



Vol. XXXI, No. 4
June 2010

• Paul H. Chipok, Chair • Thomas R. Gould, Co-Editor • Jeffrey A. Collier, Co-Editor

A Message from the Chair

by Paul H. Chipok

In my year at the helm, I have stayed the course and avoided the shoals. While the Section's ship appears to run smoothly, it is due to the hard work and dedication of many people. The continuing legal education duties are overseen by Nicole Kibert with assistance from Kelly Samek and Tara Duhy. Kelly, along with Gary Oldehoff, serve as co-editors of the Journal column. Gary, along with Enola Brown, edit the Treatise and make sure the articles are kept current. The Section Reporter is edited by Thomas Gould and Jeff Collier. Jeff also serves as co-chair with David Bass on the membership committee. The Public Interest Com-

mittee is chaired by Jeanne Zokovitch along with vice chairs Quilla Miralia and Renee Reed. Our law school liaison program has been diligently handled by Jim Porter with assistance from Vivien Monaco. Jim, along with Francine Ffolkes and Jeanne Zokovitch, work on two of our student programs entitled the ABA-SEER Diversity Fellowship in Environmental Law and the Florida Environmental Public Interest Fellowship. Our Affiliate Membership representative is Pedro Fierro. I would be subject to keelhauling if I did not mention my fellow officers, Joe Richards, vice-chair, Martha Collins, secretary and Erin Dedy, treasurer. Our master at

arms that holds this crew together is our Section Administrator, Jackie Werndli. Thanks to all of you for your efforts and diligence and my apologies to anyone I inadvertently overlooked.

One thing we are doing a little different this year is that while the Annual Update "Seas of Change: The Next Decade For Environmental and Land Regulation in Florida" is still in August, it will be a week earlier over August 12-14, 2010 and in Ponte Vedra Beach at the Sawgrass Marriott Resort. I hope to see you there. The ELULS exists as a service to its members; please utilize the benefits and opportunities offered by the Section.

2010 Legislative Update

by Janet Bowman, The Nature Conservancy; Gary Hunter, Hopping, Green & Sams; and Eric Olsen, Hopping, Green & Sams

2010 Session Quick Facts

- 2477 Bills introduced (compared to 2369 in 2009)
- 301 Bills passed the Legislature (compared to 271 in 2009)
- 213 Bills signed into law thus far (68 on Governor's desk)
- 10 Bills vetoed as of June 1 (9 vetoed in 2009)
- 10 of 40 Senate seats open in 2010 election (25% of Chamber)
- 31 of 120 House seats open in 2010 election (25% of Chamber)

Appropriations

House Bill 5001—General Appropriations Act

- Tanks Cleanup Funds--\$120,000,000
- Dry-cleaning Solvent Cleanup Funds--\$4,000,000
- Florida Forever--\$15,000,000
- Everglades Restoration Funding--\$10 million in cash, \$40 million contingent on Congress extending an enhanced Medicaid matching rate (FMAP) to states
- Wekiva Septic Study--\$2,000,000

See "Legislative Update," page 15

INSIDE:

Florida Case Law Update.....	2
On Appeal.....	4
DCA Update.....	4
Law School Liaisons	
The Center for Earth Jurisprudence.....	7
The Florida State University College of Law Program in Land Use & Environmental Law – Spring 2010 Update.....	7
Nova Southeastern University, Shepard Broad Law Center.....	8
UF Law Update: Student and Alumni Employment in Environmental and Land Use Law	9
Brochure – 2010 Ethical Challenges for the Environmental Lawyer and Consultant & 2010 Environmental and Land Use Law Annual Update – Seas of Change: The Next Decade for Environmental and Land Regulation in Florida.....	11

Florida Case Law Update

by Gary K. Hunter, Jr. & D. Kent Safriet, Hopping Green & Sams, P.A.

Note: Status of cases is as of May 2, 2010.

Flooding caused by a city is insufficient to support a claim for inverse condemnation where the landowners offered no evidence demonstrating a substantial deprivation of all beneficial use of their properties. *Hansen v. City of Deland*, -- So. 3d --, 2010 WL 667954 (Fla. 5th DCA Feb. 26, 2010).

The landowners argued that they were entitled to compensation for flooding and loss of trees on their properties, which were caused by the city's pumping of storm water. The trial court denied the claim finding that the city pumped storm water to a dry retention area, the city did not pump or direct water onto the landowners' properties, and the city's pumping caused portions of the landowners' properties to remain flooded for approximately 15 months, resulting in the loss of numerous trees. In addition, the trial court found that the majority of each property, including the driveway and house, were not flooded and used by the respective landowner; the tree damage was aesthetic, and the landowners failed to prove they were temporarily denied any reasonable use of their properties.

The Fifth DCA affirmed, reasoning that competent substantial evidence supported the trial court's judgment, clarifying that an inverse condemnation claim for flooding must be an actual, permanent invasion of, and

not simply an injury to, the property. Further, the landowners offered no evidence demonstrating a substantial deprivation of all beneficial use of their properties during the period the land was flooded. Thus, the landowners failed to demonstrate that the flooding constituted a *de facto* taking by the city, and were not entitled to compensation for inverse condemnation.

Final administrative order that clearly considers the exceptions filed in response to an administrative recommended order, but does not rule on each exception individually, is a final order subject to appellate review. *Miami-Dade County v. Department of Community Affairs*, -- So. 3d --, 2010 WL 935580 (Fla. 1st DCA Mar. 17, 2010).

On an appeal of a Department of Community Affairs final order, the First DCA sua sponte issued an order to show cause because the administrative order sought to be reviewed did not make an explicit ruling on one of the exceptions filed by the Department of Community Affairs. The order to show cause was premised upon the court's opinion in *Cocktails Plus v. Department of Business and Professional Regulation*, 958 So. 2d 1154 (Fla. 1st DCA 2009), which held that a final administrative order that did not consider or make explicit rulings on the exceptions to the recommended order does not dispose of the

case and is not final for purposes of initiating an appeal.

After considering the appellant's response to the order to show cause, the First DCA discharged the order concluding that the administrative tribunal clearly considered the exceptions filed, though it did not rule on each exception individually, and declined to extend its holding in *Cocktails Plus*.

It is improper for a local zoning authority to consider the particular use to which the owner might intend to make of property when considering a rezoning application. *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, -- So. 3d --, 2010 WL 1050024 (Fla. 3d DCA Mar. 24, 2010).

Palmer Trinity Private School, Inc. ("Palmer") sought second tier certiorari review of a circuit court appellate decision affirming the Village of Palmetto Bay's ("Village") denial of Palmer's rezoning application for its property. The northern half of Palmer's property is zoned AU (agricultural allowing one home per five acres), and the southern half is EU-2 (estate single family allowing one home per five acres). The Village's Comprehensive Plan designates the Palmer property as Estate Density Residential. Palmer sought to rezone the entire property to EU-M (estate modified single family allowing one home per 15,000 square feet). Separate from but contemporaneous with the rezoning application, Palmer also sought a special exception and non-use variances concerning further development of the Palmer Preparatory School that is currently located on the property. The surrounding properties had previously been rezoned from AU or EU-2 zoning to less restrictive classifications, including EU-M and EU-1 (estate single family allowing one home per acre).

At the rezoning hearing, the rezoning was bifurcated from the special exception and non-use variances; however, the ordinance denying the rezoning cited to the physical expansion of the school as being inconsistent with the Comprehensive Plan and Future Land Use Map and that Palmer failed to adequately establish

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

Paul H. Chipok, Orlando Chair
Joseph D. Richards, New Port Richey Chair-elect
Martha M. Collins, Tampa Secretary
Erin L. Deady, West Palm Beach Treasurer
Jeffrey A. Collier, West Palm Beach Co-Editor
Thomas R. Gould, Orlando Co-Editor
Colleen Bellia, Tallahassee Production Artist
Jackie Werndli, Tallahassee Section Administrator

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the Section.

that the application was compatible with proper level of service and the proposed use would not negatively impact the community. The circuit court, sitting in its appellate capacity, per curiam denied *certiorari* review of the Village's rezoning ordinance.

On appeal, the 3rd DCA concluded that circuit court's denial departed from the essential requirements of law resulting in a miscarriage of justice by upholding the ordinance for two reasons. First, the current zoning classification of Palmer's property renders it an island or peninsula as the current zoning of the surrounding properties differs, which is reverse spot zoning and impermissible as confiscatory. Second, the rezoning denial was arbitrary, discriminatory, and unreasonable because no record justification supported the denial. The Village incorrectly attempted to justify the denial based upon the expansion of the school, which is legally impermissible because the Village's consideration of Palmer's intent to expand the school is not a proper zoning concept as consideration of such constitutes direct governmental control of the actual use of the property.

City's denial of request to modify agreement with appellee that governed construction of mausoleums in city's cemetery did not qualify as a land use or environmental dispute and was therefore not required for submittal to the Florida Land Use and Environmental Dispute Resolution Act, section 70.51, Florida Statutes. *City of Tarpon Springs v. Planes*, -- So. 3d --, 2010 WL 1135905 (Fla.2d DCA Mar. 26, 2010).

