



THE ENVIRONMENTAL AND LAND USE LAW SECTION REPORTER

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• Gary K. Hunter, Jr., Chair • Thomas R. Gould, Co-Editor • Jeffrey A. Collier, Co-Editor

2009 Legislative Session Summary

by Eric T. Olsen

The 2009 Florida Legislature faced a daunting task in setting Florida's budget. With the downturn in the national economy, Florida's real estate market collapse, abundant home foreclosures, and tax collections far below expectations, the Florida Legislature made many extremely difficult decisions as it fashioned the 2009-2010 State budget. The budget crisis could not be resolved within the 60-day normal session period, and consequently the 2009 session was extended one week to finish the budget. With the budget crisis, the Legislature focused most of its energy on funding related matters and thus, the Legislature passed only 235 general bills, down from usually double that amount.

Below is a summary of some of the bills that passed that may be of interest to Section members:

HB 73 - Expedited Permitting, the "Mike McHugh Act"

HB 73 directs the Department of Environmental Protection (DEP) and the water management districts to adopt a program to expedite the review of applications for environmental resource permits ("ERP") or wetland resource permits for economic development projects local governments identify as a target industry business under section 288.106, F.S. This is intended to provide these projects with a 45-day permit application review period, which is one-half the standard 90-day review period. To be eligible, a permit applicant must receive a resolution from the applicable city or county commission identifying

the business as a target industry business. Projects that also require Board of Trustees of the Internal Improvement Trust Fund authorization to use submerged lands are ineligible for this expedited review. Additionally, for projects located in charter counties with a population greater than 1.2 million (Broward, Miami-Dade, Orange, Hillsborough and Palm Beach Counties) that have sought delegation of the ERP program, the county commission may request its economic development agency to determine the project's eligibility as a target industry or business. *Effective Date: July 1, 2009.*

CS/CS/HB 227—Impact Fee Legislation

HB 227 modifies the legal burden of proof in impact fee challenge cases to one which requires local governments to prove by a preponderance of the evidence that there is a rational nexus between the fee charged and the impacts resulting from the project. The bill also prevents impact fee increases through July 1, 2011, except in cases necessary to retire pledged debt. *Effective date: July 1, 2009.*

CS/CS/SB 360 - Growth Management "The Community Renewal Act"

This legislation creates transportation concurrency exception areas ("TCEAs") and DRI exemptions for projects within certain dense urban land areas. "Dense urban land areas" ("DULAs") are defined as municipali-

ties with 1,000 people per square mile with a minimum population of 5,000 and counties (including municipalities therein) with 1,000 people per square mile or with a population of one million. The bill creates statutory TCEAs for all municipal DULAs, all county DULAs in those areas of qualifying counties with an adopted urban service area ("USA") meeting a new USA definition, and all counties with a population of at least 900,000 but without an adopted USA. USAs may be designated using the alternative state review process.

Statutory exemptions from these TCEAs were created for Dade and Broward Counties. For statutory TCEAs, local governments have two years to develop strategies to support and fund mobility within the

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TCEA. The bill creates DRI exemptions within the same areas where statutory TCEAs are established. Nonetheless, projects which exceed the 120% DRI threshold must be submitted to the Department of Community Affairs ("DCA") for review, although the DCA right of appeal is limited to comprehensive plan consistency. Existing DRIs that qualify for the exemption may elect to withdraw the DRI order in qualifying areas and proceed as a non-DRI.

The bill delays updates to demonstrate financially feasible comprehensive plans until December 1, 2011. For public schools, the bill allows the 5-year capital outlay FTE growth rate to exceed 10% where enrollment does not exceed 2,000 students over the 10-year capital outlay period, and the school district capacity will not exceed 100% over the 10-year planning period. Developers may use charter schools as mitigation required by school concurrency laws, assuming the charter schools meet certain safety standards. Local school districts must include relocatables acquired after 1998 in available capacity where the school district utilizes the same relocatables in its reported inventory of student stations. The bill removes the prohibition against comprehensive plan amendments where local governments fail to enter into interlocal agreements or otherwise fail to address school concurrency requirements.

SB 360 also extends by two years all water management and DEP

Chapter 373, Part IV, F.S., permits; DRI build out dates under Section 380.06(19)(c), F.S.; and all local government development related permits. Only permits expiring between September 1, 2008, and January 1, 2012, qualify. Commencement or completion dates for mitigation actions are extended correspondingly with the permit. In order to qualify for this extension, permit holders must notify the permitting agency in writing by December 31, 2009, of the intent to exercise the extension.

Local governments may create a project-specific level of service on SIS roads for new projects certified by the Office of Tourism, Trade, and Economic Development ("OTTED") to create jobs under existing statutory programs. DCA and the Florida Department of Transportation must submit a joint report to the Legislature by December 1, 2009, on the feasibility of implementing a mobility fee system in lieu of the existing transportation concurrency system. The bill also provides revisions to the state affordable housing statutes. *Effective Date: June 1, 2009.*

SB 494 - Water Conservation

This bill provides for installation of devices on automatic sprinkler systems that interrupt the operation of the system during periods of sufficient moisture; requires contractors to inspect those devices and ensure that such systems are in compliance with this requirement; requires DEP to develop a model ordinance, including penalties, for contractors that fail to comply; provides that local governments may adopt the model ordinance by a specified date; and provides a variance process authorizing the use

of certain smart irrigation systems outside of day or days-of-the-week watering restrictions. SB 494 also creates sections 403.9335-9338, F.S., to provide for a Florida-friendly fertilizer program. The program requires local governments located within the watershed of waters DEP has determined to be impaired for nutrients to adopt a model or more stringent ordinance regarding Florida-friendly fertilizer use for urban landscaping. The bill also provides for a limited certification program, within the Department of Agriculture and Consumer Services for urban landscape commercial fertilizer application. *Effective Date: July 1, 2009*

HB 707 - Management of Wastewater

This legislation requires the Department of Health ("DOH") to alert local governments and local DEP offices whenever the DOH issues specific health advisories regarding swimming in beach waters due to elevated levels of fecal coliform or enterococci bacteria. The local DEP offices must then investigate nearby wastewater treatment facilities to determine if the facility experienced an incident that contributed to the contamination and report the results to the relevant local government. Releases from wastewater treatment facilities are required to be reported to the DOH as a condition of the plant's operating permit as is a report of any corrective action. Additionally, this legislation allows the DOH to assign certain listed responsibilities related to public swimming pools and bathing facilities to multi-county independent special districts under certain conditions. *Effective Date: July 1, 2009.*

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HB 1021 - Transportation

HB 1021 includes a definition of “backlog” for purposes of calculating a developer’s transportation costs. The bill clarifies that new development cannot be charged proportionate share fees to address existing or projected backlogs resulting from background traffic and future traffic growth not attributable to the development under review. The bill also contains a provision exempting certain seaport related projects from Development of Regional Impact review if the project is within three miles of the seaport. *Effective Date: July 1, 2009.*

CS/CS/SB 1078 - Limitation of Liability/Water Management Districts

This bill expands the limitations on liability enjoyed by water management districts regarding injuries resulting from the use of district owned land to include park areas, water areas, and other areas used by the public for recreational activities, regardless of whether those areas were expressly made available or accessible to the public. These areas are subject to the limitations on liability so long as the water management district controls, possesses, or maintains these areas. This limitation on liability afforded to the water management districts is also granted to private parties who have provided easement or use rights to the water management district, who in turn makes those lands available to the public for outdoor recreational activities. *Effective Date: July 1, 2009.*

CS/CS/HB 1423 - Florida Fish and Wildlife Conservation Commission

This bill includes the substantive legislative package of the Florida Fish and Wildlife Conservation Commission (FWC). HB 1423 clarifies local governments’ authority to regulate anchoring and mooring of vessels. The bill revises existing prohibitory language stating that while local governments can prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of permitted mooring fields, local governments are prohibited from regulating the anchoring of vessels other than live-aboard vessels out-

side of such mooring fields.

