buffers.¹³¹ The connectivity category also looked at whether the site was acquired recently as part of a Florida Forever project.¹³² This

category determined the amount of landscape integrity provided by a site to preserve unaltered land uses.¹³³ The DEP considered natural land cover patch size and land use intensity to prioritize areas that are remote and intact with large tract natural areas.¹³⁴ This category prioritized sites which provide a connected set of linear trails for the Florida Greenways and Trails System.¹³⁵ It also took into account a site's connectivity to privately held conservation lands.¹³⁶ Finally this category accounted for the Ecological Greenways Network, looking at sites which are part of core landscapes large enough to maintain sensitive and wide-ranging species' populations.¹³⁷

Many of the parcels which were listed for surplus were small tracts amid a larger conservation project.¹³⁸ Environmentalists concerned with this process feared that the segmentation of our conservation lands would create added problems for management.¹³⁹ It is important to note that the process of surplus of parcels acquired from acquisition projects but not needed has been an ongoing practice for many years.¹⁴⁰ Those who criticize this process are concerned with the impact private development will have for surrounding conservation lands, and feel they have conservation value as buffer areas.¹⁴¹ Environmentalists note that although these parcels may be small they may have value to support certain habitat types.¹⁴² On the other hand, some parcels were listed because they are difficult to manage due to their size and location.¹⁴³ If the state sells a landlocked parcel as surplus they would be required to provide access to the purchaser.¹⁴⁴ In cases where a parcel is landlocked or partially landlocked, management of the remaining conservation land may be much harder.¹⁴⁵ Small areas in private use can hinder management practices such as proscribed burns.¹⁴⁶ Dr. Frederick of the Acquisition and Restoration Council suggests, if we continue to fragment conservation lands, selling small parcels to private purchasers, we open up the remaining conservation land to increased risks such as illegal hunting, introduction of invasive exotic plants, and greater amounts of noise and light.¹⁴⁷

Water quality protection was also a category used to assess each site



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proposed for surplus.¹⁴⁸ In this category, the state looks at the presence of springs located within the proposed site, and the magnitude of water each holds.¹⁴⁹ Next, the category assessed sites to determine if they are part of a buffer to major lakes and rivers.¹⁵⁰ Buffer zone levels include 1000 meters, 500 meters, and 100 meters from an existing major lake or river.¹⁵¹ Sites were also assessed as to their location within a Nutrient Impairment Basin Management Plan, identifying watersheds with nutrient impairments.¹⁵² Sites located within the Everglades Restoration Project boundaries were flagged and weighted accordingly.¹⁵³ This category also identified sites that are within a wellhead protection zone.¹⁵⁴

Ecological significance is an essential characteristic in determining conservation value, thus, it was part of the state's assessment model.¹⁵⁵ This category identified the amount of a proposed surplus site which is located in a strategic habitat conservation area of five acres or more.¹⁵⁶ Sites located within these areas are also scored based on the priority framework of the Strategic Habitat Conservation Area itself.¹⁵⁷ Rare Species Habitat Conservation Priorities were overlaid to see if a parcel contains a rare species habitat.¹⁵⁸ The model assessed the percentage and acreage of the 100-year flood plain within each specific site.¹⁵⁹ The DEP overlaid the Biological Richness Index to identify sites that include at least three or more rare species.¹⁶⁰ The ecological significance category also identified sites listed for surplus which contain fifty acres or more of contiguous areas of critical landscape linkages.¹⁶¹ The assessment looked at whether a site encompasses underrepresented ecosystems, the size of the ecosystem in total, and the amount taken up by the potential surplus site.¹⁶² Potential surplus sites are assessed under this category to determine if they contain functional wetlands of one acre or more.¹⁶³ Finally, this section of the model calculated the percentage of potential surplus sites containing undeveloped beaches.¹⁶⁴

Scores generated from the model are relative.¹⁶⁵ Many in the

environmental community feel it is hard to compare proposed surplus sites from North Florida to those of the southern portion of the state.¹⁶⁶ According to Mark Middlebrook, executive director of the St. Johns River Alliance, Florida's size and expansive range of habitat types makes it difficult to compare sites from different regions of the state. North Florida is in a temperate climate zone and South Florida is sub-tropical.¹⁶⁷ According to Mr. Middlebrook, species differentiation varies from South Florida from that in North Florida. This may skew the model showing South Florida tracts as have higher conservation value simply because their regional habitat and climate supports a wider range of species.¹⁶⁸ The DEP has struggled for years to come up with a way of evaluating properties throughout the state for potential acquisition projects because of Florida's diverse ecosystems.¹⁶⁹ The same problems are inevitable in this procedure.¹⁷⁰

Each site was also assessed for its recreational qualities based on size, accessibility, water area, shoreline, habitat for rare species, presence of wildlife, location of hunting areas; and presence of natural features, historic sites, wilderness areas, and beaches. Historic and cultural resources was also a separate category which assessed the percentage of National Historic Registered Areas on each potential surplus site.

