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• Erin L. Deady, Chair • Jeffrey A. Collier, Co-Editor • Anthony J. Cotter, Co-Editor

The Tiff over TIF: Extending Tax Increment Financing to Municipal Maritime Infrastructure*

Can CRA's Use Tax Increment Revenue to Make Navigation and Other Improvements to Sovereign Submerged Land Outside Their Boundaries

by Samantha Culp, J.D. Candidate, Student Associate, Thomas T. Ankersen, Legal Skills Professor and Director, Conservation Clinic, University of Florida Levin College of Law, and Marissa Faerber, Associate, Dunay, Miskel, Backman and Blattner, Boca Raton, Florida

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Abstract

Harbors, inner harbors and their navigational connection to the streams of maritime commerce are the economic and cultural lifeblood of most waterfront communities. Oddly, this connection has often been disregarded in the development and financing of municipal plans. Working waterfront communities need to find new and creative means to finance or co-finance improvements to their maritime infrastructure. One such means is through redevelopment planning and the financial vehicle known as Tax Increment Financing (TIF). Typically associated with dry land, TIF allows the incremental increase in property taxes from a base year to be captured from a defined geographic area and used to fund

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From the Chair

by Erin L. Deady

Recently, I had the privilege of updating the Bar's Board of Governors on all of the great activities of the ELULS that are being implemented. Hearing updates from the other Sections was really informative because it showed that all of the Sections are facing similar challenges and working very creatively to deliver services that are innovative and cost effective to their memberships. But in delivering our Section update, I concentrated on how we are growing our membership, reaching out and collaborating with law schools, providing new and partnered CLEs including webinars, and working through our Committee structure and Affiliate members to provide strong networking opportunities. The list of our accomplishments was long, starting with our Strategic Plan and how we are integrating the goals in that Plan with those for the Committees to monitor and track their annual accomplishments.

The Executive Council will be holding its annual Long Range Planning Retreat April 4-6, in Tampa. We will have a great mix of planning discussion, our next Executive Council meeting and some great activities planned. We hope to see

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CHAIR'S MESSAGE
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you at the Council meeting June 27, 2013, in Boca Raton Resort & Club, Boca Raton (in conjunction with The Florida Bar Annual Convention).

The CLE Committee has worked tirelessly to finalize the program, content and speakers for the Annual update, August 8-10 this year with our Executive Council meeting held on August 7. We look forward to seeing you there and look for updates soon on the agenda and activities associated with the Update. In addition, the Section is proud to have partnered with UF Sea Grant Florida, Florida Department of Economic Opportunity, Community Resiliency, NOAA, UF IFAS Extension, Florida Coastal Management Program and the Palm Beach County Planning Congress to provide a new CLE program opportunity, "Adaptive Planning For Coastal Change: Legal Issues For Local Government" focused on issues for lawyers and planners.

Look soon also for our revised sponsorship opportunities for lawyers and affiliates alike. We are looking forward to getting the word out on our various events and how companies, firms and individuals can support those activities with highlighting that support through our website, E-Newsletter and Annual Update. Another big goal for this quarter is a membership survey targeted at our Affiliate membership to assure we are delivering the highest quality services to those important members. The Affiliates held successful mixers on January 24 in Tampa and on March 21 in Jacksonville, with the next one on June 6 in Tallahassee, so mark your calendars and look for final locations to be announced soon! Please contact Bob Wojcik if you are interested in becoming active with sponsorship or attendance at these events.

We are very much urging our members to bring new creative ideas to our Committees by considering joining one. We have seen new faces getting active in the Committees and we appreciate all your hard work that is so critical to making the Section and success. Please visit www.eluls.org for the latest updates on programs and services available to you as a Section Member!

We hope to see you at an upcoming meeting and as always feel free to call or drop a line to myself, our Executive Council or our Committee Chairs with any new opportunities or great ideas to grow our membership.

This newsletter is prepared and published by the Environmental and Land Use Law Section of The Florida Bar.

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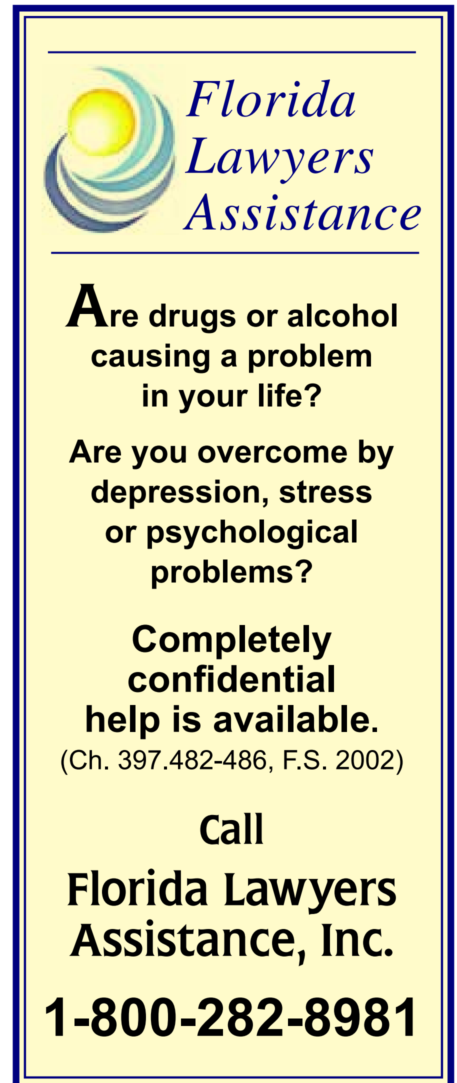

On Appeal

by Lawrence E. Sellers, Jr.

Note: Status of cases is as of February 7, 2013. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Martin County Conservation Alliance, et al v. Martin County, et al, Case No. SC11-2455. Petition for review of 1st DCA decision in *Martin County Conservation Alliance, et al v. Martin County*, Case No. 1D09-4956, imposing a sanction of an award to appellees of all appellate fees and costs following an earlier decision of the district court that "the appellants have not demonstrated that their interests or the interests of a substantial number of members are 'adversely affected' by the challenged order, so as to give them standing to appeal." 73 So.3d 856 (Fla. 1st DCA 2011). Status: The Court accepted jurisdiction on May 11, 2012.

FIRST DCA

State of Florida v. Basford, Case No. 1D12-4106. Appeal from order of partial taking in claim for inverse condemnation against the State of Florida as a result of the passage of Article X, Section 21, Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy. Status: Notice of appeal filed August 27, 2012.

Florida Wildlife Federation, Inc., et al v. DEP, Case No. 1D12-3320. Petition for review of final order determining that petitioners failed to prove that the existing narrative nutrient criterion is an invalid exercise of delegated legislative authority and that DEP proved that the proposed numeric nutrient criteria rules are not invalid exercises of delegated legislative authority. Status: Notice of appeal filed on July 9, 2012.

FINR, II, Inc. v. CF Industries, Inc. and DEP, Case No. 1D12-3309. Petition for review of final DEP order granting CF's applications for various approvals, including environmental resource permit, conceptual reclamation plan, wetland resource permit modification and conceptual reclamation plan modification. Status: Notice of appeal filed July 9, 2012.

Sexton v. Board of Trustees of the Internal Improvement Trust Fund, Case No. 1D11-5988. Appeal from final order denying as untimely an amended petition for administrative hearing seeking to challenge the issuance of a 50-year sovereign submerged lands easement to FDOT for the reconstruction of the Little Lake Worth Bridge in Palm Beach County. Status: Affirmed per curiam on December 13, 2012, 37 Fla. L. Weekly D2840c.

SECOND DCA

Scott v. Galaxy Fireworks, Inc., Case No. 2D11-1583. Appeal from final judgment entered in favor of Galaxy Fireworks and Itzhak Dickstein by which they were awarded $1 million in damages plus prejudgment interest in an inverse condemnation case relating to a 1998 executive order forbidding the sale, use or discharge of fireworks. Status: Reversed on December 5, 2012, 37 Fla. L. Weekly D2802d; motion for rehearing and motion for rehearing en banc filed December 20, 2012.

Duke's Steakhouse Ft. Myers, Inc. v. G5 Properties, LLC, and SFWMD, Case No. 2D11-5607. Petition for review of final order granting environmental resource permit over contrary recommendation by ALJ. Status: Affirmed on January 18, 2013.

THIRD DCA

City of Key West v. Florida Keys Community College, Case No. 3D11-417. Appeal from trial court's order granting final summary judgment to Florida Keys Community College, in which the trial court: (1) determined that the college enjoys sovereign immunity from the city's imposition of stormwater utility fees and (2) directed the city to refund the stormwater utility fees paid by the college. Status: Affirmed on January 18, 2012, 81 So. 3rd 494 (Fla. 3rd DCA 2012); petition for review denied by Florida Supreme Court on November 15, 2012.

FOURTH DCA

Archstone Palmetto Park, LCC v. Kennedy, et al, Case No. 4D12-4554. Appeal from trial court's order granting final summary judgment determining that the 2012 amendment to section 163.3167(8), Florida Statutes, does not prohibit the referendum process described in the City charter prior to June 1, 2011. Status: Notice of appeal filed December 19, 2012.

DACS v. Mendez, et. al., Case No. 4D11-4644 and 4D12-196. Appeals from final judgments in class actions finding the Florida Department of Agriculture and Consumer Services liable and awarding damages for the destruction of citrus trees by the Department. The issues in the appeal and cross appeal involve post-judgment proceedings on how, or whether, to allow the plaintiffs to execute on the judgments against a state agency. Status: On July 25, 2012, the court held that the applicable statute precludes the issuance of a writ of execution against the department and declined to reach the constitutional issues at this time. 37 Fla. L. Weekly D1775a. On October 10, 2012, the court certified the following question to be of great public importance: "Are property owners who have recovered final judgments against the State of Florida in inverse condemnation proceedings constitutionally entitled to invoke the remedies provided in section 74.091, Florida Statutes, without first petitioning the Legislature to appropriate such funds pursuant to section 11.066, Florida Statutes?" 37 Fla. L. Weekly D2361b.

FIFTH DCA

RLI Live Oak, LLC v. SFWMD, Case No. 5D11-2329. Appeal from declaratory judgment determining that RLI participated in unauthorized dredging, construction activity, grading, diking, culvert installation and filling of wetlands without first obtaining the District's approval and awarding the District $81,900 in civil penalties. Status: On August 31, 2012, the court reversed and remanded, determining that the trial court improperly based its finding on a preponderance of the evidence standard and not on the clear and convincing evidence standard. 37 Fla.