HB 1423 also directs FWC to establish an anchoring and mooring pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. The goals of the pilot program include promoting the establishment of public mooring fields; promoting public access to the waters of the state; enhancing navigational safety; protecting maritime infrastructure; protecting the marine environment; and deterring the improper storage and abandonment of vessels. The bill directs FWC to identify at least five locations for the pilot program by July 1, 2011, and to set forth a program by which local governments can establish anchoring and mooring regulations for all vessels. Local governments must develop the ordinances in coordination with FWC, DEP, organizations representing vessel owners or operators, and other entities; and the FWC must approve the ordinances. The pilot program expires on July 1, 2014, and the FWC must provide a report to the Legislature and the Governor by January 1, 2014.

In September 2008, Florida’s Second District Court of Appeals upheld a trial court decision overturning FWC’s existing procedures for approving local government-promulgated boating restricted areas. *See Collier County Bd. of County Com’rs v. Fish & Wildlife Conservation Com’n*, 993 So. 2d 69 (Fla. 2d DCA 2008). In response, HB 1423 provides a procedure whereby FWC must approve local government boating restricted areas so long as the ordinance is based on subjective factors, like traffic congestion; however, it allows non-subjective-based ordinances to go into effect without approval. Subsequent rulemaking will establish the FWC approval process details. The bill clarifies that FWC cannot approve a subjective-based local government ordinance unless FWC determines that the local government has produced competent substantial evidence that “the ordinance is necessary to protect public safety.”

HB 1423 also establishes a non-criminal infraction for “propeller-scaring” certain seagrass species outside of a marked channel in an aquatic preserve, and financial penalties for vessel operators that strike or anchor

upon coral reefs, although operators of recreational vessels will only receive a warning for first-time anchoring incidents. *Effective date: July 1, 2009, except as otherwise provided.*

SB 2080 - Water Management District Reauthorization

SB 2080 reenacts section 373.069, F.S., to reauthorize the five water management districts. The Ocklawaha River Advisory Council within the St. Johns River Water Management District is eliminated. The bill also repeals sections 373.465 (Lake Panasoffkee Restoration Council) and 373.466 (Lake Panasoffkee Restoration Program), F.S. The bill makes minor changes to the water management district governing board appointment process. SB 2080 grants Governing Boards, basin boards, water management district committees, and advisory boards the latitude to meet by electronic means rather than in person. The legislation mandates that decisions to issue permits be delegated from the water management district governing boards to the agency staff.

SB 2080 provides that alternative water supply projects resulting from a private-public partnership between local governments, regional water supply authorities and utilities, and a private landowner who makes an extraordinary contribution of land or funds may receive consumptive use permits for up to 50 years. No such authority is provided if one of the parties is a public-private utility created after April 1, 2008. The long-term permit is subject to a five year compliance report. Similarly, SB 2080 authorizes large scale renewable energy projects to receive consumptive use permits for at least 25 years if the reasonable beneficial use test is met. These long-term permits are also subject to five year compliance reports, but withdrawals need not occur for up to four years before revocations can occur due to non-use.

SB 2080 encourages “Florida-friendly landscapes” and directs DEP to develop a “Florida-Friendly Landscape Guidance Model for Ordinances, Covenants, and Restrictions.” The term “Xeriscape” is now replaced throughout the Florida Statutes with the term “Florida-friendly landscape.” The bill renders invalid and unenforceable covenants and restrictions prohibiting the use of “Florida-friendly landscape.”

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The bill also requires “Florida-friendly landscaping” for landscaping on state-owned properties.

The legislation notes that the Southern Water Use Caution Area (SWUCA) located within the territory of the Southwest Florida Water Management District (SWFWMD) has experienced significant declines in groundwater and accelerated salt water intrusion. Consequently, the West-Central Florida Water Restoration Plan was developed to address SWUCA water quantity and quality issues, with multiple components affecting agriculture, minimum flows and levels, and ecological restoration. The bill requires SWFWMD to provide

a report on the West-Central Florida Water Restoration Plan to the Legislature before the 2010 legislative session. *Effective Date: July 1, 2009.*

CS/HB 7053 - Rural Agricultural Industrial Centers

This bill defines rural agricultural industrial centers as those facilities in unincorporated areas which are existing agricultural industrial operations and which employ at least 200 persons full time. Such facilities must be located within, or 10 miles from, a designated rural area of critical economic concern. The bill allows for the expedited review of plan amendments to expand such facilities where the expansion will create at least 50 new jobs and will be serviced by existing or planned infrastructure. The expansion cannot exceed 320 acres or 50% of the size of the existing facility, whichever is greater. Applications for amend-

ments to accommodate such expansions must be submitted to the DCA within six months of receipt. The DCA is prohibited from applying the urban sprawl criteria to applications meeting the requirements of this statute. *Effective date: July 1, 2009.*

HB 7157 - Conservation Lands Property Tax

This legislation implements the constitutional amendment approved by the voters in November 2008 providing for special property tax treatment for land used for conservation purposes. The bill provides a new property tax exemption for land dedicated in perpetuity to “conservation purposes.” Qualifying conservation purposes include serving as the basis for a contribution under 26 U.S.C. s. 170(h), retention of substantial natural value of the land or retention for habitat, water quality enhancement, or water recharge. Special requirements apply to parcels under 40 acres. The bill requires baseline documentation of the land’s environmental conditions. Improvements to the property are assessed separately. If an “allowed commercial use” occurs on the property, the exemption is for only 50% of the assessed value of the land.

HB 7157 provides that landowners must file an application for the exemption or classified use status before March 1st each year unless the county waived the requirement for renewal applications. Landowners have an affirmative obligation to notify property appraisers if the land becomes ineligible for the exemption, and substantial penalties result from the failure to do so. *Effective date: January 1, 2010.*

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Florida Caselaw Update

by Gary K. Hunter, Jr. & D. Kent Safriet

City's abandonment of a public road, effectively closing it to the public, did not inordinately burden landowner under Harris Act where landowner only had an option to purchase property at time road closure application was submitted and where City made no representations that development would be approved if road were closed. *City of Jacksonville v. Coffield*, 34 Fla. L. Weekly D704 (Fla. 1st DCA Apr. 3, 2009).

Coffield's successful development of a two-acre property into a residential subdivision depended upon access to a nearby public road into an adjoining Jacksonville subdivision, Windsong. Windsong petitioned the City of Jacksonville (the "City") to abandon the road. If granted, Windsong's petition would have resulted in the conversion of the public road into a private, gated road, thereby precluding public access to Coffield's proposed subdivision. Notwithstanding Windsong's petition, Coffield proceeded with acquisition of the parcel and his development plans, apparently assuming that he would be able to proceed even if the road were closed. The City issued certain preliminary approvals (including a Concurrency Reservation Certificate) to Coffield, but also subsequently granted Windsong's petition to abandon the road. The City then notified Coffield of this decision and required him to demonstrate that his proposed subdivision maintained public road access.

Unable to secure access and proceed, Coffield filed a claim against the City pursuant to the Bert J. Harris Act. The trial court concluded that (1) the City had made representations that would lead a reasonable person to believe that development could proceed despite Windsong's petition for abandonment of the roadway; (2) Coffield had a "vested right" to develop the subdivision; (3) the subdivision was an "existing use" of the property under the Harris Act; and (4) the City's actions had inordinately burdened that existing use.