The DEP's model also considered geological significance.¹⁷¹ The model identified sites and their relative acreage which contain areas designated as most vulnerable to primary drinking water by the Florida Aquifer Vulnerability Index.¹⁷² This category also took into account the presence of springs and their volume; sinkholes, swallets, steepheads; and cave and karst features.¹⁷³

Finally, each site went through a market value analysis.¹⁷⁴ In general, market value was assessed based on a site's size, adjacency to residential, commercial,¹⁷⁵ or industrial development, and accessibility by road or water frontage.¹⁷⁶ This category also identified sites which were along the coastline; close to urban areas or impending developments; or adjacent to timber, mineral, oil, gas and agricultural resources.¹⁷⁷ It also identified whether the site was considered

upland habitat, or whether the parcel was within a mitigation bank service area.¹⁷⁸ Finally, the model assessed sites based on whether they had a managing agency, were part of a leasehold of a university, or were merely small, disconnected parcels.¹⁷⁹ If a parcel is landlocked or partially landlocked by surrounding state lands, it may actually have higher market value for some potential buyers who want a secluded home site.¹⁸⁰

When scoring a parcel on marketability it is important to note that the state generally appraises property "as is" not at highest and best use.¹⁸¹ Unless a potential buyer can secure the proper zoning changes or permitting required to develop a site as they wish, they would be taking a great risk buying the land for a specific purpose without securing the necessary entitlements prior to purchase.¹⁸² The fact that the land was previously a conservation site would seem to make a private purchaser's regulatory takings claim very difficult to win.¹⁸³ At the Acquisition and Restoration Council meeting in September, Dr. Frederick suggested the marketability category be taken out of the model as it has the potential to skew the results making parcels with higher market value more likely to be sold.¹⁸⁴ At this meeting the DEP suggested that this concern is precisely why each category has an associated weight, and marketability of a parcel was weighted less than other conservation factors.¹⁸⁵

The state also went through prior surplus studies to identify sites that remained after the initial review process at that time, and determine properties recommended for surplus.¹⁸⁶

VI. THE CURRENT SITUATION

The DEP terminated the entire initiative to assess state held conservation lands for potential surplus on February 28th, 2014.¹⁸⁷ In a vague press release, released after six in the evening that Friday, the DEP announced the termination with little reasoning.¹⁸⁸ The press release states that the DEP will now shift its focus towards the sale of non-conservation lands such as the A.G. Holley State Hospital in Lantana, to generate funding for Florida Forever.¹⁸⁹ This termination came after the state has spent six months working on this initiative.¹⁹⁰ The press release boasts

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that even though the initiative did not come to fruition, this process has increased staff's understanding of state held conservation lands.¹⁹¹ The DEP assures the public that the purchase and sale of conservation land will continue as it had in the past and further purports that this effort has led the department to focus on the new initiative of selling non-conservation lands.¹⁹²

The termination of the initiative to sell conservation lands was abrupt after extensive work had been done narrowing the list down to properties which fit the surplus criteria.¹⁹³ The criticism generated over this process forced members of the DEP to walk a very fine line. As the process continued more and more sites were removed from the list of potential surplus.¹⁹⁴ There were no legal actions filed surrounding this effort, however, several environmental groups threatened to proceed with legal action if the list was finalized with certain parcels still on it.¹⁹⁵ In the final days of this project two of the highly disputed areas, the Cayo Costa and Hilochee sites, were considered for removal from the list,¹⁹⁶ however, the public will never know, as their removal was simultaneous with the termination of the entire effort. Ultimately, it seems the properties remaining on the list for potential sale would not generate the return on investment expected by the State, and therefore, the DEP's focus was turned to try another alternative.¹⁹⁷ Currently the state is moving forward with its effort to sell non-conservation lands with various parcels around the state currently available for bid.¹⁹⁸