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ON APPEAL
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L. Weekly D2089a. Subsequently, the district court granted the District's request and certified the following question: "Under the holding of *Department of Banking & Finance v. Osborne Stern & Co.,* 670 So. 2d 932 (Fla. 1996), is a state governmental agency which brings a civil action in circuit court required to approve the alleged regulatory violation by clear and convincing evidence before the court may assess monetary penalties." 37 Fla. L. Weekly D2528a (Oct. 26, 2012).

U.S. SUPREME COURT

Koontz v. SJRWMD, Case No. 11-1447. Petition for writ of certiorari to review the decision by the Florida Supreme Court in *SJRWMD v. Koontz,* 36 Fla. L. Weekly S623a, in which the Court quashed the decision of the 5th DCA affirming the trial court order that SJRWMD had effected a taking of Koontz's property and awarding damages. Status: Petition granted October 5, 2012; oral argument held on January 15, 2013.

If you've got questions, we've got answers!

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Florida Case Law Update

by Gary K. Hunter, Jr. and Thomas R. Philpot, Hopping, Green & Sams, P.A.

In determining whether a landowner's investment-backed expectations are met in an inverse condemnation case, trial courts should not factor commonly owned but separately platted subdivisions in the analysis. *Galleon Bay Corp. v. Bd. of County Comm'rs*, No. 3D11-1296, 2012 WL 6027768 (Fla. 3d DCA Dec. 5, 2012).

Galleon Bay (Galleon) is a subdivision planned by the Schleus, a husband and wife development team, as a result of their acquisition of property in an area known as No Name Key in Monroe County, Florida, during the late 1960s and 1970s. The Schleus were also involved in the successful development of the Bahia Shores and Dolphin Harbour subdivisions on No Name Key during this time. Over more than a decade, and through negotiation and settlement of disputes with the Monroe County and the Department of Community Affairs (DCA), a litany of zoning, planning, and permitting decisions regarding the Galleon property ultimately resulted in the county approving a revised plat for the subdivision, including a required conservation easement and declaration of restrictions. The plat, revised from a plat approved by the county in 1991 but challenged by DCA, allowed for 14 lots, and the accompanying declaration provided that the lots shall only be used for single family residential purposes *and* for those uses permitted under the Commercial Fishing Village zoning designation.

While Galleon was securing the revised plat approval, the county had adopted a Rate of Growth Ordinance (ROGO) implementing a point system for the number of single family home building permits the county could issue in the upper, middle and lower Keys. The county modified the ordinance in 1996, revising the ROGO to incorporate the Florida Keys 2010 Comprehensive Plan and allowing for property owners to file applications for administrative vested rights determinations and beneficial use determinations. Galleon sought a vested rights and beneficial use determination in 1997, and despite a favorable recommendation from a hearing officer to grant the request, the county commission denied the recommendation. On review, the circuit court outlined the commission's errors and quashed the order, a decision from which the county sought second-tier certiorari review in 2002, but was denied by the Third District Court of Appeal (Third DCA) in 2004.

Concurrent with its pursuit of this administrative remedy, Galleon sued the county for inverse condemnation in 2002. In turn, the State of Florida was sued as a third party defendant. In an unusual and complicated set of procedural circumstances, Galleon prevailed on an order of summary judgment and proceeded to a jury award on compensation in 2006, only to seek and obtain an order for a new trial on damages later that year. After appeals brought by the county and the state, a new successor trial judge on the court declined to conduct the new damages trial, instead vacating the court's earlier grant of summary judgment. Upon motion by Galleon, the successor judge was dismissed, the case for inverse condemnation was heard on a bench trial, and a final judgment was entered in favor of the county and the state finding that a taking had not occurred. Galleon appealed.

The Third DCA determined that the trial court's ruling, purportedly following the standards of *Penn Central* and *Lucas*, was in error to the extent that it determined that Galleon's investment backed expectations had been met through an analysis lumping the 13 Galleon lots with the Schleus' decades prior development of nearby Bahia Shores and Dolphin Harbour. According to the Third DCA, inverse condemnation decisions relied upon by the trial judge were misinterpreted and misapplied. Notably, a decision finding that physically contiguous parcels are presumed as one unit in a case where none of the property was separately platted was deemed not comparable to the clear and separate plat structure of the three subdivisions, including Galleon Bay, planned by the Schleus.

Additionally, the Third DCA noted that the trial court had summarily dismissed in error and without any meaningful analysis the controlling Florida Supreme Court precedent in *Department of Transportation v. Jirik*, 498 So.2d 1253 (Fla. 1986), by its suggestion that the Galleon lots could be aggregated to build a single dwelling for purposes of determining an economically viable use of the property. *Jirik*, however, held that "vacant city property constituted presumptively separate units if platted into lots," and the Third DCA held that the rationale and holding of *Jirik* extends beyond the urban "city" environment and includes projects like Galleon Bay where plat approval is merely the first step in a project to build and sell lots or homes.

In other analysis, the Third DCA also found error with the trial court's interpretation of the declaration of restrictions pertaining to the Galleon property, whereby it concluded the term "and" could be interpreted as "or" in the requirement that lots be only for single family residential purposes and for those uses permitted under the Commercial Fishing Village zoning designation. Expert testimony at trial suggested that the Galleon property had economically viable commercial fishing use as trap storage alone, and considering this use without the required residential use identified in the declaration, the trial court found that the county's ROGO did not diminish the value of the property since Galleon could use all 13 lots as trap storage. The Third DCA disagreed, holding that "and" in this instance was a freely negotiated term of language not subject to the statutory interpretation approaches which allow for "and" to be construed disjunctively as "or." Accordingly, the decision of the trial court was reversed and remanded with instructions to enter a judgment of liability in favor of Galleon with a corresponding takings order allowing the case to proceed to a compensation trial.

Florida law permits attorneys' fees in inverse condemnation cases to be calculated and awarded based on all work relating to the suit, including work performed before the date a suit is filed. *Bd. of Supervisors v. Fla. Dep't of Transp.*, 103 So.3d 218 (Fla. 4th DCA 2012).

For a road widening project, the Florida Department of Transportation (FDOT) sought to condemn a parcel of land owned by the St. John's Water Control District (District) identified as Parcel 104. Once the project was completed, FDOT learned that a canal area, known as Parcel 104A, had been filled during the construction. The District filed an inverse condemnation counterclaim, alleging a taking by FDOT without compensation for Parcel 104A, which the District had determined it owned through prior discovery in the original condemnation proceeding.

The counterclaim was resolved in favor of the District, and the parties agreed that the District was entitled to attorneys' fees. In the court's fees award under the lodestar method, the court only considered the time period beginning at or around the time the District amended pleadings to include the inverse condemnation counterclaim. The Fourth District Court of Appeal (Fourth DCA) found error in this calculation, holding that Florida law permits an award of attorneys' fees for all work relating to a condemnation suit including work performed before the date that the suit is filed. The Fourth DCA reversed and remanded for determination of fees the District was entitled to prior to its counterclaim.

Where a deed references a property boundary defined by a natural monument, such as a canal or lake, Florida law follows the general rule that a rebuttable presumption exists in favor of finding the boundary at the centerline of the monument, absent evidence of contrary intent. *Bischoff v. Walker*, Case No. 5D11-2194, 2012 WL 6213271 (Fla. 5th DCA Dec. 14, 2012).

Bischoff and Walker owned adjoining property bordered along one side by a lake and divided by a canal which provided access to the lake. Bischoff, whose property was on the eastern side of the canal, received a deed which provided, in part, that she owned land "lying East of Canal and North of Lake." Walker, on the other hand, owned the property on the western edge of the canal, and he received a deed with language providing, in part, that he owned property also "lying East of Canal and North of Lake." Bischoff and Walker disputed the ownership of the submerged land under the canal and lake, with Walker claiming he owned all of the land and Bischoff asserting that reference to monuments in her deed allowed her ownership to extend to the centerline of the canal and lake. As Bischoff pursued county permits for the construction of a dock and deck on the lake, and later on the canal, this dispute escalated upon Walker's repeated objections, ultimately compelling Bischoff to file suit seeking, among other relief, to quiet title to the boundary between the properties.

At the trial level, the court found that Bischoff had riparian rights, including rights to build a dock to wharf out to the water, but declined to accept Bischoff's centerline of monument argument by finding instead that Walker was the rightful owner of the submerged lands in the canal and lake. On appeal, the Fifth District determined that Bischoff's deed conveyed with reference to natural monuments and that Bischoff's application of the legal presumption of ownership extending to the centerline of a bordering non-navigable body of water was accurate, unless contrary intent was clearly expressed. In analyzing the presumption in Florida law and extensively in other jurisdictions, the Fifth District concluded that Florida law follows the general rule that a rebuttable presumption exists in favor of finding the boundary at the centerline of a referenced natural monument, unless rebutted. Finding no evidence from Walker that the grantor intended not to convey to the centerline of the canal, the Fifth District reversed summary judgment and remanded the case for entry of summary judgment in favor of Bischoff that her boundary lines are the centerline of the canal and the centerline of the lake.

Florida law does not expressly prohibit a municipality from declining to contract with tenants for utility services and instead restricting service agreements to property owners. *Jass Properties, LLC v. City of North Lauderdale*, 101 So.3d 400 (Fla. 4th DCA 2012).

In the City of North Lauderdale,

continued...

the City is the exclusive provider of water and utility services. Under the City's Code of Ordinances, the City will only open utility accounts for water and sewer services in the name of a property owner, not a tenant. In effect, if the property owners do not enter contracts for these services, the residential buildings they own and manage risk being uninhabitable without utilities. No tenants can directly hold accounts with the City's utility services.

Considering this City policy in light of section 180.135, Florida Statutes, relating to restrictions on actions of a utility against a landowner or future tenant for debts owed by a previous tenant, the Fourth District held that section 180.135, Florida Statutes, does not expressly prohibit the City from declining to contract with tenants for water utility services and restricting service agreements to property owners. The statute does not particularly mandate that a tenant has the ability to contract directly for services with a municipality. Viewing the measure as a strategy for constraining costs, the Court emphasized it found nothing wrong with a City's plan to avoid the burdens of dealing with potentially thousands of tenants who could become delinquent in bill payments.

An association of property owners at a recreational vehicle park is not subject to regulations of homeowners' associations under chapter 720, Florida Statutes, where the park prohibits any permanent or semi-permanent structures intended or used as permanent living quarters. *Clark v. Bluewater Key RV Ownership Park*, No. 3D11-884, 2012 WL 6602657 (Fla. 3d DCA Dec. 19, 2012).