The appellee filed a petition for writ of mandamus to compel Tarpon Springs to participate in dispute resolution procedures pursuant to the Act after the city commission denied the appellee's request to modify an agreement between the city and appellee. The terms of the original agreement permitted three individual mausoleums to be constructed on three plots, granted the appellee the exclusive right of interment, and stated that the city retained control over the property and grave space. The modification of the agreement sought by the appellee would allow a single mausoleum to be constructed across three plots. The trial court

granted the petition, and the city appealed.

In reversing, the 2nd DCA determined that mandamus was an inappropriate remedy because mandamus is only permissible to enforce a right by compelling performance of a duty. Inappropriately, appellee sought to use mandamus to litigate a modification of the agreement, which was a discretionary (as opposed to ministerial) act because the city had a right to refuse to modify the agreement, which right it properly exercised.

Further, the appellee inappropriately attempted to invoke the Act's informal dispute resolution procedures. The city was acting in its individual corporate persona and not as a governmental entity exercising governmental functions in entering into and declining to modify the agreement with the appellee. Therefore, the city declining to modify the agreement could not be likened to a development order, nor could the dispute qualify as a land use or environmental dispute, and the city was not required to submit to the dispute resolution provisions of the Act.

Fastcase provides an 80% discount to Florida Bar Members on our comprehensive 50-state and federal database of primary law - All for only \$195 per year!

Log on to The Florida Bar website at www.floridabar.org and gain access to Fastcase's comprehensive online legal library for \$195. Florida Bar members can now save thousands of dollars on legal research costs by using Fastcase. Simply upgrade for \$195 and access all of Fastcase Jurisdictions.

FREE to Florida Bar Members:

- U.S. Supreme Court cases
- Federal 5th and 11th Circuit Court Cases
- U.S. Code
- Code of Federal Regulations
- Florida Supreme Court Cases
- Florida Court of Appeals Cases
- The Florida Statutes
- Florida Supreme Court Rules
- State Statutes and Regulations - 50 states

Florida Bar Members Can Also

Upgrade to the Premium Package For Only \$195 a Year and Receive:

- Supreme and Appellate Cases for all 50 States
- All Federal Circuit Courts
- Federal District Courts
- Federal Bankruptcy Courts
- Board of Tax Appeals
- Tax Court Memorandum Decisions
- U.S. Customs Court

Fastcase is a member benefit of The Florida Bar



On Appeal

by Lawrence E. Sellers, Jr.

Note: Status of cases is as of May 5, 2010. Readers are encouraged to advise the author of pending appeals that should be included.

U.S. SUPREME COURT

Stop the Beach Renourishment, Inc. v. DEP, Case No. 08-1151. Petition for review of decision by the Florida Supreme Court concluding that, on its face, the Beach and Shore Preservation Act does not unconstitutionally deprive upland owners of littoral rights without just compensation. 33 Fla. L. Weekly S761a (Fla. 2008). Status: Oral argument held December 2, 2009. Affirmed on June 17, 2010.

FLORIDA SUPREME COURT

SJRWMD v. Koontz, Case SC09-713. Petition for review of 5th DCA decision in *SJRWMD v. Koontz*, affirming trial court order that the District had effected a taking of Koontz's property and awarding damages. 34 Fla. L. Weekly 123a (Fla. 5th DCA 2009). Status: Oral argument held April 5, 2010.

Curd v. Mosaic Fertilizer, LLC, Case No.: SC08-1920. Petition for review of 2nd DCA decision affirming the trial court's dismissal of class-action lawsuit for alleged economic damages after contaminated water was released into Tampa Bay, killing fish and crabs. 33 Fla. L. Weekly D2193a (Fla. 2nd DCA 2008). Status: Oral argument held

May 6, 2009. Decision of the 2nd DCA quashed on June 17, 2010.

SFWMD v. Miccosukee Tribe, Case No. SC09-1893. Petition to invoke all writs jurisdiction directing the Third District Court of Appeal to transfer to the Court the consolidated cases of *New Hope Sugar Company, et al. v. SFWMD*, Case No. 3D09-2357, and *Miccosukee Tribe v. SFWMD*, Case No. 3D09-1960, so the Court can protect and exercise its mandatory and exclusive jurisdiction over matters currently pending before the Court: *Miccosukee Tribe v. SFWMD*, Case No. SC09-1817 and *New Hope Sugar Company v. SFWMD*, Case No. SC09-1818 (the validation appeals). Status: Order granting writ entered February 8, 2010.

Miccosukee Tribe v. SFWMD, Case No. SC09-1817 and *New Hope Sugar Company v. SFWMD*, Case No. SC09-1818. Petition for review of the validation of a bond issue to restore part of the Everglades. Status: Oral argument held April 7, 2010.

FIRST DCA

Lowe's Home Centers, Inc. v. DCA, Case No. 1D09-4383. Petition for review of final order of Administration Commission finding that amendments to Miami-Dade Comprehensive Plan are not in compliance. Status: Notice of appeal filed August 31, 2009.

SECOND DCA

Lee County v. DEP and Mosaic, Case No. 2D09-913. Petition for re-

view of DEP final order granting permits and approvals for Mosaic's South Fort Meade Hardee County Mine. Status: Affirmed *per curiam* on March 3, 2010.

THIRD DCA

New Hope Sugar Company, et al. v. SFWMD, Case No. 3D09-2357, and *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, Case No. 3D09-1960. Petition for review of SFWMD final order denying, for lack of standing, appellants' requests for administrative hearing on SFWMD's decision to enter into a contract for the purchase of U.S. Sugar property for purposes of Everglades restoration and preservation. Status: oral argument held December 2, 2009; on February 8, 2010, the Florida Supreme Court granted a petition to invoke all writs jurisdiction and directed the district court of appeal to transfer the cases to the Court. See Case No. SC09-1893, above.

FIFTH DCA

St. John's Riverkeeper, Inc. v. SJRWMD, Case No. 5D09-1644; *City of Jacksonville v. SJRWMD*, Case No. 5D09-1646. Petition for review of SJRWMD final order granting consumptive use permit to Seminole County for withdrawal of surface water from the St. John's River for public supply and reclaimed water augmentation. Status: Petition filed May 13, 2009.

Department of Community Affairs Update

by Richard E. Shine, Assistant General Counsel

COMPREHENSIVE PLANNING

Izaak Walton Investors, LLC, v. Town of Yankeetown and Department of Community Affairs, DOAH Case No. 08-2451; DCA Final Order No. 10-GM-004.

On February 28, 2008, the Town of Yankeetown (Town) adopted plan amendment 08-CIE1 by Ordinance

08-03, modifying the Capital Improvements Element (CIE) of the Town's Comprehensive Plan. On March 10, 2008, the Town adopted plan amendment 08-01 by Ordinance 2007-10, modifying various elements of the Town's Comprehensive Plan.

The Department of Community Affairs (DCA or Department) reviewed all of the amendments, and on April

28, 2008, issued a Notice of Intent to find plan amendment 08-CIE1 not "in compliance," and on May 1, 2008, issued a separate Notice of Intent to find plan amendment 08-01 not "in compliance." The two Notices of Intent were referred to the Division of Administrative Hearings (DOAH) and consolidated. Izaak Walton Investors, LLC (IWI or Petitioner), was

granted leave to intervene, and the case was placed in abeyance while the parties attempted to settle.

DCA and the Town entered into a Compliance Agreement, which was filed with DOAH on January 27, 2009. On March 23, 2009, the Town adopted remedial amendment 09-R1 by Ordinance 2009-02. On April 27, 2009, DCA published a Cumulative Notice of Intent to find amendments 08-CIE1 and 08-01, as remediated by amendment 09-R1, "in compliance." The Cumulative Notice of Intent was filed with DOAH on May 29, 2009, and the parties were realigned.

The final hearing was held on July 6-7, 2009, in Yankeetown. Upon consideration of the evidence and post-hearing filings, the Administrative Law Judge (ALJ) entered a Recommended Order rejecting all of the allegations raised in the Petition. The Order recommends that the Department find the Amendment "in compliance."

Petitioner filed eight exceptions, to which the Department and the Town filed a joint response. On March 5, 2010, the Department issued a Final Order denying Petitioner's exceptions; adopting the ALJ's Findings of Fact and Conclusions of Law; accepting the Recommended Order; and finding the amendments in compliance. On April 2, 2010, Petitioner filed a Notice of Appeal with the 1st DCA.

Dr. William C. Pyle, v. Florida Department of Community Affairs, et al., Case No. 1D09-4181, DCA Final Order No. 09-GM-255.

This is an appeal of Final Order No. DCA09-6M-255 (Final Order) of the Florida Department of Community Affairs (DCA or Department), pursuant to section 120.68, Florida Statutes (2009). The DCA Final Order was issued on August 11, 2009 and finds the City of St. Pete Beach (the City) comprehensive plan amendment adopted by Ordinance 2008-15 "in compliance" as defined in section 163.3184(1)(b), Florida Statutes (2009). In a March 2, 2010, Opinion the First District Court of Appeal Affirmed the Department's Final Order.

The plan amendment establishes a new land use category in the City, the Community Redevelopment District (CRD), which includes two major sub-districts, the Downtown and Gulf

Boulevard Redevelopment Districts. The CRD district comprises approximately twenty percent of the City's total land area, or approximately 248.25 acres. The CRD is a mixed use land use category. The City is currently built-out and already contains a mix of uses in the areas redesignated as CRD in the plan amendment.