On appeal, the 1st DCA reversed. The 1st DCA determined that Coffield

had misapprehended the law and his situation, and his mistaken assumptions were not enough to create a vested right to development. The 1st DCA held that the trial court's conclusion that Coffield's development plans were based upon reasonably foreseeable, non-speculative land uses was made in error. Coffield had been notified of Windsong's petition for abandonment. Coffield's proposed density was neither an "existing use" nor reasonably foreseeable use. Accordingly, Coffield had not been denied a property right. The 1st DCA also rejected Coffield's vested rights arguments, finding that no action or omission by the City could have led Coffield to reasonably believe that his proposed subdivision could proceed even if the City granted Windsong's petition to abandon the road. The City's issuance of a Concurrency Reservation Certificate to Coffield only meant that pertinent infrastructure was available and that future absence or insufficiency would not preclude development. Also, a City letter regarding driveway permits only meant that at that specific point in time permits could be issued if appropriate forms and fees were submitted.

Administrative law judge may condition permit approval on relatively minor modifications, and the Department of Environmental Protection may appropriately remand permit application back to administrative law judge for consideration of issues not arising during the original hearing. *Charlotte County v. IMC Phosphates Co.*, 34 Fla. L. Weekly D357 (Fla. 2d DCA Feb. 10, 2009).

After IMC applied to the Department of Environmental Protection (the "DEP") for phosphate mining permits and DEP issued notices of intent to approve the permits, several parties challenged the permits and their subsequent modification in January 2003. In late 2003, IMC modified a permit again based upon a DEP final order denying other IMC permit applications. In May 2004, an administrative law judge ("ALJ") found the

application deficient, but the ALJ stated that he would recommend the issuance of the permit if IMC would amend its application to meet certain specified conditions. The opposing parties filed exceptions to the recommended order. DEP concluded that additional findings were necessary to condition the issuance of the permit, as recommended, and so remanded for additional findings. Based upon the resulting recommended order, DEP issued its final order authorizing the issuance of the permits and several parties appealed.

The 2d DCA affirmed the final order and issuance of permits without discussion, writing only to address DEP's arguments concerning the propriety of the remand procedures. After a discussion of the statutory permitting process at issue, the court followed a 1st DCA holding that DEP has authority to consider additional conditions from recommended orders when they are relatively minor—and indeed must consider them if, as here, DEP had a history of considering suggested conditions. Next, the court explained that remand for additional findings of facts is proper when those issued do not arise during the original hearing. Finally, the 2d DCA rejected any notion that due process rights were violated since both sides were given the chance to present additional evidence and cross-examine after the remand.

Water supply authority had standing to challenge the withdrawal of water from a site upstream of its withdrawal site. Under the plain language of section 373.414(8)(b), Florida Statutes, if offsetting mitigation is located in the same drainage basin as the impacts, the cumulative impacts test is satisfied as a matter of law. *Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 34 L. Weekly D348 (Fla. 2d DCA Feb. 10, 2009).

This was a companion case to *Charlotte County v. IMC Phosphates Co.*, detailed above. The pertinent facts are the same: after IMC applied

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to the Department of Environmental Protection (the "DEP") for phosphate mining permits and DEP issued notices of intent to approve the permits, several parties challenged the permits and a subsequent modification in January 2003. In late 2003, IMC modified a permit again based on a DEP final order denying other IMC permit applications. Prior to the hearing referenced in *Charlotte County*, IMC filed, and the administrative law judge ("ALJ") granted, a motion in limine seeking to exclude any evidence of the cumulative impacts of the project and others on the Peace River and the surrounding basin based on section 373.414.(8)(b), Florida Statutes. IMC also filed a motion challenging the Peace River/Manasota Regional Water Supply Authority's (the "Authority's") standing, alleging that its substantial interests would not be affected if the permit were issued. The parties stipulated this issue until after the hearing on the merits. After the hearing, the ALJ reaffirmed his exclusion of cumulative impacts evidence and found the Authority did not have standing (but noted this was moot because the Authority had fully participated in the proceedings). Further findings and proceedings were explained in *Charlotte County*.

On appeal, the Authority raised two arguments. First, it argued that the ALJ erred in finding it had no

standing. The 2d DCA agreed, ruling that the Authority had a substantial interest in the proceeding since it was downstream of the site from which IMC proposed withdrawing water. Further, the Court ruled that the nature of the potential injury asserted by the Authority was precisely the type protected by the administrative process because it concerned the protection and conservation of Florida's water resources. Second, the Authority argued that its evidence of cumulative impacts should have been admitted. The 2d DCA affirmed the ALJ's reading of section 373.414.(8)(b), Florida Statutes. On the face of this provision, the Court held, it is clear that when proposed, offsetting mitigation is located in the same drainage basin as the adverse impacts, the cumulative impacts test is satisfied as a matter of law. The Court saw no reason to discredit the ALJ's findings of fact on this issue.

Department of Environmental Protection lacks statutory authority to be appointed as receiver of abandoned wastewater treatment facility. *Dep't of Env'tl. Prot. v. Landmark Enterprises, Inc.*, 34 Fla. L. Weekly D435 (Fla. 2d DCA Feb 25, 2009).

Landmark owned and operated a wastewater treatment facility. In 1999, the Department of Environmental Protection (the "DEP") and Landmark entered into an administrative consent order to correct the facility's many problems, including improper release of wastewater without proper treatment. By 2002, Landmark had not complied with the consent order, and DEP brought suit. In August 2007, the circuit court granted temporary injunctive relief, and when Landmark failed to comply, DEP filed a motion for contempt. Landmark abandoned the facility in April 2008, complying with proper notification procedures. The circuit court granted Highlands County's petition to appoint DEP as receiver of the facility. DEP objected, but the circuit court found that DEP was a "person" within the meaning of section 367.165, Florida Statutes. This provision allows a court to appoint any person it deems appropriate as a receiver of an abandoned facility.

The 2d DCA reversed, ruling that the circuit court's focus was inappropriate and that its ruling would

force DEP to act ultra vires. Examining DEP's governing statutes, the 2d DCA held that DEP had no authority to act as receiver since this power had not been granted to it by the Legislature. The court noted that the Legislature had demonstrated its ability to appoint agencies as receivers in other situations.

An exaction case is cognizable when landowner refuses to agree to an improper request from the government resulting in denial of the permit. *St. Johns River Water Mgmt. Dist. v. Koontz*, 34 Fla. L. Weekly D123 (Fla. 5th DCA Jan. 9, 2009).

Koontz requested permits from the St. Johns River Water Management District (the "District") in 1994 to develop more of his commercial property than was allowed at that time. Koontz reported that the wetlands on his site had been seriously degraded by the development in the vicinity of his parcel, including residential and commercial development, transmission lines, and roadways. The District agreed to approve the permits if Koontz agreed to off-site mitigation, and it gave Koontz two options. Koontz could develop 3.7 acres, as he had proposed, subject to deeding the remaining 11.3 acres into a conservation area and performance of off-site mitigation by either replacing culverts 4.5 miles away from his property or by plugging drainage canals 7 miles away. Alternatively, Koontz could develop only 1 acre and deed the remaining 14 acres into a conservation area. Koontz rejected the District's offers as unreasonable.

After denial of the permits, Koontz filed an inverse condemnation claim against the District for an improper exaction. The trial court concluded that the District had effected a taking and awarded damages. It determined that the proposed exactions had no essential nexus to the development restrictions in place and was not roughly proportional to the relief requested by Koontz.

The 5th DCA agreed with the trial court, citing liberally to its opinion. The court first explained that an exaction is a condition sought by a governmental entity in exchange for its authorization to allow some use of land that the government has otherwise restricted. Then, it addressed

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each of the District's arguments, noting that this was the fourth time this case had been before it. The District's primary argument was that an exaction claim is not cognizable when the landowner refused to agree to an improper request from the government resulting in the denial of the permit. Although the 5th DCA recognized that there has been considerable debate and disagreement regarding this issue, it held that this argument had already been implicitly rejected by the majority in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), wherein it had been raised by the dissent, and directly addressed and rejected in *Parks v. Watson*, 716 F.2d 646 (9th Cir. 1983), which was relied upon by the Supreme Court in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). Finally, the 5th DCA rejected the District's attempted distinction between exactions requiring physical dedications of land and those requiring monetary expenditures as a distinction without legal significance, which again it said had already been foreclosed by the Supreme Court's decision in *Ehrlich v. City of Culver City*, 512 U.S. 1231 (1994).