VII. WHERE ARE WE GOING FROM HERE

The sale of non-conservation lands will continue and the state will continue to buy and manage conservation lands as done in the past with appropriate funding.¹⁹⁹ The Florida Forever program is scheduled to continue until 2020.²⁰⁰ Revenue generated from non-conservation surplus will be deposited in the Florida Forever Trust fund and any money held in the fund at the end of the fiscal year will

continue towards the next year.²⁰¹

The decrease in funding for the program has environmentalists proposing what to do next. A new amendment is proposed called the Land and Water Conservation Amendment, which would acquire, restore, improve, and manage lands by dedicating 33% of net revenues from the existing tax on documentary stamps to conservation.²⁰² This amendment will go in front of voters in November 2014.²⁰³ As proposed, this amendment would do away with the bonding procedures as administered under Florida Forever, and provide a mandatory revenue stream for conservation.²⁰⁴ The amendment will still expend a portion of the money to pay the debt service on outstanding bonds.²⁰⁵ Once effective, the amendment will run for twenty years allocating the portion of tax revenues to the Land Acquisition Trust Fund.²⁰⁶ Many feel this amendment will pass with voter approval in November.²⁰⁷ According to its proponents, acquiring lands should not be the only goal and solution.²⁰⁸ They feel the state needs to be able to manage what it already has.²⁰⁹ On the other hand, opponents fear that this committed revenue stream will make management of the state budget more difficult and will give the state too much land and control over that land.²¹⁰

VIII. CONCLUSION

Florida has a long history of success in preserving its natural resources for its citizens and future generations. Though our population tends to look only at what is going wrong and not what we are doing right, it is important to recognize how far Florida has come in protecting and recognizing its valuable natural resources. We will face a perpetual fight with population growth and development in balancing the need for growth and the need for conservation. It is important to remember that the growth that this conservation is aimed at curbing is what is funding the ability to conserve. A fine balance must be reached between hindering growth and preserving our resources.

With the downturn in Florida's economy over the past five years, conservation efforts have become more restrictive and difficult. Since then we have seen drastic hits at what was once a bolstering \$300 million a

year program, Florida Forever. This program is now gasping for funding. 2013-14 appropriations seemed bigger than they really were with \$50 million being generated from the sale of other conservation lands. The assessment process used to evaluate sites for potential surplus was extensive. The commentary and criticisms surrounding this process were endless. Counties, as well as private environmental groups, raised their concerns for this assessment and surplus for various different reasons. Certain sites seemed to be of higher concern than others, such as the Green Swamp parcels and Cayo Costa State Park. As the state continued to remove sites, the state was reducing its potential revenue.

Ultimately, the state adhered to the legislative direction, and very few parcels were found to have no conservation value. If the lands currently held do have conservation value, its possible that the need for more conservation land is not as pressing as some felt, therefore, requiring less funding for new purchases. The final public draft of potential surplus sites amounted to little economic value if sold.

The state could pursue other alternatives to expand their conservation land inventory such as acquisition of conservation easements rather than fee simple acquisitions. If some sites which were listed as surplus have some conservation value, the state could sell or lease the site pursuant to a conservation easement. An example of this is leases of agricultural lands, or the sale of property adjacent to residential lot with a conservation easement. For certain parcels this could be a viable alternative. Also, if part of the drain on funding is derived from management of these lands, it would be interesting to know the difference in cost for a public agency to manage their lands versus and privately contracted manager. The state is exploring alternatives to adhere to its citizen's demands for more conservation land. Whether the sale of non-conservation land will be a success is still premature. The proposed amendment will provide a fixed revenue stream which should benefit the state's environmental goals. If effective, revenues generated need to be partially allocated towards management of currently held lands.

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Note: Since this article was written, Amendment 1 passed with nearly 75 % of the vote.

Endnotes:

- 1 Fla. Dept. of Env'tl. Protec., *State Lands History*, http://www.dep.state.fl.us/lands/history_more.htm (accessed Sept. 25, 2013).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 Memo from Div. of State Lands, to Board of Trustees, *Adoption of FY 2013-2014 Annual Florida Forever Work Plan*, http://static-lob-bytools.s3.amazonaws.com/press/59850_revised_proposed_work_plan_on_arc_agenda.pdf (accessed Nov. 11, 2013).
- 6 State Agency Authority for Land Disposition, Dec. 2009, http://www.dep.state.fl.us/lands/files/Surplus_whitepaper.pdf (accessed Sept. 30, 2013).
- 7 Fla. Stat. § 253.02 (2013).
- 8 *Id.*
- 9 Memo from Div. of State Lands, to Board of Trustees, *Supra* n. 4, at 6(a).
- 10 Fla. Sen. 1500, 2013 Legis. (May, 20, 2013).
- 11 Fla. Dept. of Env'tl. Protec., *State Conservation Land Assessment, GIS Model Description*, (Sept. 3, 2013).
- 12 Fla. Sen. 1500, *supra*, n. 7
- 13 Fla. Dept. Env'tl. Protec., *Public Comments*, http://publicfiles.dep.state.fl.us/DSL/OES/ARC/State%20Lands%20Assessment/Assessment_Comments/ARC%20Comments.pdf.
- 14 Fla. Dept. of Env'tl. Protec., *State Conservation Land Assessment, GIS Model Description*, *supra* n. 9, at 1.
- 15 *Id.*
- 16 Email from Clay Henderson Esq., Senior Counsel, Holland & Knight (Sept. 19, 2013, 2:08 p.m. EST)
- 17 Telephone Interview with Senator Alan Hays, Florida Senator, District 11. (Dec. 6, 2013).
- 18 *Id.*
- 19 Memo. From Dept. Env'tl. Protec. Press Office, to Interested Parties, *State Conservation Land Assessment* (Feb. 28, 2014) (available at <http://content.govdelivery.com/accounts/FLDEP/bullitens/a13afb>).
- 20 *Id.*
- 21 Fla. Dept. of Env'tl. Protec., *State Conservation Land Assessment Results- DRFAT*, <http://www.dep.state.fl.us/lands/assessment/maps.htm> (accessed Dec. 6, 2013).
- 22 Telephone Interview with Marianne Gengebach, Env'tl. Adminster. Fla. Dept. Env'tl. Protec. (May 5, 2014).
- 23 Fla. Sen. 1500, *supra* n. 8.
- 24 Email from Dr. Peter Frederick, Acquisition and Restoration Council at large member, (Sept. 20, 2013, 4:50 p.m. EST).
- 25 Telephone Interview with Marianne Gengebach, *supra* n. 22.
- 26 Fla. Dept. Env'tl. Protec., Div. of State Lands, PowerPoint, *Florida Land Programs*, (Nov. 15, 2011).
- 27 *Id.*
- 28 Dr. Joe Knetsch, *State Lands History*, (Nov. 10, 2008) http://www.dep.state.fl.us/lands/files/lands_history.pdf (accessed Sept. 25, 2013).
- 29 *Id.*
- 30 Fla. Dept. of Env'tl. Protec., *State Land History*, *supra* n. 1.
- 31 James A. Farr; O. Greg Brock, *Florida's landmark Programs for Conservation and Recreation Land Acquisition*, 14 *Sustain Journal*. Spring/Summer 2006 http://www.dep.state.fl.us/lands/files/Florida_LandAcquisition.pdf.
- 32 Documentary Stamp taxes are a tax on the execution of documents and real estate transactions. (\$0.70 per \$100 on transfers of real property/ \$0.35 per \$100 execution and delivery of documents).
- 33 Farr, *supra* n. 31, at 2.
- 34 *Id.* at 5.
- 35 *Id.*
- 36 *Id.*
- 37 Farr, *supra* n. 31, at 5.; Telephone Interview with Preston Robertson Esq., General Counsel, Florida Wildlife Federation, Tallahassee, Fla. (Sept. 20, 2013).
- 38 Fla. Dept. of Env'tl. Protec. Div. of State Lands, *supra* n. 26, at 14.
- 39 Farr, *supra* n. 31, at 7.
- 40 *Id.*; Fla. Dept. State, Div. of Elections, (<http://election.dos.state.fl.us/initiatives/full-text/pdf/11-1.pdf>).
- 41 Farr, *supra* n. 31, at 7.
- 42 *Id.*
- 43 Telephone Interview with Preston Robertson Esq., General Counsel, Florida Wildlife Federation, Tallahassee, Fla. (Sept. 20, 2013).