Owners of lots in the Bluewater Key RV Ownership Park (the "Park") in Monroe County, brought an action challenging resolutions relating to a lot rental program implemented by the Park's property owners association, asserting, among other claims, that the association is subject to the requirements of chapter 720, Florida Statutes, regulating homeowners' associations. The District Court of Appeal in the Third District disagreed. Affirming the opinion of the trial court, the District Court held that the association at the Park had not triggered the application of chapter 720 simply by using a Declaration of Covenants to control usage of the lots, particularly where the Park specifically prohibited permanent or semi-permanent structures intended or used as permanent living quarters. According to the court, the legislature has not evinced any intent to include developments like the Park, which are dedicated solely to use and rental of recreational vehicle lots, in the terms of section 720.301, Florida Statutes.

AG Opinion: A proposed county ordinance that would condition acceptance of an application for rezoning on the consent of a specified number of property owners may be an illegal delegation of legislative power. Op. Att'y Gen. Fla. 12-32 (2012).

On request from the Clay County Attorney, the Attorney General issued Opinion 2012-32 on September 19, 2012, addressing questions relating to the legal authority of a local government to require in its zoning code the consent of some or all property owners within a planned use development before considering an application to revise zoning for a portion of a planned use development. Questions on this issue arose from challenges the Clay County Commission realized when applying the current county land development code which requires that the rezoning application for property within a planned development be joined by all owners of property within the boundaries of the planned development. Third party joinder for these applications was particularly difficult in planned developments comprised of hundreds or thousands of parcels.

Cautioning that the Office of the Attorney General has no authority to comment on the current zoning code and must assume its validity until challenged and declared otherwise by a court, the Opinion offered responses for purposes of the Commission's consideration in developing an ordinance that may amend the joinder provisions of the land development code to reduce or eliminate the threshold of owners joining a zoning application. In short, the Attorney General advised that no provisions of the Community Planning Act in chapter 163, Florida Statutes, "authorize a local government agency to delegate its legislative zoning authority to other landowners by requiring their consent prior to the acceptance of a request for rezoning." The Attorney General emphasized that such requirements risks resulting in an illegal delegation or abdication of legislative power, which Florida law forbids. Further, such an ordinance may also introduce arbitrariness into the rezoning application process, particularly since courts have determined that resident opinions do not constitute a sound basis for denials of zoning change applications.

Finally, responding to questions regarding common law authority for this type of zoning requirement, the Attorney General noted that zoning powers of Florida counties are statutory as circumscribed by chapters 125 and 166, Florida Statutes, and counties have no inherent authority to restrict the use of land through zoning. Thus, no common law right exists for imposition of a consent requirement on applications of rezoning.

ELULS Energy Committee: Powering Up

by Brooke Lewis & Kelly Samek, Energy Committee Co-Chairs

As co-chairs of the Environmental and Land Use Law Section's Energy Committee, we sincerely hope you enjoyed December's special edition of the Section Reporter, which, under the direction of Committee Publications Lead George Cavros, brought you several informative pieces on current energy law topics. ELULS created the Energy Committee in 2011 to provide a forum for interested practitioners across the landscape of energy law to network and generate opportunities of common interest. ELULS's main goal in creating the committee was to provide a niche for energy law attorneys within The Bar. As the "youngest" of the Section's substantive committees, the Energy Committee is excited that the Section Leadership embraced the idea of an energy-focused December edition of the Section Reporter.

Since its inception a year and a half ago, the Energy Committee has worked hard to provide content of interest to ELULS attorneys and affiliate members whose work relates to energy law. The Energy Committee has been very active on the publications front. In addition to the articles in the December edition of the Reporter, if you missed them, please check out *"Florida's Electrical Power Plant Siting Act: Helping To Keep the Lights On For 30 Years,"* by Douglas S. Roberts of Hopping Green & Sams, P.A., in the October edition of the Section Reporter; the lead article in the June 2012 Section Reporter by Florida Department of Agriculture & Consumer Services' General Counsel Lorena Holley entitled, "*The 2012 Energy Bill: A Modest Step for Florida's Energy Policy*;" current Energy Committee Publications Lead George Cavros' article *"Florida's 35 Year-Old Renewable Energy Policy: Moving Beyond 'Avoided Cost'"* in the March 2012 issue; and a collaborative piece, "*The Inaugural Florida Energy Summit: Three Perspectives,*" in the December 2011 edition.

The Energy Committee has also organized two free webinars. The first was entitled *"Energy Regulation in Florida: Where we Have Been and Where the Legislature May Go This Session,"* a pre-2012 session glimpse at the legislative landscape related to energy with presenters George Cavros of The Law Office of George Cavros; Mark Lawson of Bryant Miller Olive; Ashley Foster Pinnock of NextEra Energy Resources, LLC; and Nicole Kibert of Carlton Fields. The second, a joint effort with the Affiliates, was entitled *"The Basics of State Licensing of Power Plants and Electrical Transmission Lines in Florida,"* with presenters Douglas S. Roberts of Hopping Green & Sams, P.A.; Robert Scheffel "Schef" Wright of Gardner, Bist, Wiener, Wadsworth & Bowden, P.A.; Cindy Mulkey, Administrator of the Florida Department of Environmental Protection Office of Siting Coordination; and Richard Zwolak of Golder Associates. At the time of this writing, Committee CLE Lead Paula Cobb is planning another free webinar expected for broadcast on February 27, titled "Air Quality Regulation: Developments, Trends, and Impacts to Energy Generation in Florida." If you were unable to attend any of the live broadcasts, these CLE-accredited programs are available on the Committee's webpage (visit http://eluls.org/energy-committee/).

In sum, the Energy Committee is proud of its early accomplishments and looks forward to active Section participation in the future. We welcome and invite participation by all ELULS members (attorneys and affiliates). Please visit the Committee's webpage for more information.

DEP Update

by Randy J. Miller, II, Senior Assistant General Counsel

Rulemaking Update

Risk-Based Corrective Action (RBCA) Rule Consolidation

The Department of Environmental Protection ("DEP") published a Notice of Rule Development for Chapter 62-780, F.A.C., in March 2012. The purpose of the rulemaking was to consolidate DEP's four contaminated site cleanup rule chapters into the existing Chapter 62-780, F.A.C, for consistency and ease of use. Currently, DEP has four Risk-Based Corrective Action (RBCA) cleanup rules that apply to different cleanup program areas which include Chapters 62-770, 62-780, 62-782, and 62-785, F.A.C.

The proposed consolidated Chapter 62-780, F.A.C., accommodates the minor differences between the rules and provides a single set of requirements for contaminated site cleanup. This consolidation is administrative consolidation of the chapters, and while there are a few clarifications and updates, no substantive requirements are changed as a result of this effort. This rule consolidation also allows DEP to propose the repeal of the other three cleanup rule chapters in support of the Governor's Executive Order #11-211. Once adopted, responsible parties and cleanup professionals will be able to use a single document to reference cleanup criteria for any type of contaminated site in Florida.

A Notice of Change is tentatively planned to be published in the Florida Administrative Register (FAR) in late February to resolve concerns raised by the Florida Legislature's Joint Administrative Procedures Committee. DEP anticipates that the

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DEP UPDATE
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consolidated Chapter 62-780, F.A.C., will be effective in April, 2013.

Associated Industries of Florida (AIF) Petition

DEP initiated rulemaking on Chapters 62-780 and 62-777, F.A.C., in September 2011 in response to a petition filed by the AIF. DEP staff developed a Workshop Draft of the Chapter 62-780 rule language; however, the AIF representatives acknowledged that it made sense to consolidate the four RBCA rules first, and then draft amendments to the consolidated Chapter 62-780.

DEP has tentatively scheduled the first rule workshop to address the issues raised by the AIF petition for Tuesday, March 5, 2013, in Tallahassee and via webinar. DEP will publish the Workshop Notice in an upcoming issue of the FAR, and the draft rule language will be available at that time. The proposed revisions will clarify that the "Referenced Guidelines" are guidance and not enforceable, will add a hierarchy of information sources for reference when developing alternative cleanup target levels, will specify the information needed when performing a probabilistic risk assessment, and will establish criteria for supporting a Site Rehabilitation Completion Order based on alternative cleanup target levels, but without institutional or engineering controls.

Chapter 62-777, F.A.C., will also be noticed for workshop on March 5, 2013, in response to the AIF Petition for Rulemaking; however, the DEP is not proposing any changes to this rule chapter at this time.

Used Oil and Hazardous Waste

DEP published a Notice of Proposed Rule (NPR) for Chapters 62-710 and 62-730, F.A.C., on January 10, 2013. The purpose of this rulemaking is intended to provide clarity and ease of reference while eliminating duplicative language. DEP is currently addressing concerns raised by the public during the comment period, which will require publishing a Notice of Change for Chapter 62-710, F.A.C., tentatively set for late February. DEP anticipates that both Chapters 62-710 and 62-730, F.A.C., will be effective in April, 2013.

Case Update

Last Stand and Halloran v. Fury Management and DEP (South District) OGC# 12-1275; DOAH# 12-2574.

Fury, a Florida corporation that is in the water attraction business, has been operating in Key West for seventeen years. It currently operates a recreational project similar to the proposed project. Fury proposed a project consisting of permanently-moored platforms and large floating water toys where customers will swim, ride jet skis, use kayaks, and play on the water toys. Petitioners challenged the Notice of Intent to issue a consolidated environmental resource permit and sovereignty submerged land lease to Fury. An administrative hearing was held and the Recommended Order was issued on December 31, 2012.

The Final Order, issued February 7, 2013, adopts the ALJ's recommendations to grant the consolidated environmental resource permit and sovereignty submerged lands lease; to direct that Fury's monetary donation for mitigation shall be paid to the Florida Keys National Marine Sanctuary Foundation for use in the Florida Keys Mooring Buoy Account 30.4.4.6.; and to modify the lease to show the lease area is 17,206 square feet.

Amanda Pope and Anastasia, Inc. v. DEP and Grace, et al. (Northeast District) OGC# 11-0644; DOAH#s 11-5313 & 11-6248.

DEP issued an amended exemption notice on September 8, 2011, to Respondent Applicants for work related to performing repair and maintenance to an existing dune walkover structure. The structure provides access to the Atlantic Ocean from the neighborhood of Milliken's Replat, in St. Johns County. Petitioners filed separate petitions contesting DEP's decision to grant the exemption. The petitions were referred to DOAH and consolidated for hearing. The final hearing was completed on May 24, 2012. The Recommended Order ("RO") was issued on October 5, 2012.

In the RO the ALJ recommended that DEP enter a final order denying the application of the Respondent-Applicants for an exemption from the requirements of CCCL permitting under Section 161.053(11)(b), Florida Statutes, for their proposed activities on a dune walkover structure seaward of the coastal construction control line at the end of Milliken Lane. Although the ALJ found that "the proposed project would meet the exemption criteria of section 161.053(11)(b)," he concluded that section 161.053(11)(b) is not the applicable provision for repair or replacement of an existing structure such as a dune walkover. The ALJ concluded that "the specific provisions of section 161.053(11)(a), not the general exemption language of section 161.053(11)(b), should have been applied" by DEP to the proposed project. He stated that "[a]ny exemption from CCCL permitting for this existing structure should have been accomplished through the applicable paragraph (a)," and if not, the "Applicants should have been required to obtain . . . a permit pursuant to section 161.053(11)(a)." The ALJ concluded that DEP ignored the paragraph (a) provision that "specifically references 'existing structures' such as the dune walkover in favor of considering the Applicants' proposal as an 'activity'."