Bert J. Harris Act claim that county inordinately burdened property was readily ascertainable when county redesignated property at a lower density in its comprehensive plan and on its future land use map, even though county failed to redesignate the property in its land development code, making a claim after one year untimely. *Citrus County v. Halls River Dev., Inc.*, 33 Fla. L. Weekly D2710 (Fla. 5th DCA Mar. 20, 2009).

Halls River purchased an eleven-acre property in Citrus County (the "County"). Nearby land uses included low intensity coastal and lakes (CL) and a 360-unit mobile home park, restaurant, and lounge. While the County formerly designated the eleven-acre property as mixed use (MXU), which permitted multifamily condominiums, the land use changed to CL upon adoption of the County's EAR amendment in 1997. The County never updated its Land Development Code because it apparently believed it could still approve MXU development on the property. On many occasions before and after Halls River's purchase of the

property, County Development Services staff confirmed that multifamily condominiums were a proper use for the property. Based upon these assurances, Halls River expended at least \$1.5 million in preparation, study, and planning for the site. The County Commission approved Halls River's development application, but upon a third party challenge, the trial court overturned the County's decision because the use of the property for multifamily condominiums was inconsistent with the CL land use designation that was now in place. The County subsequently reconciled its Land Development Code to its Comprehensive Plan but exempted the Halls River property from redesignation because it believed Halls River had vested rights. Even so, due to public opposition, the County refused to consider Halls River's resubmitted application. Halls River made a claim for compensation under the Bert J. Harris Act, prompting the County to issue a ripeness decision identifying the allowable uses of the property and declining to extend an offer of settlement. Halls River then sued the County for compensation pursuant to the Bert J. Harris Act, alleging that the County had inordinately burdened its property. The trial court found for Halls River, finding that it was reasonable for Halls River to rely upon County staff (which was itself mistaken). The trial court indicated that the County's attempts to correct its earlier (incorrect) positions with respect to the development potential of the property inordinately burdened Halls River.

The 5th DCA reversed, agreeing with the County that its ordinance could not have eliminated any development rights since those rights were eliminated by virtue of the County's adoption of its EAR amendment in 1997. Thus, any Harris Act claim should have been filed at that time and was now untimely. The Court also stated that any reliance by Halls River on County staff was unreasonable, since Halls River should have known that the Comprehensive Plan would control any development. Moreover, no theory of vested rights based upon equitable estoppel was available because equitable estoppel does not apply to transactions that are forbidden by law, such as Halls River's proposed development, which did

not conform to the Comprehensive Plan's requirements. Finally, the 5th DCA acknowledged that while in some circumstances the impact of government regulation (and thus the timeliness of a Harris Act claim) cannot be determined until an actual development plan has been submitted, in this case the impact of the density-reducing redesignation was readily ascertainable in 1997.

Case Notes:

Water Management Districts have the sole statutory authority to permit consumptive use water permits, and the Department of Community Affairs has no authority to regulate water wells in Developments of Regional Impact process. ***Nw. Fla. Water Mgmt. Dist. v. Dep't of Cmty. Affairs*, 34 Fla. L. Weekly D522 (Fla. 1st DCA March 10, 2009).**

Issuance of a building permit which was reviewed and issued by a lone City official was an executive decision not reviewable by certiorari. ***City of St. Pete Beach v. Sowa*, 34 Fla. L. Weekly D380 (Fla. 2d DCA Feb. 18, 2009).**

County's refusal to relax a parcel's single-family residential zoning that was effectively surrounded by a busy thoroughfare, commercial property, and a group home was an impermissible instance of reverse spot zoning, and a group home should not be considered a single-family residence simply because it is allowed in a single-family residential zone. ***Miami-Dade Co. v. Valdes*, 34 Fla. L. Weekly D194 (Fla. 3d DCA Jan. 21, 2009).**

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On Appeal

by Lawrence E. Sellers, Jr.

Note: Status of cases is as of May 5, 2009. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Phantom of Brevard, Inc. v. Brevard County, Florida, Case No. SC07-2200. Petition for review of Fifth DCA decision affirming in part, reversing in part and remanding a summary judgment upholding a county ordinance relating to fireworks. *Phantom of Brevard, Inc. v. Brevard County*, 32 Fla. L. Weekly D2084b (Fla. 5th DCA Aug. 31, 2007). Status: Motion for rehearing denied February 17, 2009. 33 Fla. L. Weekly S1002c.

St. Johns River Water Management District 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 Jan. 9, 2009). Status: Notice filed April 21, 2009; Petitioner's jurisdictional brief due May 7, 2009.

Fla. Assn of Professional Lobbyists v. Division of Legislative Information Services, Case No. SC08-791. Certified questions from the Eleventh Circuit: Whether the Act establishing executive and legislative lobbyist compensation reporting requirements violates Florida's separation of powers doctrine, was properly enacted under Florida law, or infringes upon the Florida Supreme Court's jurisdiction. Status: On March 19, 2009, the court answered the first and third questions in the negative and the second question in the affirmative. 33 Fla. L. Weekly S966a.

Kurt S. Browning v. Florida Home-town Democracy, Case No. SC08-884. Petition for review of DCA opinion finding that a 2007 state law that allows voters to revoke their signatures on petitions collected in the citizens initiative process violates the Florida Constitution by imposing an unnecessary regulation on citizen initiative process. 33 Fla. L. Weekly D1099b. Status: Oral argument held January 8, 2009.

Citrus County, Florida, etc. v. Save the Homosassa River Alliance, Inc., et al, Case No. SC09-552. Petition for review of 5th DCA decision concluding that Second Amended Complaint adequately alleges plaintiffs' standing to challenge the County's alleged failure to comply with its comprehensive plan. 33 Fla. L. Weekly D2490c (October 24, 2008). Status: Petition for review filed March 26, 2009; initial brief on jurisdiction filed April 14, 2009.

Polk County Builders Association, Inc. v. Polk County, Case No. SC09-633. Petition for review of 2nd DCA's decision, which affirmed a summary judgment finding that county ordinances imposing substantial educational impact fee increases on behalf of the local school board in order to fund costs associated with meeting the class size reduction requirements of Article IX, Section 1(a) did not violate any funding provisions of Article IX, Section 1(a). 34 Fla. L. Weekly D455b (2nd DCA February 27, 2009). Status: Petitioner's jurisdictional brief filed April 9, 2009.

FIRST DCA

Florida Homebuilders Association, Inc., et al v. City of Tallahassee, Case No. 1D07-6413. Appeal from summary judgment for the City in connection with challenge to City's Inclusionary Housing Ordinance. Among other things, the plaintiffs allege that the ordinance constitutes a taking and an illegal tax. Status: All briefs have been filed.

International Paper Company v. Florida Department of Environmental etc., et al. Case No. 1D07-4198. Appeal from a DEP final order denying International Paper's application for a wastewater discharge permit at its Pensacola mill. Status: Motion for stay granted and continued until August 1, 2009

Brenda D. Dickinson and Vicki A. Woolridge v. Division of Legislative Information of the Offices of Legislative Services, et al, Case No. 1D07-3827. Appeal from final judgment rejecting a constitutional challenge to executive and legislative lobby-

ist compensation reporting requirements. Status: Oral argument held June 24, 2008; appeal stayed pending final disposition of *Fla. Assn of Professional Lobbyists v. Division of Legislative Information Services*, Case No. SC08-791 (above), where some of the same questions were certified from the Eleventh Circuit to the Florida Supreme Court.