Appellant Dr. Pyle alleged that the DCA Final order is materially flawed because it does not contain a specific finding that the City failed to transmit the plan amendment to certain reviewing agencies. Appellant further argues that the Final Order is materially flawed because it does not include a finding that the City did not comply with an agency requirement on format of the plan amendment. In addition to procedural errors, Appellant claims that DCA erroneously interpreted its own rule governing substantive requirements of comprehensive plans.

On appeal, the City and the Department argued that the fact that the failure to transmit the plan amendment to certain reviewing agencies was stipulated in the record below, is immaterial and did not impair the correctness of the action finding the plan amendment "in compliance." Respondents also argued that the Final Order correctly found that the City did comply with format requirements of the rule, so no error was committed and that there is competent, substantial evidence in the record to support Department's finding that the plan amendment complies with the agency's rule governing mixed land use districts.

Proposed Rules

The Department has been engaged in rule development to update Rule 9J-11, Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments; Rule 9J-42, EAR Schedule - to update the schedule for local governments to submit their Comprehensive Plan Evaluation and Appraisal Reports; Rule 9J-5.006 Needs Analysis - to amend the rule to provide greater detail and explanation relating to the statutory requirements that the future land use element be based on the amount of land required to accommodate anticipated growth and the projected population of the area. Rule 9J-11 went to rulemaking on January 19, 2010, and is scheduled

to be effective May 12, 2010. Rule 9J-42 went to rulemaking on August 7, 2009, a Notice of Change was filed November 13, 2009, and became effective February 3, 2010.

The Department is also engaged in rule development for Rules 9J-5.006; 9J-5.003; 9J-5.010; 9J-5.013; and 9J-5.019. In order to implement the new requirements in Ch. 2008-191, L.O.F., (CS/HB 697), Ch. 9J-5, is to be amended to establish minimum criteria to be used in reviewing comprehensive plans to determine whether they comply with the new requirements of Ch. 2008-191, L.O.F., regarding energy efficient land use patterns accounting for existing and future electric power generation and transmission systems, greenhouse gas reduction strategies, strategies to address reduction in greenhouse gas emissions from the transportation sector, factors that affect energy conservation, depicting energy conservation in the future land use map series, energy efficiency in the design and construction of new housing, and the use of renewable energy resources. The most recent rule development workshop was held April 23, 2010.

Rule Challenge

In September 2009 the Department adopted amendments to Rule 9K-9, which sets forth the criteria with which it reviews applications for the Stan Mayfield Working Waterfronts Program. The amendments reconfigured the application review criteria allowing the Department to better determine the best projects, and thus most deserving of grant award funding. The amendments were challenged by a Key West developer, as well as Monroe County, as being discriminatory towards geographic locations where redevelopment pressure on working waterfronts is highest. The Department disputed this allegation, and prevailed before an Administrative Law Judge. A Final Order was issued finding the amendments valid exercises of delegated legislative authority in March 2010.

Visit The Florida Bar's
website at
www.FloridaBar.org



L·O·M·A·S



Materials to Enhance Your Practice

DVDs

- _____ [1091D] Lawyer As Employer.....\$195.00
CLER credit: 3.00 General, including 2.00 Ethics (02/14/10 - 08/14/11)
Certification credit: 2.50 Labor & Employment Law
- _____ [0793D] Maintaining a TRUSTworthy Trust Account.....\$125.00
CLER credit: 1.00 General, including 1.00 Ethics (11/01/09 - 05/01/11)
- _____ [0653D] Starting Anew\$125.00
CLER credit: 5.00 General, including 2.00 Ethics (07/01/09 - 01/01/11)

PRACTICE MANAGEMENT BOOKS

- _____ [4400013] Essential Guide to Starting and Managing a Law Practice in Florida.....\$65.00
- _____ [4400010] How to Start and Build a Law Practice\$56.00
- _____ [4400007] Maintaining a Trust Account Using QuickBooks®\$65.00
- _____ [4400014] Who Is in Charge Around Here?\$45.00

OTHER PRACTICE AIDS

- _____ [4400011] Administrative Forms Handbook (on CD).....\$50.00
- _____ [4400008] Sample Policies for Law Office Personnel (on CD).....\$50.00

"STARTING ON YOUR OWN" SETS

- _____ **BASIC SET:**
- [0653D] Starting Anew DVD (\$65);
- [4400013] Essential Guide to Starting and Managing a Law Practice in Florida (\$25); and
- [4400010] How to Start and Build a Law Practice (\$56)\$146.00
- _____ **EXPANDED SET:**
- [0793D] "Basic Set" PLUS Maintaining a TRUSTworthy Trust Account DVD (\$65)\$211.00

SUBTOTAL: \$ _____

SALES TAX (FL residents apply your county's rate or attach tax exempt certificate): \$ _____

TOTAL: \$ _____

SHIP TO:

Attorney / Customer Number _____ **Name:** _____

Firm Name: _____

Physical Address (no P.O. Boxes): _____

City / State / Zip: _____

Phone: () _____ **Fax:** () _____

PAYMENT TYPE:

☐ **Check #** _____ **Check Amount \$** _____

☐ **MasterCard** ☐ **Visa** ☐ **Discover** ☐ **American Express** → **Fax #: 850-561-5816**

Signature: _____

Name of Cardholder: _____ **Billing Zip Code:** _____

Card #: _____ **Expiration Date:** ____ - ____ 20____
Month Year

Mail completed form (with check payable to The Florida Bar, or credit card information) to:
The Florida Bar, Order Entry, 651 East Jefferson Street, Tallahassee, FL 32399-2300. (Phone: 850/561-5831)

Law School Liaisons

The Center for Earth Jurisprudence

The Center for Earth Jurisprudence (CEJ), a joint initiative of St. Thomas and Barry Universities Schools of Law, works to advance the recognition of nature's intrinsic value in policy and law.

To that end, on March 26, the CEJ hosted a conference titled **"Who's Next? (And What Will We Leave Them?): Safeguarding the Earth for Future Generations."** After decades of expansion and development, we are increasingly aware that our social and economic choices come at a price – to be paid by our children and our grandchildren in the currency of climate change, loss of habitat and biodiversity, and a damaged Earth. We are learning that, as Thomas Berry asserted, we cannot have "well humans on a sick planet." The program highlighted themes of interdependence and sustainability, along with ongoing local and state-wide efforts to reconcile current human needs and the needs of future generations of all species.

Alyson Craig Flournoy, law professor and director of the Environmental & Land Use Law Program at the University of Florida Levin School of Law, delivered the keynote address. She made the case for a National Environmental Legacy Act, based upon considerations of climate change, natural capital and intergenerational justice. Her presentation pointed out the basis for such an act

in existing law and policy, and underscored the importance of having a proactive approach to preserving our environmental legacy, rather than an approach based upon a "spend down" mentality.

Other distinguished presenters included Keith R. Fountain, director of protection in Florida for The Nature Conservancy, who outlined strategies and approaches that have resulted in the protection of almost 1.3 million acres of critical conservation landscapes statewide. James Sellen, executive vice president of planning and design for MSCW Inc., followed with a discussion of "new urbanism" projects. His firm designs communities to meet human social and economic needs in a more environmentally sensitive manner than traditional developments. Karen Z. Consalo, Esq., addressed development, conservation and the remediation of environmental contamination in affected communities from the government's various perspectives at the city, county and state level. View presentations at <http://earthjuris.org/events/past-cej-events/whos-next/>.

On Tuesday, July 13, 2010, **Dr. Vandana Shiva, environmental hero, author and winner of the Right Livelihood Award (the "alternative Nobel Prize")**, will be the featured presenter at "Ecological Integrity: Reconnecting Humans,

Health and Habitat," a CEJ conference and dinner.

The conference explores the links between a balanced environment, the protection of biodiversity and the health of vulnerable populations within the context of small-scale organic agriculture. Dr. Shiva is the founder of Navdanya, a movement that has helped to create the largest fair-trade, organic network in India, and that, via the courts and peaceful resistance, has opposed the spread of GMOs in India. Her sister joins the discussion; Dr. Mira Shiva, director of the Initiative for Health Equity and Society, has devoted three decades to the healthcare issues confronting disenfranchised populations. She will share the insights of this experience. Local experts on related issues add their perspectives to the dialogue, as well: Léonie Hermantin, deputy director of the Lambi Fund for Haiti, addresses "Rebuilding Haiti – A grassroots perspective"; Susan Luck, director of the EarthRose Institute, discusses "EcoNutrition: Our modern food supply's impact"; and Dr. Mahadev Bhat, FIU associate professor of environmental economics and co-director of FIU's Agroecology Program, explores "Urban agriculture and agroecology for sustainable, healthy, local food."

For more information, please visit <http://earthjuris.org/events/> or contact crauseo-danclair@stu.edu.

The Florida State University College of Law Program in Land Use & Environmental Law – Spring 2010 Update

by Professors David Markell, Donna Christie, Robin Craig, and J.B. Ruhl

The Florida State University College of Law's Environmental and Land Use Program has climbed to 5th in the United States in 2010, based on the latest *U.S. News & World Report* rankings. Our Program is now ranked 2nd only to the University of California, Berkeley's among all public law schools. We are the top-

ranked Program in the southeast and in Florida.