On December 21, 2012, DEP issued a Final Order rejecting the ALJ's recommendation and granting the section 161.053(11)(b) exemption. The Final Order concludes that the clear and unambiguous language of the statute does not preclude application of the section 161.053(11)(b) exemption to authorize this dune walkover repair project.

Department of Environmental Protection v. *John and Mona Rondolino* (Southwest District).

After 4 years of litigation, on November 29, 2012, a 6-person jury found the Defendants in this case liable for the filling of 0.5 acres of floodplain wetland, located on their property in Dunnellon, Marion County and adjacent to the Rainbow River Aquatic Preserve, without the required permit from DEP. The jury found that the Rondolinos failed to meet all 8 elements of estoppel against the government. The Defendants voluntarily dismissed with prejudice their equal protection claim, pursuant to 42 U.S.C. § 1983, against the DEP Secretary.

Law School Liaisons

Florida International University College of Law Update

by Casey Warfman (3L) and Shannon Caplan (3L)

The 2012-2013 school year has been very productive and busy for the Florida International University College of Law. Recent developments are summarized below:

Environmental Law Society ("ELS") Update

In September, the ELS held its annual environmental and land use law career panel, which is an opportunity for students to learn what it means to practice these areas of law on a daily basis. The panelists included: Jim Porter, an environmental law attorney at James M. Porter, P.A.; and Melissa Tapanes, a land use attorney at Bercow Radell & Fernandez, P.A.

In November, the ELS teamed up with the Federalist Society and held a lively climate change debate. The moderator, Neal McAliley, who heads the climate change practice group at White & Case, LLP, began the debate with a brief overview of the domestic laws regulating climate change. Then, Dr. Willie Wei-Hock Soon, Astrophysicist at the Solar and Stellar Physics Division of the Harvard-Smithsonian Center for Astrophysics, explained his view of climate change. Dr. Soon argued, among other things, that the sun causes climate change. Dr. David Enfield, Research Oceanographer at the University of Miami's Rosentiel School of Marine and Atmospheric Science, then rebutted Dr. Soon's thesis. He argued that climate change is caused by greenhouse gas emissions. After the presentations, Dr. Enfield and Dr. Soon answered the audience's questions.

In February, the ELS looks forward to participating in "A Talk with the Governors" hosted by St. Thomas Law School where Former Governors Graham, McKay and Crist will answer student questions about South Florida environmental and land use issues.

Environmental Law Clinic Update

Additionally, the Environmental Law Clinic is excited to introduce a new program for its students to further learn about the different ways to practice environmental and land use law. Each week, a new speaker will speak with the clinic students. The speakers this semester include: Sara Fein, Senior Staff Counsel at the Everglades Law Center; Spencer Crowley, partner at Akerman Senterfit; Thomas Watts-Fitzgerald, head of the environmental crimes section at the U.S. Attorney's Office for the Southern District of Florida; and Kerri Barsh, national co-chair of the environmental law practice group at Greenberg Traurig.

Other Updates Around FIU

The FIU College of Law has also begun offering two new environmental law related courses. The first course, Water Resources Law, is taught by Professor Ryan Stoa, FIU College of Law Fellow in Water Law and Policy and Program Executive Officer at the Global Water for Sustainability Program (GLOWS). Visiting Assistant Professor, Tracy Hresko Pearl, teaches the second course, Toxic and Environmental Tort Litigation. The FIU College of Law will also be hosting water resources law giant, Professor Joseph Dellapenna, on February 19, 2013, as part of FIU College of Law's Colloquium program.

For more information about upcoming events at FIU, please visit: http://www.fiulawels.com.

The Florida State University College of Law's Environmental Program: Spring 2013 Updates

by Prof. David Markell

Our nationally-ranked environmental program has a full schedule this spring. We list highlights below. We were delighted that Section members joined us for our Spring 2013 *Environmental Forum* on Shale Gas Development, and hope that Section members will participate in our March 25 *Distinguished Environmental Lecture*.

Spring 2013 *Environmental Forum*: *Effectively Governing Shale Gas Development*

On February 1, the College of Law held its Spring 2013 *Environmental Forum*, entitled *Effectively Governing Shale Gas Development*. Distinguished panelists included **Professor Emily Collins**, University of Pittsburgh School of Law, **Professor Bruce Kramer**, University of Colorado Law School and **Professor Keith Hall**, Louisiana State University Paul M. Hebert Law Center. **Professor Hannah Wiseman** served as moderator. The topics included a comparison of hydrologic inputs in oil and gas and underground injection control well permitting processes, federalism issues in fracturing

Professor Emily Collins

Professor Keith Hall

Professor Bruce Kramer

Law School Liaisons continued....

and the evolution of environmental and common law claims to address impacts.

Spring 2013 *Distinguished Environmental Lecture*

Wendy Wagner, the Joe A. Worsham Centennial Professor of the University of Texas School of Law, is giving the Spring 2013 *Distinguished Environmental Lecture* on March 25, 2013.

Spring 2013 *Environmental Enrichment Series*

In addition to our Spring *Environmental Forum* and *Distinguished Environmental Lecture*, the College of Law has organized a series of guest lectures as part of its Spring 2013 *Environmental Enrichment Series*. Participants include prominent scholars and local policy makers: **Kelly Samek** (LL.M.), Senior Assistant General Counsel, Florida Department of Environmental Protection (February 7), **Professor Dan Cole**, Maurer School of Law at Indiana University (February 18), **Mary Thomas** ('05), Assistant General Counsel, Executive Office of Governor Rick Scott (March 7), and **Professor Cherie Metcalf**, Queens University Faculty of Law (March 18).

Spring 2013 Visiting Professors

Professor Jim Gardner, State University of New York, University of Buffalo School of Law, is visiting for the spring 2013 semester. Gardner is teaching Constitutional Law I and State Constitutional Law.

Prof. Emily Meazell, Wake Forest University School of Law, is also visiting this spring and is teaching Water Law.

Student Activities and Accomplishments

Moot Court

The College of Law is sponsoring two environmental moot court teams this year. Our Energy and Sustainability Moot Court Team, comprised of **Andrew Missel** ('13) and **Angela Wuerth** ('13), will participate in the Energy Moot Court Competition at West Virginia University in March 2013. **Professor Hannah Wiseman** and **Jennifer Kilinski** ('12) of Hopping Green & Sams are coaching the team.

(L-R) Andrew Missel & Angela Wuerth

This year's Environmental Law Moot Court Team, consisting of **Kevin Schneider** ('13), **Trevor Smith** ('13) and **Sarah Spacht** ('14), is coached by **Tony Cleveland** ('76), **Segundo Fernandez** and **Preston McLane** ('09). The team will participate in the 2013 Annual National Environmental Law Moot Court Competition at Pace Law School in February.

(L-R) Trevor Smith, Sarah Spacht & Kevin Schneider

Environmental Law Society

The student-run Environmental Law Society (ELS), led by **David Henning** ('13), President, **Lora Minicucci** ('14), Vice-President, **Kristen Summers** ('14), Treasurer, **Sarah Spacht** ('14), Secretary, and **Kelly Baker** ('15), 1L Representative, has a series of programs lined up for the Spring 2013 semester. Non-traditional events are being planned as well, including hikes and site visits to facilities regulated under the environmental laws. In addition, the ELS is launching a pilot mentoring program to connect area environmental, energy and land use attorneys with individual students.

(Top L-R) Lora Minicucci & Sarah Spacht; (Bottom L-R) Kristen Summers, David Henning & Kelly Baker

Journal of Land Use & Environmental Law

The Journal of Land Use & Environmental Law is due to publish Volume 28 in late Spring 2013. This Volume will include articles written for last spring's *Symposium on the Twenty-Fifth Anniversary of the Journal of Land Use & Environmental Law Distinguished Lecture Series: A Focus on Ocean and Coastal Law Issues.*

Student Achievements and Accomplishments

Erika J. Barger ('13) served as an intern with the United States Air Force Judge Advocate General's Corps at Joint Base Lewis-McChord in Washington during summer 2012 and interned for Justice Charles T. Canady with the Supreme Court of Florida in Tallahassee during fall 2012. In November 2012, she was inducted as a member of "The Seminole Torchbearers," an organization of the

(L-R) Courtney Oaks, Erika Barger, Kyle Weismantle, Katherine Weber, Daria Glagoleva & Forrest Pittman (Executive Board)

Law School Liaisons continued....

Florida State University recognizing outstanding students.

Evan Rosenthal's ('13) article, "Rethinking Minimum Parking Requirements," was published in the *American Bar Association, Smart Growth and Green Buildings Committee Newsletter* in June 2012. Two other articles have been accepted for publication: *The Trend is Your Friend: Embracing and Incentivizing the Private Sector's Shift Toward Climate Consciousness*, 12 Fla. St. U. B. Rev. __ (forthcoming 2013); and *Letting the Sunshine In: Protecting Residential Access to Solar Energy in Common Interest Developments*, 40 Fla. St. U. L. Rev __ (forthcoming 2013).

Trevor Smith ('13) was recently accepted into the Air Force JAG Corps and will be heading to Officer Candidate School at Maxwell Air Force Base in Montgomery, Alabama, after graduation in May 2013.

Alumni Updates and Honors

Terry P. Cole ('70), of Gunster's Tallahassee office, has been included in the 2012 *Florida Super Lawyers* list for recognition of his environmental practice. He also was named a "Leaders in Their Field" by *Chambers USA*.

Daniel H. Thompson ('75), a shareholder of Berger Singerman, has been ranked among the top attorneys in *Chambers USA*'s 2012 list of America's Leading Business Lawyers. He was recognized in the environmental law category.

Mary F. Smallwood ('77), of GrayRobinson, P.A.'s Tallahassee office, was recognized by *Chambers USA* 2012 in its environment category. She also was included in the 2012 *Florida Super Lawyers* for her work in environmental law.

Russell P. Schropp ('84), chair of Henderson, Franklin, Starnes & Holt, P.A.'s land use, zoning and environmental law division, was named to *Florida Trend Magazine*'s ninth annual Legal Elite.

Jeremy N. Jungreis ('96) joined Rutan & Tucker, LLP's Costa Mesa, California office as senior counsel in the Government & Regulatory Section. He is an accomplished water and environmental attorney.