SECOND DCA

Peace River/Manasota Regional Water Supply v. State, Department of Environmental Protection, Case No. 2D06-3891 and 2D07-3116 (consolidated cases). Appeals from final order granting environmental resource permit to Mosaic for Ona Mine. Status: Affirmed on February 10, 2009. 34 Fla. L. Weekly D537a. and D348b.

FIFTH DCA

A. Duda and Sons v. SJRWMD, Case No. 5D08-1700. Appeal from final order denying Duda's petition to determine invalidity of agency rule and statement generally relating to the so-called agricultural exemption. DOAH Case No. 07-3545 (final order entered April 24, 2008). Status: Oral argument held March 19, 2009.

St. Johns River Water Management District v. Coy A. Koontz, Jr., etc., Case No. 5D06-1116. Appeal from trial court order determining that the District had effected a taking of Koontz's property and awarding damages. Among other things, the trial court determined that the off-site mitigation imposed by the District had no essential nexus to the development restrictions already in place on the property and was not roughly proportional to the relief requested by Koontz. Status: Affirmed January 9, 2009, 34 Fla. L. Weekly D123a (Fla. 5th DCA 2009); motion for certification granted March 20, 2009 (see above). # 6240303_v5

Lawrence E. Sellers, Jr., Larry. *sellers@hkclaw.com*, received his J.D. from the University of Florida College of Law in 1979. He practices in the Tallahassee office of Holland + Knight LLP.

DCA Update

1000 Friends of Florida, Inc., and Rosa Durando v. Palm Beach County and DCA and Salvatore J. Balsamo and Lantana Farm Associates, Inc.; DOAH 06-4544GM. After initially finding the Balsamo and Lantana Farm amendments changing the future land use designations of approximately 124 acres from Rural Residential, one unit per ten acres to Low Residential, one unit per acre not in compliance, the Department of Community Affairs executed a compliance agreement with Palm Beach County. Thereafter, 1000 Friends and Durango filed an amended petition to intervene and a hearing was held. The Administrative Law Judge issued a Recommended Order finding that it is beyond fair debate that the Balsamo and Lantana Farm amendments cause the Palm Beach County Comprehensive Plan to be internally inconsistent and are not in compliance. The Department will issue a Final Order after consideration of the exceptions filed by the respective parties to the ALJ's Recommended Order.

Susan Woods and Karen Lynn Recio v. Marion Co. and DCA; DOAH 08-1576GM. Petitioners challenged the Department's in compliance determination for Marion County's Comprehensive Plan amendment to the future land use map for 378 acres of Urban Reserve and for 17.83 acres of Rural Land, both allowing one unit per ten acres to Medium Density Residential allowing two to four units per acre. At hearing, the Department of Community Affairs joined Petitioners in asserting that the future land use map amendment was not in compliance because of an inconsistency with provisions of Marion County's Comprehensive Plan and the lack of an adequate demonstration of need for the residential units. The Administration Commission will issue a Final Order after consideration of exceptions filed by the respective parties to the ALJ's Recommended Order finding the FLUM amendment not in compliance because it was not based on a professionally acceptable demonstration of need and inconsistent with the Marion County Comprehensive Plan.

Belle Mer Owners Association, Inc. v. Santa Rosa County and DCA and Paul

Kavanaugh and BHR Pelican Palace; DOAH #08-4753GM. Petitioners challenge the Department's in compliance finding for an amendment to Santa Rosa County's future land use map (FLUM) changing the future land use designation of an approximately two acre parcel from Navarre Beach Low Density Residential to Navarre Beach High Density Residential. The ALJ found that the Petitioners failed to prove to the exclusion of fair debate that the Plan Amendment is inconsistent or not coordinated with several objectives and policies of the County Plan with respect to adequate data and analysis, that there is no persuasive evidence that the Plan Amendment is likely to adversely impact hurricane evacuation clearance times, and that the subject property is not in the Coastal High Hazard Zone. The Department will issue a Final Order after consideration of the exceptions filed by the respective parties to the ALJ's Recommended Order.

Martin County Conservation Alliance and 1000 Friends of Florida, Inc., v. Martin Co. & DCA; DOAH #08-1144GM and 08-1465GM. Petitioners challenged the Department's in compliance finding for the Land Protection Incentives (LPI) and Secondary Urban Service District (SUSD) amendments to the Martin County Comprehensive Plan due to a failure to provide meaningful and predictable standards, failure to discourage the proliferation of urban sprawl, not based on relevant data and analysis, and not consistent with the Treasure Coast Regional Planning Counsel Plan. The LPI adds policies under the future land use element addressing natural resource protection and provides for clustered development, conservation easements and open space set asides for 500 acre or greater tracts of land outside of the urban services district. The SUSD amends the text of the future land use element and sanitary sewer and potable water elements allowing landowners the option to apply for connection to regional water and wastewater service. The ALJ found that Petitioners failed to prove to the exclusion of fair debate that either the LPI or the SUSD amendments are not in com-

pliance. The Department will issue a Final Order after consideration of the exceptions filed by the respective parties to the ALJ's Recommended Order.

Grassy Key Beach Subdivision, Inc., v. City of Marathon and Department of Community Affairs; 16th Circuit Court Case No. 2007-CA-240-M. Plaintiffs seek a determination of a vested right to proceed with the development of its 43 acre property in accordance with the zoning, comprehensive plan and land use regulations in effect in Monroe County, Florida, in 1981 when the Court reformed and amended the original plat of the property to change the location of a section line. The Court found that the doctrines of res judicata and estoppel by judgment are inapplicable in the instant case as the final judgment in the reformation action merely relocated a section line and nothing more. With respect to the equitable estoppel claims, the Court found that the Plaintiff has failed to demonstrate good faith and reasonable reliance upon an official act or omission of government. Finally, the Court found that the Plaintiff's challenge to the 1986 rezoning of the property was barred by the statute of limitations. Petitioners filed a Notice of Appeal to the Third District Court of Appeals.

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and the Environmental & Land Use Law Section present**

2009

Ethical Challenges for the Environmental Lawyer and Consultant

Course Classification: Intermediate Level (0875R)

and

2009

Environmental and Land Use Law Annual Update

**The Sustainable Sunshine State:
People, Power, Nature & Services**

Course Classification: Advanced Level (0921R)

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SCHEDULE OF EVENTS

2009 Ethical Challenges for the Environmental Lawyer and Consultant (0875R)

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.

Scott L. Burgard, Water & Air Research, Inc.

8:40 a.m. – 9:25 a.m.

Ethical Considerations of the Attorney-Consultant Partnership

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

James P. Oliveros, Golder Associates, Inc.

9:25 a.m. – 10:10 a.m.

What's My Line? Ethical Considerations of Where to Draw the Line When Legal Documents May Contain Technical Opinions and Consultant Reports May Contain Legal Opinions

Anna H. Long, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

David J. Bass, E Sciences, Inc.

10:10 a.m. – 10:25 a.m.

Break

10:25 a.m. – 11:00 a.m.

Notifying Third Parties About Contamination: Ethical Challenges – What's Required, What's in the Pipeline, What to Do?

Alfred J. Malefatto, Greenberg Traurig, P.A.

J. Chris Herin, Geosyntec Consultants

11:00 a.m. – 12:00 noon

Ethical Challenges Facing Attorneys, Planners, and Environmental Professionals in Land Use Matters

Frank Schnidman, Center for Urban Redevelopment Education, Florida Atlantic University

12:00 noon – 1:15 p.m.

Substantive Committees Luncheon

2009 Environmental and Land Use Law Annual Update (0921R)

12:45 p.m. – 1:30 p.m.

Late Registration

1:30 p.m. – 1:40 p.m.

Opening Remarks/Introduction

Kelly K. Samek, Department of Environmental Protection

1:40 p.m. – 3:00 p.m.

Florida's Response to Climate Change: A Move Toward Clean Energy

Douglas S. Roberts, Hopping, Green & Sams, P.A.