We've had a terrific semester at the College of Law. Our spring 2010 *Distinguished Lecturer*, G. Tracy Mehan III, former EPA Assistant Administrator for Water and a leading national water expert, discussed water-related issues in his March

2010 public lecture. Our spring 2010 *Environmental Forum* focused on the pending U.S. Supreme Court case involving Florida's coast, *Stop the Beach Renourishment v. Florida Department of Environmental Protection*. Our panelists included the lawyers who argued the case before the Court—Scott Makar, Florida's

Law School Liaisons continued....

Solicitor General, and D. Kent Safriet of Hopping Green & Sams—as well as Gary Oldehoff of Lewis Stroud & Deutsch and Tom Ingram, Director of the Florida Open Beaches Foundation, Inc. Administrator Mehan's lecture and the *Forum* are available electronically at http://www.law.fsu.edu/academic_programs/environmental/video.html.

Our students continue to excel both inside and outside the classroom. In addition to publishing several articles (detailed in our previous ELULS Newsletter update), our students have worked this academic year as externs and performed *pro bono* service with a variety of public interest and government organizations, including: 1) the Department of Environmental Protection (DEP), 2)

the Department of Community Affairs (DCA); 3) the Department of Agriculture and Consumer Services; 4) Gulf Coast Legal Services; 5) Apalachicola Riverkeepers; 6) Earthjustice; and 7) the Florida Clean Water Network. If your organization is interested in working with our students, or you would be interested in serving as a mentor to help our students learn more about opportunities in the environmental and land use arena, we would love to hear from you. Please contact Professor David Markell at dmarkell@law.fsu.edu.

Our new LL.M. Program in Environmental Law and Policy is off to a strong start. In January 2010, full-time LL.M. students Ann Drobot and Misty Morgan and part-time LL.M. student Kelly Samek joined continuing LL.M. student M.B. Adelson in the Program. The Program is currently admitting students to begin the LL.M. degree in Fall 2010, and we expect a full class after ap-

plications close on June 1, 2010. Detailed information about the LL.M. Program, including an application form, is available on our web site at: http://www.law.fsu.edu/academic_programs/environmental/llm_environmental_law_policy.html.

We hope you'll join us for future programs at the College of Law. Our Environmental Law *Forums* and our Distinguished Lectures in Environmental Law are free and open to the public, and Florida CLE credit is generally available for the *Forums*. For more information about upcoming events, please view our web site at: www.law.fsu.edu. Please also review our environmental brochure, http://law.fsu.edu/academic_programs/environmental/documents/environmental_brochure_08.pdf, which provides an in-depth overview of the environmental and land use law program at the Florida State University College of Law.

Nova Southeastern University, Shepard Broad Law Center

by Andrew L. Carter, J.D. Candidate 2011, Egle Ellie Dykhne, J.D. Candidate, 2010, and Richard Grosso, Professor

The Nova Southeastern University Shepard Broad School of Law's Environmental Law Society and environmental program has continued to offer its students a diversity of speaker events and several opportunities to study and experience Florida's valuable ecosystems first hand. Among other highlights:

A group of NSU law students began this semester by attending the Public Interest Environmental Conference at the University of Florida in February. The students were able to interact with and learn from some of the most influential and accomplished experts in the field, and to network with professionals and discuss current environmental law issues with many national and state scientists, policy-makers, professors, and attorneys.

The NSU Environmental Law Society entertained students and members of the public at its Annual Earth Day Celebration. The celebration held

on NSU's campus, raised awareness of land use and environmental issues facing Florida and the world. Those in attendance enjoyed barbeque and music while learning from local and regional environmental organizations. Funds raised at the event were donated to the Kids Ecology Corps.

NSU law students also attended the National Association of Environmental Law Societies (NAELS) Conference at the Loyola University College of Law in New Orleans, LA in March 2010. NAELS is a coalition of over fifty law student groups which seeks to unite, educate and inspire the next generation of environmental leaders. This year the conference theme was *Adapting to Climate Change in the Gulf Coast and Beyond*, introduced the past, present and the future of New Orleans and the rest of the world through industry-leading adaptation by climate, energy, and environmental champions and experts.

New Orleans and many other coastal communities in Louisiana shared tragic stories of the effects of Katrina, including forty-four oil spills as a result of the hurricane. There are fourteen oil refineries in the Mosville area in Lake Charles, LA, where the Murphy Oil spill erupted in September of 2006 releasing over one million gallons of crude oil. Neighborhood signs reveal the devastation, "damaged by Katrina, ruined by Murphy." Louisiana's Houma Indian tribe is being ousted from their tribal grounds on the southeastern coast of the state not only because of these devastating effects of Katrina, but also rising sea levels.

The evidence of the global climate change is overwhelming, as several other communities around the world, such as natives in Maldives and Alaska, face inevitable changes to their way of life and even extinction. However, world leaders expressed unwillingness to take

binding obligations and action in the Copenhagen Climate Change Conference in December, 2009.

With uncertainty of the passage of the American Clean Energy and Security Act and its validity under international environmental law and principles, including World Trade Organization law, treaties, and non-binding declarations, states started their own regional and local climate change actions. Three major initiatives, the Regional Greenhouse Gas Initiative, the Western Climate Initiative, and the Midwest Greenhouse Gas Accord, cover half of the country

population. Local state programs, including the Florida Climate Action Team, join the ranks to access and address the challenges posed by global climate change.

In April, the school presented a public service panel of high-level public sector lawyers, including South Florida Water Management District General Counsel Cheryl Wood and Senior Litigation Counsel James Nutt, and Palm Beach County Attorney Denies Nieman, who spoke to a packed room about the unique opportunities and benefits of public sector practice.

Throughout the Winter 2010 Semester, third year student Sarah Hayter was awarded Public Service Fellowship by the Florida Bar Foundation, and performed her fellowship work with the Everglades Law Center, Inc. During the upcoming summer 2010, several NSU students will take advantage of pro bono and fellowship opportunities provided by the school's in-house practice clinic, working for the Everglades Law Center on land use and environmental permitting cases, and policy initiatives impacting south Florida's environment.

UF Law Update: Student and Alumni Employment in Environmental and Land Use Law

by Alyson C. Flournoy

New Fellowships for J.D. and LL.M. Students

Thanks to generous support from the Elizabeth Ordway Dunn Foundation, Florida SeaGrant, the Southeast Climate Consortium, and our alumni, next year marks the beginning of a program of fellowships to support students in UF Law's Conservation Clinic. These fellowships will support both J.D. and LL.M. environmental and land use law students beginning next spring. UF alumni helped the

ELULP meet the first year of a Dunn Foundation matching grant, and the Program and Clinic have partnered with the Florida Climate Institute and Florida SeaGrant to support further fellowships. Details on these fellowships will be available on our website www.law.ufl.edu/elulp later this summer.

Student and Alumni Employment

Throughout the year we update

you on what's happening here at the UF Levin College of Law by way of new courses and programs, visiting speakers, clinic projects, conferences, and faculty research. With the arrival of summer, some of our students head to Costa Rica to participate in our Summer Environmental Law Study Abroad Program, and many will spend the summer in employment settings where they continue their education and gain valuable experience.

Law School Liaisons continued....

Ease your legal confusion.

www.floridabar.org/SCOPE

SCOPE

... To better serve the Bar and the public

if a legal hassle or area of law has you confused or full of questions...

SCOPE

points you in the right direction.

SCOPE

offers the less experienced attorney access to the knowledge and resources of a more experienced attorney— fast, free and over the phone.

SEEK COUNSEL OF PROFESSIONAL EXPERIENCE

Call 1-800-342-8060, ext. 5807

A program of the Young Lawyers Division of The Florida Bar

SCOPE applications can be found at www.floridabar.org/SCOPE

LAW SCHOOL LIAISONS

from page 9

So in this column, we highlight the array of employment settings where UF environmental and land use law students will spend their summers. Some of these are placements through our summer externship program, others are positions the students identified and secured independently. UF continues to create new summer externships for credit. Externships for credit are permitted with government agencies, non-profits, and under a new pilot program, with in-house corporate law departments. If your organization would like to host a UF summer law extern, please contact me at flournoy@law.ufl.edu. Also, if you have paid employment opportunities for students or recent graduates, we welcome and will distribute job postings from all potential employers to students who have expressed interest in environmental and land use law.

Alachua Conservation Trust (Gainesville)

Alachua County Attorney's Office/
Alachua County Forever Program
Brevard County Attorney's Office
Caribbean Conservation Corporation
(Gainesville)

City of Jacksonville Office of General Counsel
Earthjustice (Tallahassee FL)
E-Law (Eugene OR)
Florida Department of Community Affairs
Florida Department of Environmental Protection
Florida Fish & Wildlife Conservation Commission
Florida Power & Light (Juno Beach)
Hillsborough County Environmental Protection Commission
Hopping Green & Sams
National Oceanic and Atmospheric Administration Regional Counsel (St. Petersburg)
Orange County Attorney's Office
Pasco County Attorney's Office
Public Trust Environmental Institute of Florida (Jacksonville)
Seminole County Attorney's Office
St. Johns River Water Management District
South Florida Water Management District
The Nature Conservancy (Altamonte Springs)
U.S. Army JAG Corps (Fort Shafter, HI)
U.S. District Court (Middle District Penn.)