Amanda L. Brock ('05), an associate with Henderson, Franklin, Starnes & Holt, P.A., was selected for inclusion in the 2012 *Florida Rising Stars* list appearing in *Super Lawyers*. She concentrates her practice in administrative law, particularly in the area of land use and environmental law.

F. Joseph Ullo, Jr. ('06), of Lewis, Longman & Walker, P.A., has been named a 2012 *Florida Rising Star* in the area of environmental law by *Super Lawyers*.

Carolyn R. Haslam ('09) joined Wicker Smith O'Hara McCoy & Ford, P.A.'s Orlando office as an associate. She practices in various areas including land use, environmental and local government law, with an emphasis on permitting and environmental regulation.

Jacob T. Cremer ('10) co-authored an amicus brief to the U.S. Supreme Court in support of the property owner in *Koontz v. St. Johns River Water Management District*, No. 11-1447 (argued Jan. 15, 2013). The American Bar Association Constitutional Law Committee published his article about the same case in its newsletter. Cremer joined Bricklemyer, Smolker & Bolves in Tampa as an associate. He was named a 2012 *Florida Trend* Legal Elite "Up & Comer."

We hope you will join us for one or more of our programs. For more information about our programs, please consult our web site at: http://*www.law.fsu.edu*, or please feel free to contact Prof. David Markell, at dmarkell@law.fsu.edu. For more information about our Environmental Law Program, please visit *http://www.law.fsu.edu/academic_programs/environmental/index.html*.

UF Law Update

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

Visiting Practitioner Program Begins

This semester the ELULP is inaugurating a new program, the visiting practitioner in residence, to take advantage of our friends and alumni in practice. The visiting practitioner in residence will be an environmental and land use attorney who will spend occasional time in the ELULP suite conducting their practice, and as opportunities present themselves, allowing students to experience practice first hand.

The first visiting practitioner in residence will be Ralf Brookes, a 1987 UF Law grad with extensive experience in environmental, land use, local government and administrative law. He is a sole practitioner with a statewide primarily public interest practice. He also teaches environmental policy as an adjunct at Gulf Coast University in Southwest Florida. In addition to providing a glimpse into practice, he will assist with one or two conservation clinic marine and coastal projects, bench environmental moot court sessions and otherwise involve himself in the ELULP while he is in residence.

UF Law Begins Busy Spring Schedule

ELULP's spring semester began with several key program activities, including the Environmental Law Capstone Colloquium during January and February; the 12th Annual Richard E. Nelson Symposium on Feb. 8; the 19th annual Public Interest Environmental Conference (PIEC) on February 21-23; and a spring Foreign Enrichment Course on "Contemporary International Development: Law, Policy and Practice", which concluded Feb. 27.

The annual Spring **2013 Environmental Capstone Colloquium** featured a theme of "*All About Endangered Species*" in honor of the 40th anniversary of the Endangered Species Act. Speakers included Alejandro Camacho, Professor of Law

Law School Liaisons continued....

LAW SCHOOL LIAISONS
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and Director, UCI Law Center for Land, Environment, and Natural Resources, University California School of Law, Irvine; Joe Roman, Research Assistant Professor and Author, University of Vermont; Kalyani Robbins, Associate Professor of Law, University of Akron School of Law; Zygmunt J.B. Plater, Professor of Law, Boston College Law School; David A. Dana, Stanford Clinton Sr. and Zylpha Kilbride Clinton Research Professor of Law, Northwestern University School of Law. The series was funded by contribution from Hopping Green & Sams, P. A., Tallahassee.

The **PIEC conference** also featured a theme of *The Endangered Species Act at 40"*. In honor of this occasion, the PIEC focused on the evolution of endangered species protection over the past four decades. The conference featured panels on a variety of topics discussing cross-cutting themes in endangered species protection, including whether the Endangered Species Act is accomplishing its purposes; new and continuing challenges to endangered species protection; and innovative approaches to implementation of the Act.

Keynote speakers for this year's conference included Carl Safina, founding president of the Blue Ocean Institute, and award winning author of "Song for the Blue Ocean," and "Eye of the Albatross," and Zygmunt Plater and Patrick Parentau, attorneys in the landmark decision of *Tennessee Valley Authority v. Hill et al*., 437 U.S. 153 (1978) ("The Snail Darter Case").

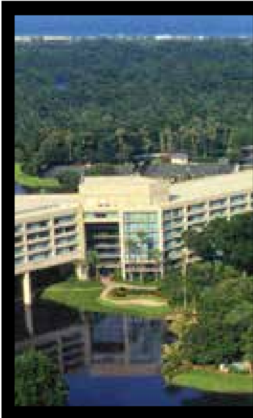
The Conference also included special events and activities, citizen and attorney skills training opportunities provided by the ELULS Public Interest Committee, and networking venues.

The **Nelson Symposium** examined conflicts between state and federal laws. UF Law assembled an outstanding group of national and state experts to examine the serious puzzles posed by federal and state preemption of local regulatory activity in five areas: firearms, hydrofracking, immigration, renewable energy and agriculture. Speakers were John R. Nolon, professor of law, Pace University School of Law; Michael O'Shea, professor of law, Oklahoma City University School of Law; Rick Su, Associate professor, SUNY Buffalo Law School; Hannah Wiseman, assistant professor, Florida State University College of Law; and Michael Allan Wolf, Richard E. Nelson Chair in Local Government Law, University of Florida Levin College of Law. Respondents were Dave Mica, executive director, Florida Petroleum Institute; Amy T. Petrick, senior assistant county attorney, Palm Beach County; and Robert N. Hartsell, Fort Lauderdale. Law student presenters were Samantha Culp and Eric Fisher.

The spring foreign enrichment course, ***Contemporary International Development: Law, Policy and Practice*** (1 credit), addressed the international and comparative law framework within which international development is carried out. The course explored models of international development and development assistance as these have evolved since the Post-WWII Breton Woods accords that created the World Bank Group and regional progeny. Topics addressed included, but were not limited to, free and fair trade, environmental security, human rights and global health. The course was coordinated by UF Law faculty and taught by law and policy practitioners from Costa Rica, Argentina and Jamaica. Course instructors include Otton Solis, a Costa Rican development economist, former minister of the economy and presidential candidate; Oscar Avalles, a World Bank country director for Guatemala; and Danielle Andrade, a Jamaican environmental and human rights attorney with the Jamaica Environment Trust.

Spring Break Belize Field Course Examines International Development Law & Policy

The UF Levin College of Law Environmental and Land Use Law Program will offer "Sustainable Development Field Course: Law Policy and Practice" (2 credits) (spring break in Belize). The course will provide students with an on-site, interdisciplinary understanding of the law and policy challenges associated with "sustainable development" in a developing country. Students will travel to and within Belize over spring break and delve into international and domestic law issues concerning protected areas, indigenous land rights, intellectual property in biological diversity, water, mining and energy development, fisheries and coral reef conservation – all within the context of national pressures for human development. In addition to domestic Belizean law and international development policy, students will be exposed to the unique legal framework of the commonwealth Caribbean. The course will include skills exercises based around ongoing projects of the UF Law Conservation Clinic.



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David M. Caldevilla, de la Parte & Gilbert, P.A.
Steven L. Brannock, Brannock & Humphries

February 26, 2013

Online Ethics: Ethical Challenges of Social Media
Mac R. McCoy, Carlton Fields
Min K. Cho, Holland & Knight, LLP

March 28, 2013

Community Planning Act Impacts: How Local Governments are Adapting to the CPA and the Effect on Local Land Use Practice
Robin G. Drage, Shuffield Lowman, P.A.
Catherine D. Reishmann, Brown Garganese Weiss & D'Agresta, P.A.
Virginia Cassidy, Shepard Smith and Cassady, P.A.

April 25, 2013

Water Rules Update
Craig D. Varn, Manson Law Group, P.A.

May 30, 2013

Annual Legislative Wrap Up
Janet E. Bowman, Nature Conservancy
Gary K. Hunter, Jr., Hopping Green & Sams

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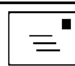
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❑ Enclosed is my separate check in the amount of $40 to join the Environmental & Land Use Law Section. Membership expires June 30, 2013.

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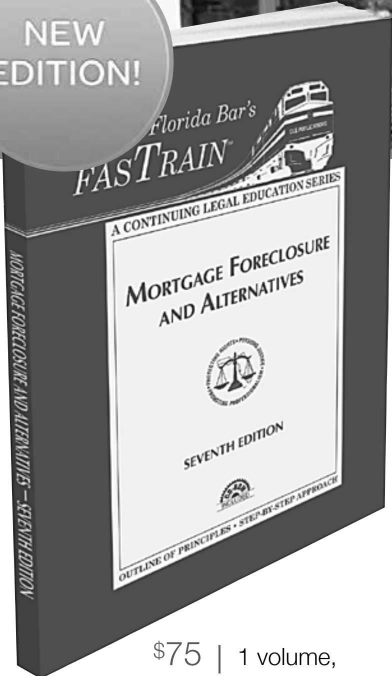

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activities within that area. By the end of the 1980s, many states were utilizing TIF to address inner city blight. In most cases, the authorization for TIF remains embedded in statutes that create "redevelopment districts" – based on statutory definitions of "slum" and "blight." Because working waterfronts often lie within the urban core, the landside facilities that keep these waterfronts working also lie within these so-called "blight districts." However, waterfront blight districts can fail to include the waterside of their waterfront, including navigation infrastructure and natural resources that may contribute to both on-water and waterfront blight. Moreover, in many cases, municipal boundaries themselves end at the waterfront, compounding the jurisdictional problem. Expending TIF revenue to support on-water harbor improvements outside these TIF districts and their associated municipalities may be legally problematic. This article explores the issues associated with TIF financing in Florida for maritime infrastructure outside of the redevelopment district that provides the tax increment and suggests options for local governments, including targeted statutory reform.

I. Introduction: The Florida Context

Like most states, Florida authorizes its local governments to create Community Redevelopment Districts to transform areas considered to be suffering from "slum" and "blight."[1] These districts use an essentially revenue-neutral financing vehicle referred to as Tax Increment Financing, or TIF,[2] to help to redevelop the district. TIF funds are administered pursuant to a plan that is implemented by a Community Redevelopment Agency (CRA).[3] The CRA model and its unique financing vehicle have proven to be very popular in Florida and elsewhere. There are more than 200 CRAs in Florida,[4] many of which encompass working waterfronts. In many cases, where a CRA lies within a waterfront community, the CRA district boundary ends at or very near to the waterline. Moreover, where the CRA lies within a municipality, the municipality's jurisdiction often also ends at or near the waterline.[5] The failure of these jurisdictional boundaries to extend into the water and encompass critical maritime infrastructure and natural resources creates a level of regulatory and jurisdictional uncertainty that exacerbates the municipal planning disconnect between the water and the waterfront.