Patrick L. "Booter" Imhof, Public Service Commission

Susan Glickman, Southern Alliance for Clean Energy

3:00 p.m. – 3:30 p.m.

Keynote Address: Transitioning Florida's Economy from Fossil Fuels to Renewable Energy

Susan N. Story, President and CEO, Gulf Power Company

3:30 p.m. – 3:45 p.m.

Break

3:45 p.m. – 4:35 p.m.

Statewide Water Conservation Initiatives

Janet G. Llewellyn, Department of Environmental Protection

Shannon A. Estenoz, Governing Board Member, South Florida Water Management District

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

4:35 p.m. – 5:25 p.m.

Transportation and Mobility Fees

Thomas G. Pelham, Secretary, Department of Community Affairs

Richard A. Drummond, Assistant County Manager, Alachua County

Karen E. Seggerman, Center for Urban Transportation

Research (CUTR), University of South Florida College of Engineering

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 – Beach Tour

Led by Water, Wetlands, Wildlife & Beaches Committee

Friday

Concurrent Sessions

A) Track A

B) Track B

8:30 a.m. – 9:20 a.m.

A) Brownfields Redevelopment: Impact of Anthropogenic Background Analysis

Terry Griffin, TBE Group

Christopher M. Teaf, HSWMR, Inc.

B) Beaches

Kelly L. Russell, Department of Environmental Protection

Patrick N. Krechowski, Jacksonville

9:20 a.m. – 10:10 a.m.

A) Greenwashing

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

Martin H. Rogol, Marketing Concepts, Inc.

B) Wetlands Regulatory Enforcement

Aliki A. Moncrief, Department of Environmental Protection

John F. Kasbar, U.S. Army Corps of Engineers

10:10 a.m. – 10:25 a.m.

Break

10:25 a.m. – 11:15 a.m.

A) In Trust for All the People: Sovereign Lands Rules, Enforcement, and Legislation

Edwin A. Steinmeyer, Lewis, Longman & Walker, P.A.

Yvonne H. Gsteiger, Department of Financial Services

Harold G. "Bud" Vielhauer, Department of Environmental Protection

B) Hazardous Waste and Storage Tank Update

Agusta Posner, Department of Environmental Protection

Michael P. Petrovich, Hopping Green & Sams, P.A.

continued...

11:15 a.m. – 12:05 p.m.

A) Integrated Water Supply Planning for Local Governments and Water Management Districts

*Cathleen Foerster, St. Johns River Water Management District
Chad Drummond, Geosyntec Consultants*

B) Land Use Planning for Renewable Energy Generation: Integration into Development Projects

*Kenneth A. Tinkler, Carlton Fields, P.A.
Terrell K. Arline, Bay County Attorney's Office
Scott Osbourn, Golder Associates, Inc.*

12:05 p.m. – 1:45 p.m.

Section Annual Meeting and Awards Luncheon

1:45 p.m. – 2:25 p.m.

Administrative Update

Mary F. Smallwood, Ruden, McClosky, Smith, Schuster & Russell, P.A.

2:25 p.m. – 3:15 p.m.

Ethics

Mary D. Hansen, Mary D. Hansen, P.A.

3:15 p.m. – 3:30 p.m.

Break

3:30 p.m. – 4:50 p.m.

General Counsels' Roundtable

*Moderator: Timothy J. Center, Sustainable Florida
James V. Antista, Fish & Wildlife Conservation Commission
Thomas M. Beason, Department of Environmental Protection
Shaw P. Stiller, Department of Community Affairs
Kathryn L. Mennella, St. Johns River Water Management District*

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

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

2009 Environmental and Land Use Law Annual Update (0921R)

General: 13.0 hours

Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 13.0 hours)

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Real Estate Law: 13.0 hours

State & Federal Gov't & Administrative Practice: 13.0 hours

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A block of rooms has been reserved at the Amelia Island Plantation, at the rate of \$186 single/double occupancy. To make reservations, call the Amelia Island Plantation directly at (888) 261-6165 and reference group number 8B552M. Reservations must be made by 7/17/09 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

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0921R

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The Florida Bar Professional Ethics Committee Takes Action on Staff Opinion Regarding Rule 4-4.2

In the March issue, we informed Section members of Florida Bar Staff Opinion 28193 concerning Rule 4-4.2 (Communication with Person Represented by Counsel) being considered for publication as a formal advisory opinion by the Professional Ethics Committee (PEC). Because the Opinion involved communications with governmental officials, it was thought the matter would be of consequence to a significant portion of ELULS membership. Readers were advised that the PEC would be considering the revised draft Opinion in June. Subsequently, the Opinion was affirmed by the PEC at its June 26, 2009 meeting held in conjunction with The Florida Bar's Annual Convention in Orlando. With its affirmation, however, the PEC decided not to publish the Opinion; therefore, public comment will not be received. The following synthesizes the changes made to the Opinion between the January and June PEC meetings.

The amended Opinion deems a "constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization

with respect to the matter, or whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability" as part of a class of "protected employees" contemplated by Rule 4-4.2 as persons represented by counsel. The succinct terminology of "protected employee" is useful for readily and consistently distinguishing that class of employee from other employees of the governmental agency with whom a lawyer is free to communicate.

Perhaps more notably, direction from the PEC in January to its subcommittee working on the Opinion largely concerned addressing the constitutional aspect of communication with governmental officials. Thus, the revised Opinion underscores this in noting that the Comments to Rule 4-4.2 recognize

that attorneys with an "independent justification" may communicate with a represented party, with a party's right to speak to government officials about a matter in controversy provided as an example. Both the state and federal constitutions confer rights relating to communications with government, with

both constitutions granting a right to petition one's government, and the Florida Constitution conferring the additional right to instruct one's representatives. Rule 4-4.2 may limit, but cannot be read to extinguish these rights. Given this limitation, together with the Comments' clarification that there must be actual knowledge that the other party is represented on a particular matter and that the bar on communications does not apply to matters outside the representation, the Rule cannot be read to bar all communications with government managers and officials merely because the government entity retains a general counsel or other continuously employed attorneys.

Section members are encouraged to review the Rule and its Comments in full at <http://www.florida-bar.org/divex/rtrfb.nsf/FV/D9F2-CB6782C1A3A585257171006BBE07>.

Editor's Note: Additional background information on Rule 4-4.2 is available in the March 2009 edition of the Reporter at http://www.eluls.org/2009/Reporter_March2009/Env0309.pdf.

Law School Liaisons

Barry University School of Law/St. Thomas School of Law: Center for Earth Jurisprudence

The Center for Earth Jurisprudence (CEJ), a joint initiative of St. Thomas and Barry law schools, partners with a variety of organizations to encourage a shift away from legal modalities that are ill adapted to protect anything but human interests toward legal responses more respectful of the Earth's carrying capacities and of other species. Among the CEJ's part-

ners are the United Kingdom Environmental Law Association (UKELA) and the Gaia Foundation; together UKELA and the Gaia Foundation launched "**Wild Law - Is there any evidence of Earth jurisprudence in existing law and practice?**" on March 24, 2009.

The authors of the report studied laws across five legal systems to dis-

cern where elements of Earth jurisprudence exist. They examined the rules against a set of Earth jurisprudence indicators to assess whether the legislation contains elements of Earth-centered governance, as opposed to homocentric governance; to what degree the legislation promotes the well-being, complex interactions and interdependence of all species

and ecosystems; to what extent the legislation upholds community involvement, including such factors as access to information, participation in decision-making, access to justice, respect for traditional knowledge and community land rights.

CEJ director Sister Patricia Siemen participated in the coordination of the project, and CEJ legal director Mary Munson authored the chapter on United States legislation. In it Munson examines the Earth jurisprudence content of the National Environmental Policy Act; the U.S. Endangered Species Act; the National Park Service Organic Act, which guides the federal government regarding the acquisition, management and protection of public lands; and the recent Supreme Court decision in

Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007), in which the U.S. Supreme Court ruled that the Environmental Protection Agency must regulate carbon dioxide (CO₂) and other greenhouse gases as an air pollutant under the U.S. Clean Air Act. To read the report, visit www.gaiafoundation.org/documents/wild-law-report.pdf.