- 44 Under Florida Forever, the DEP Division of State Lands receive 35% of the funding; Water Management Districts receive 30%, Florida Communities Trust receives 21%; the Department of Family Lands receives 3.5%, the Stan Mayfield Working Waterfront receives 2.5%, the Recreation and Development Assistance Program receives 2%, Fish and Wildlife Conservation Commission receives 1.5%, the Forestry Department receives 1.5%, Recreation and Parks receives 1.5%, and Department of Greenways and Trails receives 1.5%. Fla. Dept. of Env'tl. Protec., *Florida Forever*, http://www.dep.state.fl.us/lands/fl_forever.htm (accessed Sept. 30, 2013).
- 45 Andy McLeod, The Nature Conservancy, PowerPoint, Fla. State University DeVoe Symposium, (Feb. 15, 2007).
- 46 Farr, *supra* n. 31 at 7.
- 47 *Id.*
- 48 *Id.*
- 49 *Id.* at 8.
- 50 Email from Dr. Peter Frederick, *supra* n. 24.
- 51 *Id.*
- 52 *Id.*
- 53 Farr, *supra* n. 31, at 8.; F-TRAC, a FNAI interactive program, looks at different species, water resources, natural communities and forestry. It is employed every six months in conjunction with the selection meetings to assess the new potential projects as well as lands already in public ownership. This program takes into account what important resources are already represented in protected lands when it assesses the value of an unprotected piece of land.
- 54 *Id.*
- 55 Telephone Interview with Senator Alan Hays, *supra* n. 17.
- 56 Farr, *supra* n. 31, at 13.
- 57 *Id.* at 14.
- 58 Fla. Dept. of Env'tl. Protec., *State Lands History*, *supra* n. 1.
- 59 Fla. Dept. Rev., *Documentary Stamp Collections by County*, http://dor.myflorida.com/dor/taxes/doc_stamp_coll.html (accessed Dec. 10, 2013).
- 60 *Id.*
- 61 Email from Preston Robertson Esq., General Counsel Florida Wildlife Federation, (Dec. 6, 2013, 3:29 p.m. EST).
- 62 Telephone Interview with Greg Kenect, The Nature Conservancy, Tallahassee, Fla. (Nov. 11, 2013).
- 63 Memo from Clay Smallwood, Director Div. of State Lands, to Board of Trustees of the Internal Improvement Trust Fund, *Florida Forever Work Plan for Fiscal Year 2011-12* (Sept. 14, 2011).
- 64 *Id.*
- 65 *Id.*
- 66 *Id.*
- 67 Memo from Fla. Dept. of Env'tl. Protec. Div. of State Lands, *Annual Florida Forever Work Plan, Item 9*.
- 68 Memo Div. of State Lands, *supra* n. 4, at 5.
- 69 *Id.*
- 70 *Id.*
- 71 *Id.*; Since the start of the fiscal year 2013/2014 the State has closed on one partnership project, with the Dept. of Defense, who allocated \$1.5 million to purchase 1,578 acres for the Camp Blanding-Raiford Greenway Florida Forever Project.
- 72 All outstanding Preservation 2000 bonds matured on July 1, 2013. Since this alleviates the states debt, many feel more funding can now be appropriated toward Florida Forever.
- 73 Email from Clay Henderson, *supra* n. 16.
- 74 Telephone Interview with Senator Alan Hays, *supra* n. 17.
- 75 *Id.*
- 76 *Id.*
- 77 *Id.*
- 78 *Id.*
- 79 Email from Clay Henderson, *supra* n. 16.; Email from Manley Fuller, President, Florida Wildlife Federation, (Sept. 19, 2013 at 9:18 a.m. EST).
- 80 *Id.*
- 81 Email from Manley Fuller, President, Florida Wildlife Federation, (Sept. 19, 2013 at 9:18 a.m. EST).
- 82 Email from Clay Henderson, *supra* n. 16.
- 83 Telephone Interview with Senator Alan Hays, *supra* n. 17.
- 84 *Id.*; Email from Mark Middlebrook, Executive Director, St. Johns River Alliance, (Sept. 19, 2013 at 4:21 p.m. EST).