As federal and state resources for navigation and other improvements on submerged lands have become scarcer, Florida communities have had to look harder for revenue to remove derelict vessels, conduct channel improvements, install mooring fields, undertake environmental restoration and sea level rise adaptation projects - all arguably valid redevelopment purposes under Florida law. In at least two instances Florida CRAs have either spent or considered spending funds from revenues generated through TIF district property taxes to address navigation improvements, even though the TIF districts themselves do not extend into the water.[6] In these cases, property owners within the district are or would be financing activities that take place outside the district, typically on state-owned submerged lands.

While it is clear that CRAs may direct funds for redevelopment within their boundaries, Florida's CRA statute does not expressly authorize expenditures for improvements that are outside of the districts whose property owners contribute the tax increment. While the general question of the propriety of TIF expenditures outside of the district boundaries has not been litigated in Florida, a 2009 Florida Attorney General Opinion interpreted Chapter 163 to mean that CRA funds may not be used on capital improvements outside the district.[7] Several other states have drafted or amended CRA laws to specifically authorize expenditures beyond district boundaries for limited purposes.[8]

Florida's waterfront CRAs would benefit from the ability to confidently spend TIF revenue improving sovereign submerged lands through the removal of derelict vessels, the improvement of navigation channels, the installation of mooring fields, environmental restoration and climate adaptation, and other improvements that keep waterfronts working. Below we discuss the legal issues associated with such extra-jurisdictional TIF spending in Florida and propose options to provide greater certainty to existing and future waterfront CRAs.

II. Florida's Waterfront Boundary Conundrum

The Florida Department of Economic Opportunity maintains a database of 207 community redevelopment districts in Florida, most of which employ tax increment financing for revenue generation.[9] Of these 207 districts, more than 25% appear to have urban waterfronts associated with them.[10] Unfortunately, there does not appear to be any publically accessible geo-referenced database that identifies the relationship between CRA district and local government boundaries in Florida. To the extent feasible, individual waterfront CRA and municipal websites were accessed to locate both district and municipal boundaries. Only 31 of the identified waterfront community websites had sufficient information to delineate both the CRA and municipal boundaries. Of these 31 CRA districts, only 9 had boundaries that extend past the shoreline to encompass significant on-water areas. For example, the City of Punta Gorda CRA district boundary clearly extends waterward of the shoreline to the city limits, covering an area that extends well into the Peace River.[11] However, most of the municipal/CRA waterfront boundary relationships we researched did not follow this example. The City of Palmetto, for example, has a municipal boundary that extends well into the Manatee River, but the City of Palmetto CRA district boundary extends only a short distance beyond the shoreline.[12] As we discuss, CRAs with these configurations may be compromised in their ability to use TIF money to address on-water improvements.[13]

III. The Florida Community Redevelopment Act: Briefly

The Community Redevelopment Area

Community Redevelopment Areas are districts in which locally generated monies are used to foster redevelopment. The Florida Community

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Redevelopment Act (Act), adopted in 1969, is intended to help communities revitalize downtowns, preserve historic structures, and enhance the CRA district.[14] Florida Statutes Chapter 163 Part III authorizes local governments to designate up to eighty percent of a municipality as a CRA.[15] Under Florida law, local governments may designate a specific area as CRA when the area is determined to be "slum" or "blighted."[16] Both these terms are defined generally and through lists of factors that apply to each.[17] Arguably the more lenient of the two, a "blight" finding requires that there be "a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property," and that at least two out of the relevant list of factors are met.[18] Thus a threshold requirement would appear to be the presence of "deteriorated or deteriorating structures." However, the definition thereafter removes this requirement and requires only one factor from the list to be present when there is agreement among all relevant local taxing authorities.[19] The relevance of these factors to an on-water blight finding is discussed further below.

To document that the required conditions exist, the local government must survey the proposed redevelopment area and prepare a "Finding of Necessity."[20] If the Finding of Necessity determines that the required conditions exist, the local government may create a Community Redevelopment Area to provide the tools needed to foster and support redevelopment of the specified area.[21]

The Community Redevelopment Agency

The Community Redevelopment Agency administers all the activities and programs within a specified Community Redevelopment Area.[22] A CRA Board, which is comprised of five to nine members, directs the agency.[23] The city or county government appoints the CRA Board.[24] The local governing body may also appoint itself as the CRA Board, which is fairly common.[25]

The Community Redevelopment Plan

The Community Redevelopment Agency creates and implements a Community Redevelopment Plan, which is tailored to the unique issues and goals of the Community Redevelopment Area and must conform to the local comprehensive plan.[26] The statute sets forth the minimum requirements for the plan,[27] which will govern how expenditures are made within the District.[28] For coastal communities, this includes "maintaining or reducing evacuation times" and "ensuring protection of property against exposure to natural disasters,"[29] both of which could appropriate to on-water infrastructure and improvements. By using Tax Increment Financing, a CRA can help finance redevelopment programs and projects to improve the "blighted area."

Financing the Plan: The Community Redevelopment Trust Fund

Tax Increment Financing and revenue bonds fund most Community Redevelopment Areas,[30] though these are not required to establish a CRA and other sources may be used. However, if these financing vehicles are employed the governing body must establish a Community Redevelopment Trust Fund.[31] Florida amended its redevelopment statute to authorize TIF in 1977.[32]

To begin the TIF process, the assessed valuation of all real property within the TIF district is determined at a fixed date, and the value becomes the "frozen tax base."[33] The designated taxing authorities continue receiving property tax revenues based on the frozen value, which are available for general government purposes.[34] However, the "increment," that is, property tax revenues generated from increases in real property value within the district, is deposited into the CRA Trust Fund and dedicated to public improvements and general development and rehabilitation of the redevelopment area.[35] Therefore, in theory, TIF induces redevelopment that otherwise would not occur because the incremental revenues pay for public expenditures, which then encourages private investment in the area, which then creates more incremental revenues for public improvements, which encourages more private investment, and so on in a cyclical fashion.[36] Eventually, if successful, the TIF district expires, leaving an economically improved area generating higher taxes due to increased property values.[37]

IV. CRAs, TIF and Working Waterfronts

As previously discussed, many Florida communities have created CRAs to revitalize their downtown waterfronts. On-water navigation and related improvements, including environmental restoration and sea level rise adaptation projects, can be just as important to this effort as the landside infrastructure. These improvements include, but are not limited to, derelict vessel removal, the installation of mooring fields, navigation improvements including dredging, aids to navigation, signage, even environmental restoration and sea level rise adaptation projects.[38] The Act specifically targets coastal communities. In the section concerning Findings of Necessity, the legislature recognized that economically and physically distressed coastal areas should be revitalized and redeveloped to improve their social and economic conditions.[29] Further, in defining a Community Redevelopment Area, the legislature included a "coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment."[40]

CRAs have been used in waterfront communities to revitalize and maintain land-based infrastructure, including docks, boat slips, boardwalks and pavilions, and to build aquariums, boat storage, mechanic bays, and educational riverwalks.[42] CRAs could also be useful to waterfront communities to plan for and fund the on-water improvements that serve as the waterborne transit link to the waterfront and to enhance the recreational, commercial and natural resource value of the waterfront. However, when a Florida CRA

boundary does not encompass these on-water areas, it is not clear that the CRA is legally permitted to use funds to undertake the improvements.

V. The Community Redevelopment Act and On-Water Financing

There is currently no binding law in Florida that addresses the issue of using TIF revenue outside a CRA boundary for improvements to adjacent submerged lands, or for any other purpose for that matter. Therefore, whether a CRA has the power to use TIF funds for improvements to the adjacent waterways largely depends on the interpretation of the governing Florida statute. Two questions arise in this context: whether on-water "blight" is the sort of blight the statute intended to ameliorate, and whether TIF funds expended for this purpose can be spent on improvements outside the boundary of a "land-locked" CRA district. The first question is more easily answered.

Deteriorating Maritime Infrastructure and Natural Resources as Blight

Although the statute clearly has a bias toward landside redevelopment, especially for housing and transportation infrastructure, its language seems sufficiently broad to encompass the variety of on-water improvements being considered here. The initial blight definitional requirement of "deteriorated or deteriorating structures" does create difficulties, though the term "structure" is not defined in the Act. Presumably dredged channels, aids to navigation and derelict vessels could qualify as structures for this purpose. Assuming this were the case, several of the factors needed for a "blight" finding could readily be construed to include on-water infrastructure and derelict vessels.[42] Moreover, even in the absence of a generous interpretation of deteriorated or deteriorating structures, blight can be found where only one of the factors is present <u>and</u> all relevant local taxing authorities approve.[43]

The Act's *Workable Program* section gives communities authority to utilize "appropriate private and public resources to eliminate and prevent the development or spread of slums and urban blight" and "to encourage needed community rehabilitation."[44] The removal of derelict vessels – which are defined as abandoned and dilapidated boats, often causing health and safety threats[45] – fits neatly into the statutory purpose. Similarly, channel dredging, aids to navigation, and moorings can be analogized to transportation improvements that seem well suited to redevelopment goals in a blighted waterfront community seeking to improve water-based transportation and the connections to maritime commerce and recreation.[47] Even environmental restoration and sea level rise adaptation activities fit within statutory goals for improving conservation and recreation in blighted areas.[47]

Finally, there is no absolute requirement that all of the area within the CRA qualifies as slum or blighted. Deteriorating or inadequate on-water infrastructure can contribute to landside blight, and improvements to that infrastructure can contribute to waterfront redevelopment and revitalization. As long as these activities and projects are articulated in the redevelopment plan and lie within the CRA boundaries, it is difficult to imagine they would be considered inappropriate to ameliorating blight in a water-dependent community seeking to redevelop its waterfront.

Activities on Submerged Lands Outside the CRA

Whether a CRA can undertake these improvements on the submerged lands outside of the District boundaries seems more problematic. The definitions of "community redevelopment" and "redevelopment" argue against such an interpretation. These terms are defined as "undertakings, activities or projects in a county, municipality or community redevelopment agency <u>in a community redevelopment area</u>…."[48] Numerous other references in the statute refer to activities taking place in the redevelopment area.[49] The overriding focus of the section on redevelopment plans stresses planning for activities that are within the redevelopment area,[50] and TIF revenue must be spent pursuant to that plan.[51] There is only one specific use of the term "outside the redevelopment area" – authorizing expenditure of funds for the "relocation of site occupants."[52] These references militate against a broader interpretation that would allow a CRA to expend funds on activities outside its geographic boundaries.