Eleven UF Law students, joined by students from Florida A & M, FSU, Golden Gate, Univ. of Houston, Pace, Univ. of Puerto Rico, Stetson and Vermont Law School are heading to Costa Rica for the 2010 UF Law Costa Rica Program. This year's law student cohort will be joined by several doctoral candidates from UF's NSF funded IGERT Program in Water, Wetlands & Watersheds. The law faculty will be joined by U.S. Department of Justice Attorney Mark Barash, UF Systems Ecology PhD candidate Wes Ingwersen and UF Anthropology PhD candidate Gabriella Stocks. Barash has extensive experience focusing on natural resource damage assessment. Stocks is completing her PhD in Costa Rica on dam resettlement. Barash, Ingwersen, and Stocks will join UF Law Professor Richard Hamann in teaching Comparative Watershed Management: Law Science & Policy. In addition, Costa Rican attorney and dispute resolution specialist Franklin Paniagua will teach the Program's simulation skills course, and Program Director Tom Ankensen will teach International and Comparative Environmental Law and direct the Conser-

vation Clinic, continuing its work on a wide range of issues. In past years, the Clinic has assisted Costa Rican and Latin American NGOs on issues including climate change, the human right to indigenous property, civil responsibility for pesticide contamination, and sea turtle conservation.

Despite the difficult economic times, recent graduates of UFLaw have found employment related to environmental and land use law in a wide variety of settings as well. If you graduated in the last couple of years and don't see your employer here, please send us an email and bring us up to date. A partial list includes:

Akerman Senterfitt (Orlando)
Bilzin Sumberg (Miami)
Carlton Fields (Tampa)
City of Fernandina Beach
Earthjustice (Seattle WA)
Florida Dept. of Environmental Protection
Florida Fish and Wildlife Conservation Commission
Florida Power & Light (Juno Beach)
Hand Arendall (Mobile, AL)
Holland & Knight (Orlando)
Icard Merrill (Sarasota)
Lowndes Drosdick Doster Kantor
Mayer Brown (Charlotte NC)
National Oceanic and Atmospheric Administration (Silver Springs MD)
Nuclear Regulatory Commission (Washington, DC)
Public Trust Environmental Law Institute of Florida (Jacksonville)
Smith Hulsey & Busey
Steptoe & Johnson (Washington, DC)
St. Johns Riverkeeper (Jacksonville)
The Center for Progressive Reform (Washington, DC)
The Trust for Public Lands (Jacksonville)
U.S. Army Corps of Engineers (Jacksonville)
U.S. Court of Appeals for the Eleventh Circuit (Tampa)
U.S. Department of Justice (Washington, DC)
U.S. Department of Transportation (Washington, DC)
U.S. Marines JAG Corps
Wicker Smith

A full report on the year's environmental and land use law activities at UFLaw will soon be available in our newsletter. Look for it on our website at: <http://www.law.ufl.edu/elulp/events.shtml>.

**Update your
CLE record in
record time!**

CLE CREDIT POSTING

**Discover the
convenience of
online posting at**

www.floridabar.org

Click "Member Profile" at top right
Click "CLE Activity Posting" link
Login and Post Credits

**REMINDER: FLORIDA BAR
CLE ATTENDANCE CREDITS
ARE POSTED AUTOMATICALLY**



The Florida Bar Continuing Legal Education Committee and the
Environmental & Land Use Law Section present

2010 Ethical Challenges for the Environmental Lawyer and Consultant

Course Classification: Intermediate Level (1099R)

and

2010 Environmental and Land Use Law Annual Update – Seas of Change: The Next Decade for Environmental and Land Regulation in Florida

Course Classification: Advanced Level (1100R)

**August 12-14, 2010
Sawgrass Marriott Golf Resort & Spa
1000 PGA Tour Boulevard
Ponte Vedra Beach, FL 32082
800-457-4653**

**Course No. 1099R
1100R, 1101C**



SCHEDULE OF EVENTS

2010 Ethical Challenges for the Environmental Lawyer and Consultant (1099R)

Thursday

8:00 a.m. – 8:35 a.m.

Late Registration

8:35 a.m. – 8:40 a.m.

Opening Remarks/Introduction

Erin L. Deady, Lewis, Longman & Walker, P.A.

Pedro Fierro, ARCADIS

8:40 a.m. – 9:30 a.m.

Notifying Third Parties About Contamination in Florida: Ethical and Practical Challenges – What's Required? What's in the Pipeline? Financial Disclosures?

Howard E. Nelson, Bilzin Sumberg

Nicholas Albergo, HSA Engineers and Scientists

9:30 a.m. – 10:10 a.m.

Ethical Issues with Redevelopment of Contaminated Property

F. Joseph Ullo, Jr., Lewis, Longman & Walker, P.A.

Nandra Weeks, Geosyntec Consultants

10:10 a.m. – 10:25 a.m.

Break

10:25 a.m. – 11:00 a.m.

Ethical Dilemma: Actions to Take When Faced with Representing Two Opposing Parties

Ralph A. DeMeo, Hopping Green & Sams, P.A.

James P. Oliveros, Golder Associates, Inc.

11:00 a.m. – 12:00 noon

Metadata Scrubbing and Mining: Legal, Ethical and Practical Implications

Jerry R. Sullenberger, The Florida Bar, LOMAS

12:00 noon – 1:00 p.m.

Substantive Committees Luncheon

2010 Environmental and Land Use Law Annual Update (1100R)

12:45 p.m. – 1:30 p.m.

Late Registration

1:30 p.m. – 1:40 p.m.

Opening Remarks/Introduction

1:40 p.m. – 2:30 p.m.

Keynote Address - No Blue, No Green: A New Era of Understanding and Action for the Oceans and Florida

David E. Guggenheim, 1planet1ocean

2:30 p.m. – 3:20 p.m.

Retooling America's Energy Future: Federal Initiatives Addressing Climate Change and Energy Independence

John Henry Hankinson, Jr., St. Augustine

3:20 p.m. – 3:35 p.m.

Break

3:35 p.m. – 4:25 p.m.

State of Florida Growth Management

Thomas G. Pelham, Department of Community Affairs

4:25 p.m. – 5:25 p.m.

Numeric Nutrient Criteria

Winston K. Borkowski, Hopping Green & Sams, P.A.

Drew Bartlett, Department of Environmental Protection

David G. Guest, Earthjustice Legal Defense Fund

5:25 p.m. – 5:30 p.m.

Session Summary and Announcements

5:30 p.m. – 6:30 p.m.

Reception

6:30 p.m. – 7:30 p.m.

EcoWalk

Tom Roberts, E Sciences, Inc.

Friday

Concurrent Sessions

A) Track A

B) Track B

8:30 a.m. – 9:20 a.m.

A) Offshore Oil and Gas Exploration

Frank E. Matthews, Hopping Green & Sams, P.A.

Susan Glickman, Southern Alliance for Clean Energy

Thomas A. Herbert, Lampl Herbert Consultants

B) Amendment 4: Hometown Democracy After the Vote

Deborah L. Martohue, Martohue Land Use Law Group, P.A.

Kenneth A. Tinkler, Carlton Fields, P.A.

Lawrence E. Sellers, Jr., Holland & Knight LLP

9:20 a.m. – 10:10 a.m.

A) Statewide Stormwater Rule and Low Impact Development

Meredith C. Fields, Department of Environmental Protection

Jennifer Hecker, The Conservancy of Southwest Florida

Nicole C. Kibert, Carlton Fields, P.A.

B) Potential Changes to the Arsenic Cleanup Criteria: Impacts to Remediation and Development in Florida

Moderator: Robert A. Malinoski, Gunster, Attorneys at Law

J. Keith Tolson, Geosyntec Consultants

Kelly Eger, Miller Legg

10:10 a.m. – 10:25 a.m.

Break

10:25 a.m. – 11:15 a.m.

A) Marinas and Mooring Fields: Issues in Siting and Development

Harold G. "Bud" Vielhauer, Fish & Wildlife Conservation Commission

Peter C. Peterson, Applied Technology & Management

B) Planning for Projected Population

Robert P. Diffenderfer, Lewis, Longman & Walker, P.A.

Richard J. Grosso, Everglades Law Center, Inc.

11:15 a.m. – 12:05 p.m.

A) Coral Protection in Florida: What Happens When Your Client Hits Bottom

Kelly K. Samek, Fish & Wildlife Conservation Commission

Christopher T. Byrd, Department of Environmental Protection

B) Transportation Update

Amy Taylor Petrick, Palm Beach County Attorney's Office

Tara W. Duhy, Lewis, Longman & Walker, P.A.

Alan R. Mosely, Department of Transportation

12:05 p.m. – 1:45 p.m.

Section Annual Meeting and Awards Luncheon

1:45 p.m. – 2:25 p.m.

Administrative Update & Tips for Environmental and Land Use Law Practitioners at DOAH

Mary F. Smallwood, GrayRobinson, P.A.

Hon. Bram D.E. Canter, Division of Administrative Hearings

2:25 p.m. – 3:15 p.m.