A forthcoming monograph by the Center for Earth Jurisprudence delves into **the legal and theological grounding for recognition of the intrinsic value of nature**. CEJ legal director Mary Munson, J.D., LL.M., considers arguments for incorporating respect for the intrinsic value of nature in law from three jurisprudential perspectives: the view that law is a system of morally justi-

fied rules; a positivist view of law as a system to organize human action to promote necessary social change, independent of morality; and the view of laws as the embodiment of higher spiritual precepts. Sister Gloria L. Schaab, Ph.D. assistant professor of systematic theology and associate dean for general education curriculum at Barry University, leads the theological exploration of models of relationship between God and the natural world, covering deism, pantheism and theism, ultimately concentrating on panentheism. The publication will be available this summer; if you are interested in obtaining a copy, please contact ngerard@stu.edu. For more information about the monograph, CEJ partners and the work of the Center, visit <http://earthjuris.org>.

Nova Southeastern University: Annual Update

by Andrew L. Carter, J.D. Candidate 2011 and Richard Grosso, Professor

The Nova Southeastern University Shepard Broad School of Law's Environmental Law Society and program has had a dynamic academic 2008-2009 year, hosting insightful speakers and offering law students interested in environmental and land use law exciting opportunities to get involved in their community. Among other highlights:

- A group of NSU students learned about environmental issues facing Florida's marine ecosystems while sailing and snorkeling in the Key Largo's John Pennekamp Coral Reef State Park.

- Members of the NSU Environmental Law Society raised funds to purchase native Florida plants which they volunteered to plant as part of a beach preservation project at John Lloyd State Park, in Dania Beach, Florida

- NSU hosted Luna E. Phillips, an environmental litigator and wetlands law expert from Gunster Yoakley law firm, who shared her professional experiences with students and offered insight into the future of environmental and wetlands law.

- Students participated in the National Teach-In on Global Warming Solutions by hosting a local panel on Global Warming to discuss Gov-

ernor Crist's State Climate Change Initiatives and the science behind climate change. Among the members of the panel were NSU Law alumnus George Cavros, and professors Joel Mintz, and Brion Blackwelder. George Cavros shared his experiences as an energy law attorney and consultant for the Natural Resources Defense Council & Southern Alliance for Clean Energy. Also speaking was Joel Mintz, a professor of environmental law at NSU Law Center and former Chief Attorney at the Environmental Protection Agency. Brion Blackwelder, President of the Broward Group of the Sierra Club and Professor of Ocean & Coastal Law at NSU Law Center and Oceanographic Center, delivered a presentation addressing the effects of global warming on the Everglades and South Florida. The teach-in concluded with an outlook on current federal legislation and the impact President Obama may have on global climate change.

- NSU facilitated a reception for current NSU students to network with NSU graduates and alumni who worked at the Nova Southeastern University Environmental & Land Use Clinic and in various areas of environmental law.

- NSU also welcomed Louise Caro,

a toxic tort attorney working at Legal Aid of Broward. Ms. Caro shared her practical knowledge gained while representing some of Florida's low income area residents who have been exposed to environmental contaminants such as arsenic, lead, and dioxin while living in close proximity to old landfills and incinerator sites, Superfund sites, and other contaminated sites.

- A group of NSU students had the amazing opportunity to travel to the annual Public Interest Environmental Conference (PIEC) held in Gainesville, where they were able to network with professionals and discuss current environmental law issues with many of the region's best scientists, policy-makers, professors, and attorneys. During this three day event students actively participated outside the classroom to help solve many of the environmental problems facing the state of Florida.

- NSU law students took a short break from classwork to experience Florida's estuaries and mangroves ecosystems while enjoying a day kayaking in Biscayne Bay in Miami.

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

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tion, held on NSU's campus, raised awareness of land use and environmental issues facing Florida and the world. Those in attendance enjoyed barbeque and live music while learning from local and regional environmental organizations. Participating groups were: Broward County Audu-

bon Society; Broward County Sea Turtle Conservation Project; The Sierra Club, Florida Chapter; South Florida Water Management District; Army Corps of Engineers; Sawgrass Nature Center; Animal Rights Foundation of Florida; The Green League of Broward County; Slow Foods; Student Farmers Alliance; and, Defender's of Wildlife. Additionally, funds raised at the event were donated to the Sawgrass Nature Center. Sawgrass Nature Center is a non-profit center for public education and a

wildlife hospital and rehabilitation located in Coral Springs, Florida.

• Environmental and Land Use Law Clinical interns attended the annual Everglades Coalition Conference in Miami in January. Several Certified Legal Interns performed clinical internships for the Everglades law Center, Inc., where they worked on significant litigation and policy advocacy concerning the Florida Everglades and Keys, while others performed externships with private firms throughout south Florida.

The Florida State University College of Law Program in Land Use & Environmental Law: Spring 2009 Update

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

U.S. News & World Report's recent rankings place Florida State's Environmental and Land Use program 11th in the country, tied with Stanford and Tulane. The rankings put us 1st in Florida, 2nd in the southeast, and in the top 5 nationally among public law schools.

We've had a terrific semester at the College of Law. Our spring 2009 *Distinguished Lecturer*, Professor Hope Babcock of Georgetown University Law School, discussed standing issues

in her February 2009 public lecture, entitled "The Problem with Particularized Injury: the Disjuncture Between Broad-Based Environmental Harm and Standing Jurisprudence." Our spring 2009 *Environmental Forum*, Growth Management in a Shrinking Economy, provided a neutral forum for consideration of current growth management challenges. The extremely distinguished panel included: Tom Pelham, Secretary of

the Department of Community Affairs; Tim Chapin, Associate Professor, FSU Department of Urban and Regional Planning; Nancy Linnan of Carlton Fields; Rebecca O'Hara of the Florida League of Cities; Uma Outka of 1000 Friends of Florida; and Linda Shelley of Fowler White.

We devote the rest of this Update to sharing with Section members the exceptional accomplishments of our students. Our moot court teams did a wonderful job this year. Our Environmental Moot Court team (comprised of FSU students **Ryan Cooper**, **Andrew Greenlee**, and **Preston McLane** and coached by Tim Atkinson ('93), Tony Cleveland ('76), and Segundo Fernandez of Oertel, Fernandez, Cole & Bryant, P.A., a Tallahassee-based law firm specializing in environmental, land use and administrative law) made it to the semi-finals of the 2009 Environmental Moot Court Competition at Pace Law School. The team finished in the top nine out of a field of 68, defeating teams from several of the nation's top law schools. Ryan Cooper was awarded Best Oralist in one preliminary round, and Preston McLane was awarded Best Oralist in two preliminary rounds.

Our International Environmental Moot Court Team (comprised of **Jennifer Kilinski** and **DeWitt Revels**, and coached by Visiting Professor Randy Abate) did a terrific job in the North American Atlantic Regional, making it to the semi-finals of that competition, with Ms. Kilinski taking home honors

Environmental & Land Use Law Section CLE Audio-CD Programs Available

The first link is to the CLE by Sponsor, Environmental & Land Use Law Section of the Florida Bar website where you can purchase the programs on-line. <https://www.floridabar.org/FBWEB/CLEReg.nsf/By%20Sponsor?Openview&Start=11&Expand=11#11>

The second link is a PDF of the audio/video list and order form that you can print and return with your payment. [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/33D29E3754E2FC1A85256B96006BFDDBE/\\$FILE/AVTapesList.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/33D29E3754E2FC1A85256B96006BFDDBE/$FILE/AVTapesList.pdf?OpenElement)

You may also visit the LegalSpan site to purchase additional CLE courses or CLEtoGo. <http://www.legalspan.com/TFB/catalog.asp?CategoryID=20060801-441572-825390&UGUID=T2008070783521934192526>

as the Second Best Oralist and Mr. Revels being honored as the Third Best Oralist in the competition.