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85 Email from Mark Middlebrook, Executive Director, St. Johns River Alliance, (Sept. 19, 2013 at 4:21 p.m. EST).

86 Telephone Interview with Senator Alan Hays, *supra* n. 17.

87 *Id.*

88 *Id.*

89 Email from Mark Middlebrook, *supra* n. 85.

90 *Id.*

91 Telephone Interview with Senator Alan Hays, *supra* n. 17.

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 Email from Dr. Peter Frederick, *supra* n. 24.

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 Telephone Interview with Marianne Gengenbach, *supra* n. 22.

105 Fla. Sen. 214, Legis. (April 11, 2013).

106 Email from Marianne Gengenbach, Environmental Administrator, Fla. Dept. of Env'tl. Protec., (Dec. 6, 2013 at 2:58 p.m. EST)

107 *Id.*

108 *Id.*

109 *Id.*

110 *Id.*

111 Memo. From Dept. Env'tl. Protec. Press Office, *supra* n. 19.

112 Fla. Dept. of Env'tl. Protec., State Conservation Land Assessment- GIS Model Description, *supra* n. 11.

113 Property surplus by the state must first be offered to state universities and other state agencies to lease; the county in which the property is located must be offered the land at fair market value prior to it being offered for sale to the public. Generally, proceeds generated from the surplus land sales are deposited into the fund from which the land was sold.

114 Email from Mark Middlebrook, *supra* n. 85.

115 Memo. From Dept. Env'tl. Protec. Press Office, *supra* n. 19.

116 Fla. Dept. Env'tl. Protec., State Conservation Land Assessment- GIS Model Description, *supra* n. 11, at 1.

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*

121 More than 65 scientific criteria were considered.

122 *Id.* at 2.

123 *Id.*

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.*

128 *Id.* at 3.

129 *Id.* at 5.

130 *Id.* at 7.

131 The model flagged any site within five miles of a Department of Defense facility.

132 *Id.*

133 *Id.*

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.*

138 Fla. Dept. of Env'tl. Protec., State Conservation Land Assessment Results- DRFAT, *supra*, n. 21.

139 Email from Dr. Peter Frederick, *supra* n. 24.

140 Email from Mark Middlebrook, *supra* n. 85.

141 *Id.*

142 *Id.*

143 *Id.*

144 *Id.*

145 Email from Dr. Peter Frederick, *supra* n. 24.

146 *Id.*

147 *Id.*

148 Fla. Dept. Env'tl. Protec., State Conservation Land Assessment- GIS Model Description, *Supra* n. 11, at 8.

149 *Id.*

150 *Id.*

151 *Id.*

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.* at 9.

156 *Id.*

157 *Id.*

158 *Id.*

159 *Id.*

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 Email from Mark Middlebrook, *supra* n. 85.

166 *Id.*

167 *Id.*

168 *Id.*

169 *Id.*

170 *Id.*

171 Fla. Dept. Env'tl. Protec., State Conservation Land Assessment- GIS Model Description, *supra* n. 11, at 12.

172 *Id.*

173 *Id.*

174 *Id.* at 13.

175 This category also identified sites located

within two miles of a development of regional impact.

176 *Id.*

177 *Id.*

178 *Id.*

179 *Id.*

180 Email from Dr. Peter Frederick, *supra* n. 24.

181 Email from Mark Middlebrook, *supra* n. 85.

182 *Id.*

183 *Id.*

184 Dr. Peter Frederick, Acquisition and Restoration Council Meeting Commentary, *Surplus Land Assessment Process* (Tallahassee, Fla. Sept. 15, 2013).

185 Marianne Gengenbach, Acquisition and Restoration Council Meeting Commentary, *Surplus Land Assessment Process* (Tallahassee, Fla. Sept. 15, 2013).

186 Fla. Dept. Env'tl. Protec., State Conservation Land Assessment- GIS Model Description, *supra* n. 11, at 13.

187 Memo. From Dept. Env'tl. Protec. Press Office, *supra* n. 19.

188 *Id.*

189 *Id.*

190 *Id.*

191 *Id.*

192 *Id.*

193 *Id.*

194 Fla. Dept. of Env'tl. Protec., State Conservation Land Assessment Results- DRFAT, *supra* n. 21.

195 Telephone Interview with Marianne Gengenbach, *supra* n. 22.

196 *Id.*

197 *Id.*

198 Memo. From Dept. Env'tl. Protec. Press Office, *supra* n. 19.

199 *Id.*

200 Fla. Dept. Env'tl. Protec., Parks and Open Space Florida Forever Grant Program, http://www.dep.state.fl.us/lands/FL_Communities_Trust/parksandopensespace_FAQ.htm (May 8, 2014).

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202 *Advisory Op. to Atty. Gen. re Water and Land Conservation--Dedicates Funds to Acquire and Restore Florida Conservation and Recreation Lands*, 123 So. 3d 47, 49 (Fla. 2013).

203 *Id.*

204 *Id.*

205 *Id.*

206 *Id.*

207 Telephone Interview with Marianne Gengenbach, *supra* n. 19.

208 Interview by Lauren Rowe, *Flashpoint Discusses Florida Forever*, with David Simmons, Senator; Chuck O'neil, League of Women Voters, Natural Resources Committee. (Sept. 23, 2013).

209 *Id.*

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