Ethics: 10 Mistakes Every Lawyer Has Already Made

Linda L. Shelley, Fowler White Boggs P.A.

3:15 p.m. – 3:30 p.m.

Break

3:30 p.m. – 4:50 p.m.

General Counsels' Roundtable: Agency Update

Moderator: Timothy J. Center, Collins Center for Public Policy

Thomas M. Beason, Department of Environmental Protection

William S. Bilenky, Southwest Florida Water Management District

Shaw P. Stiller, Department of Community Affairs

Harold G. "Bud" Vielhauer, Fish & Wildlife Conservation Commission

4:50 p.m. – 5:35 p.m.

Legislative Update

Lawrence E. Sellers, Jr., Holland & Knight LLP

Terry E. Lewis, Lewis Longman & Walker, P.A.

5:35 p.m. – 5:45 p.m.

Closing Remarks

5:45 p.m. – 7:00 p.m.

Reception

7:00 p.m. – 9:30 p.m.

Jamming with the Nonessentials

Saturday

ELULS Committee Meetings

8:30 a.m. – 10:00 a.m.

Affiliate Membership

9:00 a.m. – 10:00 a.m.

Law School Liaison

10:00 a.m. – 12:00 noon

Continuing Legal Education

12:00 noon – 2:00 p.m.

Public Interest

CLE CREDITS

Ethical Challenges for the Environmental Lawyer and Consultant (1099R)

General: 4.0 hours

Ethics: 4.0 hours

CERTIFICATION PROGRAM

(Max. Credit: 4.0 hours)

Business Litigation: 3.0 hours

City, County, Local Gov't: 4.0 hours

Civil Trial: 3.0 hours

Real Estate: 4.0 hours

State & Federal Gov't & Administrative Practice: 4.0 hours

2010 Environmental and Land Use Law Annual Update (1100R)

General: 12.5 hours

Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 12.5 hours)

City, County & Local Government: 12.5 hours

Real Estate Law: 12.5 hours

State & Federal Gov't & Administrative Practice: 12.5 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at www.floridabar.org for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).



REFUND POLICY

Requests for refund or credit toward the purchase of the audio CD or course books of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A \$25 service fee applies to refund requests. Registrants who do not notify The Florida Bar by 5:00 p.m., August 5, 2010 that they will be unable to attend the seminar, will have an additional \$140 retained. Persons attending under the policy of fee waivers will be required to pay \$140.



AMERICAN PLANNING ASSOCIATION

Certification Maintenance (CM) credit for accredited planners is pending.



HOTEL RESERVATIONS

A block of rooms has been reserved at the Sawgrass Marriott Golf Resort & Spa, at the rate of \$144 single/double occupancy. To make reservations, call the Sawgrass Marriott directly at (800) 457-4653. Reservations must be made by 7/12/10 (3:00 p.m.) to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.



ELECTRONIC COURSE MATERIAL NOTICE

Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or immediately for products purchased thereafter. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

TO REGISTER**ON-LINE:**
www.floridabar.org/CLE**MAIL:**
Completed form with check**FAX:**
Completed form to 850/561-5816

REGISTRATION

Register me for "2010 Ethical Challenges for the Environmental Lawyer and Consultant" and/or "2010 Environmental and Land Use Law Annual Update"

ONE LOCATION: (140), SAWGRASS MARRIOTT GOLF RESORT & SPA (AUGUST 12-14, 2010)

TO REGISTER OR ORDER AUDIO CD OR COURSE BOOKS BY MAIL, SEND THIS FORM TO The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

Name _____ Florida Bar # _____

Address _____

City/State/Zip _____ Phone # _____

JMW: Course No. 1099R/1100R/1101C

REGISTRATION FEE (CHECK ONE):

1099R

- ☐ Member of the Environmental & Land Use Law Section: \$115
☐ Non-section member: \$140
☐ Full-time law college faculty or full-time law student: \$70
☐ Persons attending under the policy of fee waivers: \$0

1100R

- ☐ Member of the Environmental & Land Use Law Section: \$460
☐ Non-section member: \$485
☐ Full-time law college faculty or full-time law student: \$382
☐ Persons attending under the policy of fee waivers: \$140

Reduced fee for both seminars 1099R and 1100R:

- ☐ Member of the Environmental & Land Use Law Section: \$525
☐ Non-section member: \$575
☐ Full-time law college faculty or full-time law student: \$402
☐ Persons attending under the policy of fee waivers: \$140

Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court-appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice; are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. (We reserve the right to verify employment.)



☐ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

METHOD OF PAYMENT (CHECK ONE):

- ☐ Check enclosed made payable to The Florida Bar
☐ Credit Card (Advance registration only. Fax to 850/561-5816.) ☐ MASTERCARD ☐ VISA

Signature: _____ Exp. Date: ____/____/____ (MO./YR.)

Name on Card: _____ Card No. _____

COURSE BOOK — AUDIO CD/COURSE BOOK

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 8/12/10. TO ORDER AUDIO CD OR COURSE BOOKS, fill out the order form above, including a street address for delivery. Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

Ethical Challenges for the Environmental Lawyer and Consultant

☐ **COURSE BOOK ONLY (1099M)**

Cost \$50 plus tax

TOTAL \$ _____☐ **AUDIO CD (1099C)**

(includes course book)

\$115 plus tax (section member); \$140 plus tax (non-section member)

TOTAL \$ _____

2010 Environmental & Land Use Law Annual Update

☐ **COURSE BOOK ONLY (1100M)**

Cost \$50 plus tax

TOTAL \$ _____☐ **AUDIO CD (1101C)**

(includes course book)

\$460 plus tax (section member); \$485 plus tax (non-section member)

TOTAL \$ _____

Certification/CLER credit is not awarded for the purchase of the course book only.

LEGISLATIVE UPDATE

from page 1

to the Department of Health for completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Study

Environmental Bills

SB 318—Invasive Reptile Bill

The bill bans the possession of certain types of reptiles, including any kind of reptile designated as a reptile of concern (ROC) by the Florida Fish and Wildlife Conservation Commission (FWCC). The bill prohibits any person, party, firm, association, or corporation from keeping, possessing, importing into the state, selling, bartering, trading, or breeding these reptiles for personal use or for sale for personal use.

The bill provides an exception for any person, party, firm, association, or corporation who is currently licensed or licensed prior to July 1, 2010, to continue to possess the reptile for the remainder of its life. If a person, party, firm, association, or corporation holds a permit issued before July 1, 2010, and the reptile remains alive following the death or dissolution of the licensee, the reptile may be legally transferred to another entity that holds a permit. This prohibition does not apply to traveling wildlife exhibitors licensed or registered under the U.S. Animal Welfare Act or to zoological facilities that are licensed by the FWCC or are exempted from the licensure requirement.

This bill requires authorization by the FWCC for any person, party, firm, corporation, or association to sell any wild animal life designated by FWCC rule as a conditional or prohibited species, Class I or Class II wildlife, ROC or venomous reptile, in the state, including a sale with delivery made in this state, regardless of the origin of the sale or the location of the initial transaction.

This bill establishes a minimum mandatory fine of \$100 for a second degree misdemeanor (Level Two) violation of the ROC and venomous reptile law and FWCC rules or orders pertaining to species that are designated conditional and prohibited. Animals subject to the violation must also be surrendered to FWCC.

In addition, this bill establishes civil penalties for those who have been convicted of violations dealing with illegal importation of wildlife, ROCs and venomous reptiles, and the licensing requirements for commercial and personal use. This bill also expands the \$10,000 bond or \$2 million comprehensive general liability insurance requirement for those exhibiting Class I wildlife to anyone possessing Class I wildlife.

The bill requires FWCC to annually report to the Legislature which species are listed as reptiles of concern, conditional, and prohibited.

The bill also requires FWCC, by December 31, 2010, to evaluate adding additional species, such as iguanas, to the list of reptiles of concern.
Effective date: July 1, 2010

The bill was sent to the Governor on May 21, 2010.

Water Resources

Senate Bill 550—Water Resources

This bill started out as the “springs bill” and evolved into a bill that creates a state-wide septic tank inspection program. The bill includes a number of provisions, including:

- Authorizes the Department of Health to administer an on-site sewage treatment and disposal system inspection program that requires a septic tank inspection once every five years to assess the fundamental operational condition of the system and identify any failure in the system. The bill authorizes the Department of Health to adopt rules for compliance and enforcement and to accomplish statewide implementation of the inspection program by January 1, 2016.

- Prohibits the land application of septage after January 1, 2016.

- Provides for a grant program to assist low-income septic tank owners in complying with septic tank inspection and repair requirements.

- Allows the Department of Health to establish an inspection fee of between \$15-\$20 and allows up to \$5 of the fee to be used for the grant program.

- Creates a new part VII of chapter 373 to combine the water supply provisions of chapter 373 in one location.

- Expands eligibility for alternative water supply funding to include

conservation projects.

- Allows life of the mine permits for limestone extraction and requires mitigation for limestone mining in surface waters and wetlands.

- Modifies the procedure for removing the Florida Keys Area of Critical Concern Designation.

- Authorizes the issuance of up to a total of \$200 million in bonds to be used to finance the cost of constructing sewage collection treatment and disposal facilities.