A Florida Attorney General's Opinion supports this interpretation. On June 19, 2009, Florida Attorney General Bill McCollum opined that expenditure for capital improvements outside district boundaries is unlawful.[53] There, a Florida non-profit corporation operating a shelter facility in the Southeast Overton/Park West CRA in Miami was relocating to a new building outside the district boundary, but within a proposed future district. The CRA wanted to use its funds to help build the new facility.[54] After reviewing the statutory references discussed above, the Attorney General concluded that the Act limits expenditure of CRA funds on capital improvements to those improvements made on property within the district.[55]

The Attorney General Opinion leaves open the question of whether expenditures other than capital improvements can be made outside of the district boundaries. However, it would seem that improvements to waterside transportation infrastructure such as mooring fields, aids to navigation and channel improvements would qualify as capital improvements, thus restricting expenditures to the CRA's borders. Environmental restoration and sea level rise adaptation projects could arguably also qualify as capital improvements.[56] It is less likely that the removal of derelict vessels would be considered a capital improvement project, unless perhaps it was part of a larger project that required removal of the vessels in order to accomplish the larger project.

Informal telephone conversations by the authors with several Florida CRA Directors suggested that they would be hesitant to spend money outside of their district for fear of legal challenges.

VI. Other States' Approaches

The issue of extra-jurisdiction TIF spending has been addressed through legislation in several states. In North Carolina, TIF funds are generally spent inside the boundaries of the TIF district; however, TIF funds can also be spent outside the district if necessary to encourage development within it.[57] In Minnesota, the legislation allows tax increments to be

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"pooled," or used for activities located outside of TIF district boundaries where they were collected.[58] Pooling amounts for redevelopment districts are limited to 25% of total tax increment funds, with possible increases of up to 10 percentage points as allowed by the statute for housing projects.[59] California also permitted TIF districts to spend revenue outside the geographic confines of the district in some instances.[60] However, because of budget woes and the manner in which revenue sharing is structured in California, the state has completely eliminated all community redevelopment areas and the TIF revenue stream that supports it.[61]

VII. Potential Options for Accessing TIF Revenues or On-Water Improvements

Florida waterfront communities seeking to utilize TIF as a means to address blight through improvements over submerged lands have several choices, depending on the political geography (and political will) of the community. Communities whose CRA and municipal boundaries are conterminous, such as Punta Gorda, and that extend sufficiently far into the water to undertake improvements likely need only ensure that the proposed improvements have been addressed by the CRA redevelopment plan, or amend the plan to address them – a relatively straight forward task. In those instances where either the CRA or the municipality are landlocked, or both, more complex statutory processes must be followed, statutes amended, home rule powers asserted, or creative interpretations based on the common law pursued. These are discussed below.

Amending CRA and/or City Boundaries

Landlocked waterfront communities and CRAs can consider amending their boundaries to encompass as much of the contiguous submerged lands as necessary to create the political space needed to undertake on-water improvements. Where the municipal jurisdiction already extends sufficiently far into the water, the community can pursue the statutory process for amending the CRA boundaries to meet the municipal boundary. This requires much the same factual findings and procedures as the initial formation of the CRA.[62] Blight must be found,[63] notice provided, hearings held,[64] and the plan amended.[65]

In instances where both the municipality and the CRA are landlocked, the municipal boundaries must also be modified. This can be accomplished in two ways: by annexation or by special legislation. Annexation can be voluntary or compulsory, and there are different standards for each. Compulsory annexation of submerged lands is problematic because these lands do not fit neatly into the sorts of lands the statutes contemplate – populated space for "urban purposes."[66] Voluntary annexation offers a simpler procedure in which the owner(s) of the land to be annexed petition the municipality.[67] The property to be annexed must be contiguous and "reasonably compact."[68]

Since municipalities are created by statute, they can also seek special legislation to modify their boundaries.[29] Florida municipalities have successfully pursued both paths to modify their political boundaries to encompass submerged lands for the purpose of pursuing on-water navigation improvements. In 2006, the City of Bradenton Beach sought and received special legislation to extend their boundaries to encompass the area proposed for a mooring field.[70] In 2007, the State of Florida, owner of the contiguous submerged lands, petitioned the Town of Fernandina Beach for a voluntary annexation,[71] also to encompass a proposed mooring field. Neither engendered controversy. Interestingly, neither community has extended its CRA out to the new city limits.

A Riparian Rights Rationale and the CRA

One policy-based rationale for reading the Community Redevelopment Act to preclude spending TIF funds outside the TIF district stems from the fact that these funds are derived from the taxes on real property owners within the district, and should therefore – absent clear legislative intent to the contrary - be spent to improve real property within the district. However, waterfront property owners also possess riparian (or littoral) rights[72] – which are recognized property interests that attach to the property.[73] These rights include the right to ingress and egress, a qualified right to "wharf out," and the right to an unobstructed view.[74]

A riparian rights rationale for extra-jurisdictional TIF expenditures stems from the fact waterfront property taxpayers within the TIF district have a distinct property interest that extends over the submerged lands outside the district. Presumably, at least some part of the property value against which taxes are assessed can be attributed to this property interest. In essence, this rationale extends the CRA boundaries into the contiguous navigable waters by operation of the common law, at least to the extent that proposed improvements relate to exercise of riparian rights. For example, the riparian right to an unobstructed view could arguably validate the use of district TIF funds to remove a derelict vessel that is otherwise outside the CRA's geographically described boundaries.

Seeking an Attorney General Opinion

The options described above, including the essential question of extra-territorial TIF spending on and over contiguous submerged lands, could be initially pursued through an opinion from the Florida Attorney General. Under Florida Statute section 16.01(3), an officer of the state, county, municipality, other unit of local government, or political subdivision may make a written request for an official opinion from the Attorney General on a question of law relating to the official duties of the requesting officer.[75] This request would need to distinguish the 2009 opinion stating that CRA funds can only be used for capital improvements within the district boundaries – which might prove difficult if many improvements are, in fact, capital improvements. Moreover, even with an opinion confirming the ability of a CRA to use TIF funds for on-water improvements outside its district, Attorney General Opinions are not law or binding on a court; they are advisory only, and a CRA's decision to spend could still be found unlawful in a court of law.[76]

Amending the Community Redevelopment Act

The most elegant solution for Florida would be to amend the Community Redevelopment Act with narrowly tailored language to authorize the use of TIF funds for on-water improvements on contiguous submerged lands that are outside the CRA's geographic boundaries. This could be accomplished by amending the definition of Community Redevelopment Area to include contiguous submerged lands based on the rationale that on-water improvements will contribute to ameliorating waterfront blight,[77] and by amending the statute's blight definition and Finding of Necessity requirements to more clearly encompass on-water factors that contribute to blight on and off the water. Other provisions of the statute, such as the *Workable Program* section, could more clearly address the relevance of on-water improvements to blight remediation.[78] Alternatively, a new provision could authorize existing and new CRAs to plan for and expend funds for specified purposes on contiguous submerged lands outside the CRA boundary. This latter approach would enable already created CRAs to simply amend their plan, rather than also having to amend the boundaries.

VIII. Home Rule Authority to Use Tax Increment Financing

A final option that bears mentioning, though a detailed analysis is beyond the scope of this article, is based on the theory that local governments have home rule authority to use the TIF vehicle for programs and activities that are outside of the scope of the Community Redevelopment Act.[79] The Act would likely preempt any local effort to create a parallel process for redevelopment of slum and blighted areas. However, a local TIF program to develop and implement municipal harbor management plans without the necessity of a blight finding may be sufficiently distinct to avoid preemption. This option implicates state constitutional questions concerning the authority of local governments to levy taxes, and additional research would be required to validate its use. However, TIF is not a new tax, just a reallocation of existing revenue pursuant to local priorities, which is a fundamental attribute of local governments.

IX. Conclusion

CRA's have fallen on hard times since the economic downturn that began in 2008, due to reliance on a revenue stream dependent on steadily rising property values. However, all indications are that the real estate market has turned the corner and property values will climb. As this occurs, CRAs should once again be in a position to generate revenue for redevelopment improvements. Waterfront communities should revisit their comprehensive plans, CRA plans and other community visioning processes and consider whether they adequately consider the waterside infrastructure in or adjacent to their jurisdictional boundaries. The Florida Legislature should consider amending the Act to make it clear that this infrastructure is of the sort the Act contemplates and that CRAs can spend revenue from the Redevelopment Trust Fund to make on-water improvements over submerged lands that are contiguous to but outside of CRA boundaries. Finally, the Florida Legislature should require that CRAs and other special districts furnish spatially explicit geo-referenced jurisdictional maps in a specified format that can be accessed through the Department of Economic Opportunity's database.

Endnotes:

1 *See* Fla. Stat. Ch. 163, pt. III (2012).

2 For a relatively recent discussion of the historical and policy background of TIF see generally Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. Chi. L. Rev. 65 (2010), *available at* http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/77.1/77-1-TaxIncrementFinancing-Richard%20Briffault.pdf. *See also* David E. Cardwell & Harold R. Bucholtz, *Tax-Exempt Redevelopment Financing in Florida*, 20 Stetson L. Rev. 667 (1990-1991).

3 *See infra* notes 31-36 and accompanying text.

4 CRAs are considered to be special districts under Florida law. *See* Fla. Stat. § 189.403(1) (2012). Pursuant to Chapter 189, Florida Statutes, the Florida Department of Economic Opportunity maintains a statewide database of special districts that can be sorted based on attributes.

5 Some of Florida's most emblematic working waterfronts have municipal boundaries that do not extend past their shorelines, including the City of Port St. Lucie, Port St. Joe and Fernandina Beach. *Community Redevelopment Area*, Official Web Site City of Port St. Lucie, http://www.cityofpsl.com/community-redevelopment-area/cra-area.html (last visited Dec. 28, 2012); *Port St. Joe Redevelopment Agency Redevelopment Plan,* July 2009 at pg 28, *available at* http://www.celebrateportstjoe.com/file/Redevelopment/PSJRA2009Update_FINAL_5_10.pdf (last visited Dec. 28, 2012).

6 Both instances involved the removal of derelict vessels.

7 *See infra* notes 53-55 and accompanying text.

8 *See infra* notes 58-61 and accompanying text.

9 *See supra* note 4; Florida Department of Economic Opportunity, http://dca.deo.myflorida.com/ fhcd/sdip/OfficialListdeo/ (last visited Dec 23, 2012).

10 Our analysis did not extend to waterfront communities on freshwater rivers and lakes.

11 *Community Redevelopment Agency*, City Of Punta Gorda, Florida, http://ci.punta-gorda.fl.us/gov/commdevagency.html (last visited Dec. 22, 2012).

12 City of Palmetto & CRA Boundaries 2012, http://palmettocra.org/wp-content/uploads/2012/02/2011CRAReferenceMap.pdf (last visited Dec. 22, 2012).