Our students have established a tremendous track record on the publishing front as well. **Jacob Cremer**, FSU Law '10, had his article, *Tractors Competing with Bulldozers: Integrating Growth Management and Ecosystem Services to Conserve Agriculture*, published in the Environmental Law Reporter. **Katherine Weber**, FSU Law '10, published her article, *Increasing Hope for Florida Keys Coral Reefs in the Face of Climate Change*, in the February 2009 issue of the ABA Section on Environment, Energy, and Resources' *Marine Resources News-*

letter. **Karlie Clemons**, FSU Law '09, earned first place in the Hofstra Law School "Green" writing competition for her paper *Potable, Fresh Water Versus Climate Preservation: Can Florida Justify an Increased Use of Desalination Given Florida's Vulnerability To Climate Change and Current (and Anticipated) Policies?* **William Cantrell**, FSU Law '08, published his article *Cleaning Up the Mess: United Haulers, the Dormant Commerce Clause, and Transaction Costs Economics* in the Columbia Journal of Environmental law. **Eric Neiberger**, FSU Law '10, won 2nd place in the University of Oklahoma College of Law 2009 Indian Law Writing Competition for his

paper *Seminole Success and Winters Rights: Twenty-One Years After the Seminole Water Rights Compact of 1987*. The paper will be published in the American Indian Law Review.

We hope you'll join us for future programs at the College of Law. For more information about upcoming events, please view our web site at: www.law.fsu.edu, or please feel free to contact Professor David Markell, at dmarkell@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 FSU.

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

by Alyson C. Flournoy

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, but many will spend the summer employment settings where they continue their education and gain valuable experience.

So this seems an appropriate time of year to 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.

Akerman Senterfitt (Tampa)
Alachua Conservation Trust (Gainesville)
Alachua County Attorney's Office/
Alachua County Forever Program
Bay County Attorney's Office
Brevard County Attorney's Office
Caribbean Conservation Corporation (Gainesville)
City of Jacksonville Office of General Counsel
Earthjustice (Denver CO)
Flagler County Attorney's Office

Hillsborough County Environmental Protection Commission
National Oceanic and Atmospheric Administration Regional Counsel (St. Petersburg)
New Orleans Redevelopment Authority (New Orleans LA)
NextEra Energy (Juno Beach)
Orange County Attorney's Office
Pasco County Attorney's Office
Phelps Dunbar (Tampa)
Public Trust Environmental Institute of Florida (Jacksonville)
Seminole County Attorney's Office
Southern Environmental Law Center (Atlanta, GA)
The Nature Conservancy (Altamonte Springs)
The Trust for Public Land (Washington, DC)
U.S.E.P.A. Office of Administrative Law Judges (Washington, DC)
U.S.E.P.A. Region I (Boston)
U.S.E.P.A. Region III (Philadelphia)
Wildlaw (St. Petersburg).

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. 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 (Tallahassee)
Florida Fish and Wildlife Conservation Commission (Tallahassee)
Hand Arendall (Mobile, AL)
Holland & Knight (Orlando)
Icard Merrill (Sarasota)
National Oceanic and Atmospheric Administration (Silver Springs MD)
NextEra Energy (Juno Beach)
Nuclear Regulatory Commission (Washington, DC)
Public Trust Environmental Law Institute of Florida (Jacksonville)
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).

Meanwhile, for the students heading to Costa Rica, the 2009 edition of the UF Law Costa Rica Program, celebrating its 10th year, will have a special interdisciplin-

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ary thematic focus. This year's law student cohort will be joined by five doctoral candidates from UF's NSF funded IGERT Program in Water, Wetlands & Watersheds. The law faculty will be joined by UF environmental engineering professor and Systems Ecologist Mark Brown and UF Anthropology PhD candidate Gabriella Stocks. Stocks is completing her PhD in Costa Rica on dam resettlement. Brown and Stocks will join UF Law Professor Richard Hamann in teaching a course entitled "Comparative Watershed Management: Law Science & Policy." In addition, Costa Rican attorney and dispute resolu-

tion specialist Franklin Paniagua will focus the Program's simulation skills course around ongoing water allocation, diversion and pollution controversies in Costa Rica. The Conservation Clinic in Costa Rica will be considering projects that address protection of wild and scenic rivers in Latin America, environmental service payments for privately owned wetlands, a life cycle analysis of pineapple production in Costa Rica and the impact on watersheds, a review of a draft water law being considered by the National Assembly in Costa Rica, and the human rights implications of a proposed dam in the southwestern part of the country. All in all, it promises to be a watery year.

Last but not least, we congratulate the students who graduated in May: five who completed the Environmen-

tal and Land Use Law Certificate and the two LL.M. students in our inaugural class.

Masters in Environmental and Land Use Law

Andrew Hand
Kalanit Oded

Environmental and Land Use Law Certificate

Erin Condon
Christine Covington
Jason Hall
Ann Hove
Katherine Isaacs

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>.

Support Legal Representation for Florida's Children



Go to your local county tag office to purchase a **KIDS DESERVE JUSTICE** specialty license plate, an authorized Florida automobile license plate.

- Generates tax-deductible contributions to provide legal assistance to needy Florida children. The \$25 donation for each plate will go to The Florida Bar Foundation, a §501(c)(3) public charity. The Foundation will grant 100% of the funds to provide legal assistance to needy children.
- Grants to local legal aid organizations to provide direct legal assistance to needy children will be the priority. Additionally, the funds can be used, for example, to train pro bono lawyers to represent needy children, or work with the courts and other groups on ways the courts and broader justice system can better serve the legal needs of children.
- \$25 per year at your regular license plate renewal time. If you want the plate before your regular renewal, there's an additional one-time charge of \$18 that goes to the state. Additional state and local tag agency fees may apply.

Go to The Florida Bar's Web site (www.flabar.org) for instructions, a downloadable replacement plate request form, and the location of your local tag office from the Florida Department of Highway Safety and Motor Vehicles.

Expanded Member Profiles Available on Bar's Web Site

Visitors to the Find-a-Lawyer section of The Florida Bar Web site can now find out so much more than just the basics.

Previously listing only limited information about each Bar member, an expanded version of the Find-a-Lawyer section is now ready for lawyers to provide more details about themselves, including Web addresses, areas of practice, schools attended, languages spoken, and even a photograph.

Although Bar members are responsible for adding any information they would like to have appear on their pages, most categories are limited to selections in a drop-down list to maintain professionalism and uniformity.

Once a lawyer adds details, the profile page will only display those categories for which information was provided. The available categories are similar to those provided by Martindale-Hubbell, and the profiles will include a link to Martindale ratings. Lawyers can also include their firms' Web addresses, but these will not link directly to the sites.

Florida Bar members may add the information using with Bar user name and password. Those who need to obtain a password should use the "Request a Password" feature on the member profile page of Bar's Web site at www.floridabar.org.

The categories of information include:

- Photo (must be attached as an electronic file)
- Law school
- Degrees
- Firm name
- Firm Web site address
- Number of attorneys in your firm
- Martindale-Hubbell rating
- Occupation
- Practice areas
- Services (offered by your firm)
- Languages spoken
- Federal courts (admitted to)
- State courts (admitted to)

To post any or all of this information to your page:

1. From the homepage (www.floridabar.org), click on **Member Profile** just under the red-boxed Member Tools on the right side near the top of the page;
2. Click on **Update address and expanded profile**;
3. Enter your user name (Bar number) and password;
4. Review the information listed on the screen, make any needed changes and then click **Continue**;
5. Click **Yes** on the security alert pop-up;
6. Add any of the information you wish to be displayed on your page; and
7. Click Submit.



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