- Changes the deadline for the implementation of central wastewater systems in the Florida Keys from 2010-2015, following criteria established by the Administration Commission.

- Requires that onsite sewage disposal systems in Monroe County must cease discharges by December 31, 2015 or meet enhanced water quality standards.

- Includes provisions for counting the reuse requirements for flow diverted from facilities that discharge through an ocean outfall.

- Provides that lands acquired under the Wekiva Parkway Act and used as mitigation for environmental resource permitting requirements shall be deemed to meet cumulative impact requirements of chapter 373.

- Requires that water management districts must establish a procedure for bringing permit decisions before the governing board. These provisions are intended to undo legislation last year that required the majority of permit decisions to be made by water management district Executive Director.

- Allows governing boards of water management districts to delegate certain general permit decisions to the Executive Director.

- Clarifies what information regarding the availability of reclaimed water is required of consumptive use permit applicants.

- Includes a statement of legislative intent regarding numeric nutrient standards and expresses the preference of the legislature that a TMDL approach directed at specific water bodies is preferred to categorical numeric nutrient standards. States that EPA's January 2010 proposed standards will have severe economic consequences on Florida's economy.

- Modifies provisions for site rehabilitation tax credits.

- Provides that biofuel facilities

continued...

LEGISLATIVE UPDATE

from page 15

that include the cultivation of 1,000 or more acres qualify for the expedited permitting process for certain economic development projects.

Effective date: July 1, 2010

The bill was presented to the Governor on May 21, 2010

Dock Permitting/Aquatic Preserves

CS for SB 1118—Docks

The bill modifies the calculation of the square-footage of private residential docks within aquatic preserves to provide that the roofs over boat lifts or davits are not included in the square footage calculation of a terminal platform. In addition, the Department of Environmental Protection is permitted to adopt rules for Class III shellfish waters that may include special criteria for approving docking facilities that have 10 or fewer slips if the construction and operation of the facilities will not result in the closure of shellfish waters.

The Department is directed to maintain a list of mitigation banks which applicants may consider when developing proposals to meet mitigation or public interest requirements of chapters 403, 253 and 373. In addition, county governments are encouraged to develop similar inventories. Counties are authorized to establish dedicated trust funds for depositing public interest donations to be used for future projects, including improving on-water law enforcement capabilities. Finally, DEP is directed to expand the use of online self-certification permit applications for exemptions, general permits and individual permits. *Effective date: July 1, 2010*

The bill was sent to the Governor May 21, 2010.

CS/CS/CS/HB 831—Nassau County-St. Johns River Marshes Aquatic Preserve

This bill is intended to grandfather hundreds of existing docks located in the Nassau County portion of the Nassau County-St. Johns River Marshes Aquatic Preserve that exceed the

dock size requirements of the aquatic preserve rule. Representative Adkins negotiated with the Department of Environmental Protection the provisions of this bill that allow owners of docks with a cumulative total deck and roof area of 800 square feet or less to apply for a letter of consent to use the underlying sovereign submerged lands. If more than 50% of the dock is destroyed, a repaired or new dock must meet the current rule, Rule 18-20, Florida Administrative Code. The original version of the bill only applied to docks along Lofton Creek and was expanded to include the entire Nassau County portion of the preserve at the request of Secretary Sole. *Effective date: Upon becoming law.*

The bill became law without the Governor's signature on May 28, 2010.

CS/HB 569—Solid Waste Disposal

CS/HB 569 allows Class I landfills designed to utilize active gas collection systems to provide and arrange for beneficial use of the landfill gas collected at such facilities, and modify their operating permit to accept yard trash. To obtain such a permit modification, the permittee must certify that gas collection and beneficial use will continue after the facility closes. If the landfill is located in a county that owns and operates a compost facility, a waste-to-energy facility, or a biomass facility that sells renewable energy to a public utility and that is authorized to accept yard trash, DEP must notify the county and allow the county to comment on the permit modification application.

The exception established by the bill to the existing prohibition from accepting yard trash in Class I landfills does not apply to a county operating under a constitutional home rule charter. Additionally, this exception is not intended to materially affect current operations at existing waste-to-energy or biomass facilities. *Effective date: July 1, 2010.*

The bill was presented to the Governor on May 17, 2010.

HB 7243—Environmental Control

HB 7243 addresses the State's incremental recycling goals for recyclable materials and provides specific benchmarks to be reached in order to reach the long term goal that by 2020

at least 75% of the municipal solid waste stream shall be recycled rather than disposed of at a landfill. If such benchmarks are not reached, DEP is required to report to the Legislature on the program changes that might result in meeting the benchmark. Cities, counties and state entities, and public schools are required to report their recycling rates. The bill directs Enterprise Florida along with DEP to create the Recycling Business Assistance Center to coordinate between state agencies and the private sector to develop new markets for recyclable materials.

The bill allows renewable energy facilities to count a certain amount of the megawatts they produce towards the state recycling goals and creates incentives for renewable energy producing counties that maintain a program to recycle at least 50% of municipal solid waste by means other than creating renewable energy. DEP must adopt rules creating a voluntary certification program for materials recovery facilities. The bill significantly modifies DEP's solid waste management grant program.

The bill directs DEP to adopt rules creating the method and criteria by which counties will calculate recycling rates. Counties are directed to implement recycling programs for construction and demolition ("C & D") debris. The bill requires the reporting of processed C & D debris by the county of origin in accordance with policies to be established by DEP. DEP rules are also to develop criteria to ensure accurate and consistent reporting and, to the extent economically feasible, require that C & D debris be processed (for recycling) prior to disposal.

The bill authorizes local governments to enact ordinances to require multi-family dwellings and apartment complexes to allot space and receptacles for separating recyclable materials. The bill repeals a greenhouse gas reporting requirement to The Climate Registry which federal regulations have made unnecessary. The Capitol building must report its recycling rates, and the bill directs the Florida Building Commission to encourage recycling, composting and the use of recyclable materials. *Effective date: July 1, 2010.*

The bill was signed by the Governor on May 27, 2010, Chapter 2010-143.

CS/CS/HB 1385—Petroleum Contamination Site Cleanup

CS/CS/HB 1385 authorizes DEP to establish a long term natural attenuation monitoring category for sites in the Petroleum Cleanup Program. Where cost-effective, DEP must re-prioritize sites previously eligible for restoration funding assistance to long-term natural attenuation status if the sites meet certain criteria. DEP must evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. Site specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels must also be evaluated. For sites in this category, active remediation must be resumed within a 42 month period if the chemicals of concern increase, are not significantly reduced, or the plume migrates beyond the property boundaries.

The bill creates a low-scored site initiative for sites with a priority ranking score of 10 or less and sets forth conditions for voluntary participation. If these conditions are met, DEP must issue a “no further action” determination. If no contamination is detected, DEP may issue a site rehabilitation completion order. The bill authorizes DEP to spend no more than \$10 million per fiscal year and funds will be available on a first-come, first-served basis limited to 10 sites in each fiscal year for each responsible party or property owner.

This bill also provides an additional extension to September 30, 2011, for fuel service stations previously granted an extension by DEP to July 1, 2010, to upgrade underground storage tanks with secondary containment. *Effective date: July 1, 2010.*

The bill was presented to the Governor on May 17, 2010.

State Lands

Senate Bill 1516—DEP State Lands Inventory

The bill requires the Department of Environmental Protection, working with the Department of Management Services, to annually produce an inventory of state lands and to develop a data base identifying all

state lands, including lands owned by the water management districts, the Board of Trustees of the Internal Improvement Trust Funds and other agencies. While the bill requires the identification of lands eligible for surplus consideration, the language of the bill does not impose percentage goals on the surplus consideration or selling of state-owned lands as did an earlier version of Senate Bill 1752. *Effective date: Upon becoming law.*

The Governor vetoed the bill on May 28, 2010.

CS/CS/HB 435—Marketable Record Title Act

This bill provides that the exceptions to marketability shall not affect or extinguish any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district or the United States.

The bill was signed by the Governor on May 27, 2010, Chapter No. 2010-104

CS/SB 7103, Engrossed 1—Agriculture

Amends the “Agricultural Lands and Practices Act,” to prohibit a county from charging an assessment on a bona fide farm operation on land classified as agricultural land if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the district permit or implements best management practices adopted by DEP, DACS for a water management district as part of a statewide or regional program.

- If a county, before March 1, 2009, adopted a stormwater utility ordinance, an ordinance or utility establishing a Municipal Service Benefit Unit, or a resolution stating an intent to use the uniform method of collection for such stormwater ordinances, the county may continue to levy a stormwater management assessment if the ordinance or resolution provides credits against the assessment or fee for the water quality or flood control benefit of measures taken by the farm operation (BMPs, measures as part of ERP or works of the district permit etc.)

- Qualifies the subsection prohibiting counties from adopting or enforcing regulations that prohibit or regulate an activity on land classified

as agricultural land, if such activity is regulated through BMPs, interim measures or regulations adopted under chapter 120 by DEP, DACS or a water management district as part of a statewide or regional program. Provides that this restriction does not limit a county’s powers to enforce wetlands, springs protection, or stormwater ordinances, regulations or rules adopted before July 1, 2003; regulations pertaining to the Wekiva River Protection Area; or enforce ordinances consistent with the requirements of a program operated under a delegated agreement from a state agency or water management district.