13 Counties may also host CRAs. However, county boundaries extend over submerged lands to the limits of the state's political jurisdiction, and are constitutionally created.

14 *See* Melva Macfie, et al., *Establishing a Community Redevelopment Area in Your Waterfront Community*, Conservation Clinic Univ. of Fla. Levin Coll. of Law 2 (2006), http://www.law.ufl.edu/_pdf/academics /centersclinics/clinics/conservation/resources/establishing_comm_redev_area.pdf.

15 Fla. Stat. § 163.340(10) (2012). This restriction only applies to CRAs created in Florida after July 1, 2006.

16 Fla. Stat. § 163.355 (2012).

17 Fla. Stat. §§ 163.340(7)-(8) (2012).

18 Fla. Stat. § 163.340(8) (2012).

19 *Id*. However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to Florida Statute § 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted.

20 Fla. Stat. § 163.355 (2012).

21 *Id.; see also* Fla. Stat. § 163.356 (2012).

22 Fla. Stat. § 163.356 (2012).

23 Fla. Stat. § 163.356(2) (2012).

24 *Id.*

25 Fla. Stat. § 163.357 (2012).

26 Fla. Stat. § 163.360 (2012).

27 The plan must be "sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area; zoning and planning changes, if any; land uses; maximum densities; and building requirements. Fla. Stat. § 163.360(a)(b) (2012).

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[28] *See* Fla. Stat. § 163.387(1)(a) (2012).
[29] Fla. Stat. § 163.360(7)(e) (2012).
[30] *See* Fla. Stat. § 163.385; *see* Fla. Stat. § 163.387 (2012); *see* Harry M. Hipler, *Tax Increment Financing in Florida: A Tool for Local Government Revitalization, Renewal, and Redevelopment*, Fla. B.J. 66 (July/Aug. 2007).
[31] *See* Fla. Stat. § 163.353 (2012).
[32] Act of June 28, 1977, ch. 391. 1977 Laws of Fla. 1930.
[33] *See* Briffault at 67.
[34] *Id.*
[35] *Id.*; *see also* Fla. Stat. § 163.387 (2012).
[36] Briffault at 68; *see also* Fla. Stat. § 163.345(a) (2012).
[37] Briffault at 68.
[38] The construction of an oyster reef provides one example of a project that can be both an environmental restoration and sea level rise adaptation project. *See* Brian P. Piazza, Patrick D. Banks and Megan K. La Peyre, *The Potential for Created Oyster Shell Reefs as a Sustainable Shoreline Protection Strategy in Louisiana*, 13 Restoration Ecology 499 (2005).
[39] Fla. Stat. § 163.335(4) (2012).
[40] Fla. Stat. § 163.40(10) (2012). This language in this provision demonstrates the statute's landside bias.
[41] The Florida Department of Economic Opportunity administers the Waterfronts Florida Partnership Program. The Department's website documents activities of designated waterfront communities - most of which are also CRAs - including best practices and case studies. *Waterfronts Florida Partnership Program*, Fla. Dep't. of Econ. Opportunity, http://www.floridajobs.org/community-planning-and-development/programs/technical-assistance/community-resiliency/waterfronts-florida-program (last visited Feb. 18, 2013).
[42] Fla. Stat. § 163.340(8)(a)-(n) (2012). These might include (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities; (d) Unsanitary or unsafe conditions; (e) Deterioration of site or other improvements; (j) Incidence of crime in the area higher than in the remainder of the county or municipality; (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality; (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.
[43] Fla. Stat. § 163.340(8) (2012).
[44] Fla. Stat. § 163.350 (2012).
[45] *See* Fla. Stat. § 705.101; *see also Abandoned Vessels,* Fla. Fish and Wildlife Conservation Comm'n, http://myfwc.com/boating/waterway/derelict-vessels/abandoned-vessels/ (last visited Dec. 19, 2012).
[46] *See* Fla. Stat. § 163.340(8)(a) (defining blight as including defective or inadequate public transportation facilities).
[47] *See* Fla. Stat. § 163.335(2) (2012).
[48] Fla. Stat. § 163.340(9) (2012) (emphasis added).
[49] *Id.; See* Fla. Stat. §§ 163.340(10), (24) (2012).
[50] *See* Fla. Stat. § 163.360 (2012); *see* Fla. Stat. § 163.362 (2012).
[51] *See* Fla. Stat. § 163.362(9) (2012); *see* Fla. Stat. § 163.387(1)(a) (2012).
[52] Fla. Stat. § 163.387(6)(d) (2012).
[53] Community Redevelopment Agency – Relocation Expenses, 2009 Op. Att'y Gen. 32 (2009), http://www.myfloridalegal.com/ago.nsf/Opinions/E166FAD57B67BC4C852575DA005D03C0 (last visited Dec. 21, 2012).
[54] *Id.*
[55] *Id.* Florida Statute Section 163.3164(7) provides that: "Capital improvement" means physical assets constructed or purchased to provide, improve, or replace a public facility and which are typically large scale and high in cost. The cost of a capital improvement is generally nonrecurring and may require multiyear financing. For the purposes of this part, physical assets that have been identified as existing or projected needs in the individual comprehensive plan elements shall be considered capital improvements.
[56] *See* Fla. Stat. § 215.681(1)(a) (2012) (authorizing issuance of Florida Forever bonds "… for capital improvements to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals,….").
[57] Joseph Blocher and Jonathan Q. Morgan, *Questions About Tax Increment Financing in North Carolina*, U.N.C. School of Gov't Cmty. and Econ. Dev. Bull., 4 (Aug., 2008); N.C. Gen. Stat. § 159-103(a) (2012) *available at* http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection /Chapter_159/GS_159-103.html.
[58] *TIF Pooling*, Minn. House of Rep., http://www.house.leg.state.mn.us/hrd/issinfo/tif/ pooling.aspx (last visited Dec. 28, 2012); Minn. Stat. § 469.1763 (2012).
[59] *Id.*
[60] *See* SB 71 Bill Analysis, Coachella Valley Redevelopment *available at* ftp://leginfo.public.ca.gov/pub/97-98/bill/sen/sb_0051-0100/sb_71_cfa_19970507_145545_sen_floor.html.
[61] *The 2012-13 Budget: Unwinding Redevelopment*, Legis. Analyst's Off., http://www.lao.ca.gov/ analysis/2012/general_govt/unwinding-redevelopment-021712.aspx (last visited Feb. 18, 2012).
[62] Fla. Stat. § 163.361 (2012).
[63] Fla. Stat. §163.361(4); Fla. Stat. §163.355. These are the general rules for modifying CRA boundaries. Please refer to the Florida Statutes Chapter 163 for further guidance on how to specifically modify your area's CRA boundaries.
[64] Fla. Stat. §§ 163.361(1)-(2). The governing body must also give public notice of the hearing in a newspaper that has general circulation in the area of the CRA.
[65] *See* Fla. Stat.§ 163.360(9) (2012).
[66] Fla. Stat.§ 171.043(1) (2012) ("The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun and reasonably compact, and no part of the area shall be included within the boundary of another incorporated municipality. . . . Part or all of the area to be annexed must be developed for urban purposes.").
[67] Fla. Stat. § 171.044 (2012).
[68] *Id.*
[69] *The Local Government Formation Manual 2011-2012*, Fla. House of Rep. Econ. Affairs Comm., at 53, *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees& CommitteeId=2605&Session=2012&DocumentType=General%20Publications&FileName=Local%20Government%20Formation%20Manual%202011%20-%202012.pdf.
[70] H.B. 1217, 2006 Leg., (Fla. 2006).
[71] Mark Hurst, *City Annexes Egans Creek Land for Mooring*, The Fla. Times Union, Aug. 23, 2006 *available at* http://jacksonville.com/tu-online/stories/082306/nen_4518073.shtml.
[72] Although technically "riparian" land refers to land abutting streams and rivers and "littoral" land refers to land abutting a lake or the ocean, the two terms have been used somewhat interchangeably by the courts. *See* Theresa Bixler Proctor, *Erosion of Riparian Rights Along Florida's Coast*, 20 J. Land Use & Envtl. L. 117, 121 (2004).
[73] Fla. Stat. §253.141(1) (2012).
[74] *See* Proctor, 121-126 (characterizing riparian rights in Florida).
[75] Fla. Stat. §16.01(3) (2012).
[76] *Frequently Asked Questions About Attorney General Opinions*, Fla. Off. of the Att'y Gen., http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad (last visited Dec. 22, 2012).
[77] Fla. Stat. §163.340(10).
[78] Fla. Stat. §163.350 (2012).
[79] Article VIII of the Florida Constitution establishes Home Rule powers for Florida local governments. Fla. Const. art. VIII. Counties derive sovereign powers through Article VIII, Section One of the Florida Constitution, which authorizes the adoption of county charters. Fla. Const. art. VIII § 1(c); *see* Lowe v. Broward County, 766 So. 2d 1199 (Fla. Dist. Ct. App. 2000). Charter counties have broad home-rule power and may enact any ordinance not inconsistent with state law or the state and Federal Constitutions. Fla. Const. art. VIII, § 1(g); *see* Hollywood, Inc. v. Broward County, 431 So. 2d 606 (Fla. Dist. Ct. App. 1983). Similarly, municipalities may establish a government and enact their own ordinances under Section Two. Fla. Const. art. VIII, § 2. Local government regulations must also not be inconsistent with state and Federal laws. Gustafson v. City of Ocala, 53 So. 2d 658 (Fla. 1951).

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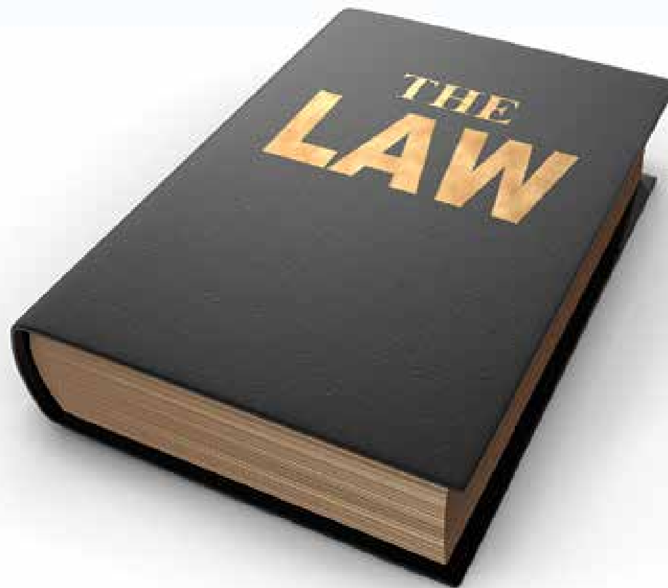

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