- Creates the “Agricultural Land Acknowledgement Act.”

- The bill requires local governments to require, as a condition of issuing a local land use permit, building permit or certificate of occupancy for nonagricultural land contiguous to sustainable agricultural land “a written acknowledgement of contiguous sustainable agricultural land.” The acknowledgement must be recorded in the official records of the county where the political subdivision is located.

- Farm fences are exempt from the Florida Building Code except for code provisions implementing local, state, or federal floodplain management regulations.

The bill was vetoed by the Governor on May 15, 2010.

CS/HB 981—Agriculture

This legislation prohibited county property assessors from using a proposed sale of land as a basis for eliminating agricultural classification of the property so long as “bona fide” agricultural practices continued on the land while the parcel was offered for sale. Additionally, the bill authorized the Department of Agriculture and Consumer Services to develop a permitting process in concert with DEP for the regulation of pesticide applications to waters of the state with the goal of compliance with the federal Clean Water Act.

Despite only a single no vote in each Chamber, the Governor vetoed this bill on May 17th.

Energy-- HB 7179—Renewable Energy: Property Assessed Clean

continued...

LEGISLATIVE UPDATE

from page 17

Energy (PACE) Program

This bill allows local governments to finance renewable energy and storm-resistance improvements by allowing local governments to issue bonds to finance energy projects for property owners with the repayment of the bonds through special assessments on the property owners' property tax bill.

The Legislature declined to adopt a renewable portfolio standard bill and a bill, HB 7229, that would have allowed utilities to recover up to \$380 million from customers to finance renewable energy projects (in a similar fashion to cost recovery for nuclear) failed because of legislative concerns over the impact on customers' bills.

The bill was signed by the Governor on May 27, 2010, Chapter 2010-130, Laws of Florida.

Administrative Procedures Act

CS/CS/HB 1565—Rulemaking

The bill requires agencies to prepare a statement of estimated regulatory costs if a proposed rule has an adverse impact on small businesses; or a proposed rule is likely to increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule. The 90-day time limit for the duration of emergency rules is qualified to allow extension beyond 90 days when the agency has initiated rulemaking addressing the subject of the emergency rules and either: 1) a challenge to the proposed rules has been filed and remains pending; or 2) the rules are

awaiting legislative ratification.

The bill qualifies the circumstances where a statement of estimated regulatory costs is required to include where a proposed rule will have an adverse impact on small business or if a proposed rule is likely to increase regulatory costs in excess of \$200,000 in the aggregate within 1 year of the implementation of the rule. Agencies must revise statements of regulatory costs if any change to a rule increases the regulatory costs of the rule. The failure of the agency to prepare the statement or to respond to a written lower cost regulatory alternative is a material failure. These failures can only be raised in a rulemaking proceeding if the issue is raised in a petition filed no later than 1 year after the effective date of the rule; and raised by a person whose substantial interests are affected by the rule's regulatory costs.

A statement of regulatory costs must include:

- An economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment over \$1 million in the aggregate within 5 years of implementation.
- Is likely to have an adverse impact on business competitiveness.
- Is likely to increase regulatory cost, including transactional costs over \$1 million in the aggregate within 5 years of implementation of the rule.

If the regulatory costs of the rule exceed the dollar thresholds listed above, the rule has to be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular session, and the

rule may not take effect until ratified by the Legislature. Effective upon becoming law.

The bill was vetoed by the Governor on May 28, 2010

Growth Management

CS/HB 7129—Military Base-Local Government Comprehensive Plan Compatibility

This bill seeks to improve the coordination of local government land use decisions with military installations in order to avoid encroachment. In addition to providing military bases with pending comprehensive plan amendment proposed changes, local governments must transmit to base commanding officers copies of applications for development orders requesting a variance from height or lighting restrictions or noise attenuation reduction requirements within areas defined in the local government plan as being in the military installation's zone of influence.

In addition, the bill requires local governments that fail to adopt criteria to address the compatibility of lands adjacent to existing military installations in its future land use plan by June 30, 2012 to enter into mediation with the military installation, the Department of Community Affairs, the regional planning council and private landowner representatives. *Effective date: July 1, 2010.*

The bill was presented to the Governor on May 17, 2010.

SB 1752—Jobs Bill

This omnibus job creation bill contains numerous job creation provisions and economic development tax incentives. In addition, the bill contains the following environmental/land use provisions:

- Contains a two-year extension of local government development orders and ERP permits as well as a two-year extension of build-out dates;
- Provides that DRI and comprehensive plan amendments granted transportation concurrency exemptions pursuant to SB 360 (2009) are valid should SB 360 be held invalid in ongoing litigation.
- Authorizes local governments to petition the Governor and Cabinet to challenge the denial of a program



Ethics Questions?

**Call The Florida Bar's
ETHICS HOTLINE**

1/800/235-8619

delegation by the Department of Environmental Protection.

Effective date: Upon becoming law.

The bill was signed by the Governor on May 28, 2010, Chapter 2010-147, Laws of Florida.

CS/CS/CS/HB 1271, Engrossed 2—Transportation

- Expands the scope of Charter County Transportation System Surtax to allow counties within or under an interlocal agreement with a regional transportation or transit authority to levy a discretionary sales surtax of up to 1 percent, subject to approval by majority vote of the electorate of that county.

- Expands the allowable uses of surtax to include “on-demand transportation services” defined to mean: “transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.”

- Requires any public transit system which connects directly with a new public transit system put into service after December 1, 2010, and which is adding a new fare media system to “use a universally accepted contactless fare media that is compatible with the American Public Transportation Association’s Contactless Fare Media System Standards and allows users to purchase fares at a single point of sale with coin, cash or credit card.

- Changes to outdoor advertising regulation—Defines “allowable uses” to mean those uses that are authorized within a zoning category without the requirement to obtain a variance or waiver. Defines “zoning category” to mean the designation under the land development regulations or other similar ordinance enacted to regulate the use of land as provided in s. 163.3202(2)(b), which designation sets forth the allowable uses, restrictions, and limitations on use applicable to properties within the category.

- Defines “commercial use” to mean activities associated with the sale, rental or distribution of products or the performance of services. The term includes, without limitation, automobile manufacture or repair, boat manufacturing or repair, junkyards, meat

packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants and solid waste disposal sites.

- Amends pilot programs authorized in Orange, Hillsborough, Osceola County and the City of Miami to allow the reduction of the distance between permitted signs on the same side of an interstate highway to 1,000 feet if, among other existing criteria, “the new or replacement sign to be erected on an interstate highway within that jurisdiction is to be located on a parcel of land specifically designated for commercial or industrial use under both the future land use map of the comprehensive plan and the land development regulations adopted pursuant to chapter 163.

- Gives DOT a cause of action to recover the costs of removal of illegal signs with jurisdiction in county court concurrent with circuit court.

Effective date: July 1, 2010

The bill was presented to the Governor on May 21, 2010.

CS/HB 143—Exemption for aircraft assembly and manufacturing hangars from comprehensive plan transportation concurrency requirements.

The bill creates a new exemption from concurrency for hangars for the assembly, manufacture, maintenance or storage of aircraft. *Effective date: July 1, 2010.*

The bill was signed by the Governor on May 7, 2010. Laws of Florida 2010-33.

Bills that Failed to Pass

CS/CS/SB 282-- Reauthorization of the Department of Community Affairs—Failed

The Department of Community of Affairs was subject to a statutorily mandated sunset review this year where the legislature reviews all of the duties and functions and must take affirmative action to reauthorize the agency. While a reauthorization bill passed the Senate, House leadership prevented reauthorization from passing in the House. Without action, the sunset review process will con-

tinue next year, creating a risk that the Department will be reorganized or eliminated.

HB 665-Affordable Housing—Failed

The bill removes statutory limitations on the amount of documentary stamp tax revenue that goes into the State Housing Trust Fund and Local Government Housing Trust Fund, creating a greater potential pool of money to fund affordable housing. The bill requires certain local comprehensive plans to include affordable housing for seniors as part of the housing element of the plan. The bill revises the State Housing Strategy to provide targeted assistance for persons with special needs. The bill provides that certain state affordable housing funds could not be used to finance new construction until July 1, 2011.

The bill died in the House after a Senate amendment was added to the bill that would have defined certain urban service areas as entitled to a transportation exception area regardless of any local government limitation on that area set forth in the local government’s comprehensive plan.

SB 1408/SB346—Relating to Working Waterfront Property—Failed

Several iterations of legislation implementing the 2008 “working waterfronts” constitutional amendment were advanced during the 2010 Session. Each version purported to provide legislative guidance for the Department of Revenue and county property appraisers to implement the constitutional amendment. In the end, Senator Altman’s bill (1408) and Senator Dean’s bill (346) attracted the most attention and debate, the former actually passing the Senate and ending the Session in House messages. Controversy surrounded SB 1408 due to provisions which appeared to expand the constitutional language to include certain water dependent operations along the Miami River front within the tax protected status of waterfront properties. Ultimately, House leadership rejected the language by preventing the bill from advancing to the floor. Currently, the Department of Revenue is assembling a “stakeholder” group to draft guidance for implementation of the constitutional amendment.

The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399-2300