



Celebrating 50 YEARS OF ELULS

The first newsletter of what was then the Environmental Law Section was published in 1977. This publication later became the modern ELULS Reporter. Below is that first publication.

1977 LEGISLATIVE SESSION

by
Rose A. McVey

The 1977 Session was probably the most active for environmental legislation in the last three or four years. A number of these new laws will affect the practice of section members.

1. "WETLANDS" Statute Chap. 77-170 (C.S. for S.B. 1142) creating 403.817. DER is authorized to adopt, pursuant to chapter 120, regulations establishing a method of plant and soil indicators for determining the natural landward extent of waters of the state for regulatory purposes.

This act is interesting because DER presently has a dredge and fill rule using vegetative indicators for regulatory purposes. 17-4.02 (17) and (19) FAC defines the vegetative indicators. 17-4.28 FAC states the rule, originally adopted June 10, 1975.

Whether this law will give rise to challenges to old rule or not, members should look for possible new proposed dredge and fill regulations. (Effective June 9, 1977.)

2. COASTAL ZONE MANAGEMENT PLAN. Chap. 77-306 (S.B. 589) amending 20.25, 20.261, 23.013, 23.0114 and 370.02. For several years the Federal Government has financed Florida in establishing a coastal zone management program. The program is intended to be a coastal resource management program providing for the optimum utilization of coastal zone resources, coupled with an adequate protection of the zone's natural environment. The Local Government Comprehensive Planning Act 163.3177 (6)(g) F.S. contains a coastal zone element. The program has been transferred from DNR to DER. The Secretary of DER is required to present the proposed coastal zone management plan and proposed implementing legislation to the Speaker of the House and President of the Senate no later than 30 days prior to the commencement of the 1978 regular session. (Effective July 1, 1977).

3. LAND AND WATER MANAGEMENT, Chap. 77-215 (C.S. for S.B. 569). Creates 380.032 and amends 380.06 and 380.07

Section one establishes the powers of the State Land Planning Agency (DOA through 2).

Section Two amends the DRI section of 380 (380.06). The binding letter procedure is

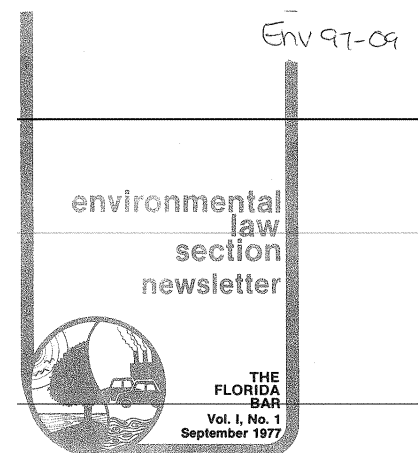
amended to establish a procedure whereby a developer may inquire from the Division of State Planning whether a substantial change to a previously vested project would operate to direct his rights or, in the alternative, whether such substantial change would sufficiently reduce regional impacts and thereby retain his vested status. Criteria are established.

Section Three amends the DRI appeal procedure and Section Four, possibly the most significant section, directs the State Land Planning Agency to study the existing guidelines and standards contained in Ch. 22F-2 F.A.C. (developments presumed to be of regional impact) and to make appropriate recommendations to the Administration Commission (Governor and Cabinet) for adoption no later than January 1, 1978.

Development orders are now required to contain findings of fact and conclusions of law. Minimum criteria were created to provide for allowable changes to previously approved DRI's which would not require further review pursuant to 380.06.

4. FLORIDA SAFE DRINKING WATER ACT - Chap. 77-337 (S.B. 575) amends 381.261, 381.291, and 403.101; creates 403.850
continued on pg. 4

*See "1977 Legislative Session"
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From the Chair



Dear ELULS Section Members,

Let's celebrate – ELULS is turning 50 years old! It is my honor and privilege to guide the Section through this milestone year. We have an exciting year planned already, including our featured event for the fall season – the 50th Annual Update at the beautiful Omni Resort and Spa in Amelia Island, Florida from September 22 – 24, 2022. The Update will be the first live ELULS event in Amelia Island in almost a decade and will feature many of the Section's accomplishments over the last fifty years. Highlights will include an ELULS Executive Council meeting, a welcome reception honoring fifty years of ELULS' past-chairs, a full day of CLE programming, a celebratory luncheon (with special guests and surprises) and a closing reception with live music, plus much more. In addition to earning valuable CLE credits, there will be plenty of time to experience the world class amenities of the Omni Resort and Spa!

Additionally, for the first time in over 20 years, ELULS will be offering a special commemorative 50th anniversary hard-copy version of the ELULS Treatise.

The three volume set will be offered to 50th Annual Update attendees at a discounted price with additional sets available online after the Update. I'd like to give a special thank you to the ELULS Treatise Committee for their hard work and dedication to make this possible.

ELULS will also be honoring past members and others associated with the environmental and land use law field that are no longer with us at our 50th Annual Update. If you would like to recognize a specific member of the Section (or your firm) or anyone else that has passed away, please send us the name of the person to be recognized so that we can be sure they are included.

Finally, I am pleased to announce that we have welcomed several new members to the Executive Council, as well as a handful of new sponsors for the 2022-23 calendar year. If you have any questions or would like to learn more about ELULS, please visit our website or feel free to contact me directly. I look forward to seeing many of you in Amelia Island in September!

Best Regards,
Josh Coldiron
ELULS Chair 2022-23

Save the Date!
Join Us As We Celebrate 50 Years of ELULS!

THE ENVIRONMENTAL AND LAND USE LAW SECTION'S
50th YEAR UPDATE
September 22-25, 2022
Omni Amelia Island Resort
CLE, Receptions, Networking Events, and Much More

The graphic features a warm, rustic background with wooden planks, golden streamers, and large, illuminated numbers '50'. The text is layered over this background, with the main title '50th YEAR UPDATE' in large, bold, white serif font. The dates 'September 22-25, 2022' and the venue 'Omni Amelia Island Resort' are also in white serif font. The bottom line 'CLE, Receptions, Networking Events, and Much More' is in a smaller white sans-serif font.

Coastal Conservation Corner: An op-ed report on Florida's ocean and coasts and protecting the state's blue economy

September is International Coastal Cleanup Month – do your part and chip in to make Florida's ocean and coasts healthy and clean.

By Jon Paul “J.P.” Brooker, Esq.

In Florida, you cannot get more than 60 miles from the beach, and with over 800 miles of beaches Florida is second only to Alaska in terms of coastline length. And let us be frank—people are not headed to Alaska to go to the beach. They come to Florida!

Healthy and clean Florida beaches are a major driver of the Floridian economy. Our sunshine and sand contributes tens of millions of dollars of impacts to the statewide GDP. Beyond that, our beaches are a part of the Floridian cultural and recreational identity. They are beloved by surfers, swimmers, sailors, beachcombers, and sunbathers. Other states have purple mountains or amber waves of grain – but Florida has *the beach*.

And that is why it is incumbent on us as Floridians (and lovers of Florida) to do our part to keep our beaches clean. September marks the annual International Coastal Cleanup, run by Ocean Conservancy, which for more than 30 years has taken place in over 160 countries worldwide and has driven hundreds of thousands of volunteers to clean up millions of pounds of marine debris. And though it is important to clean up our beaches year-round, the International Coastal Cleanup gives us a unique opportunity to collect a data snapshot of the debris and litter that spoils our coasts on a country



A black skimmer feeds a cigarette butt to its chick on St. Pete Beach. Photo: Karen Mason

by country, and even state by state basis.

Because of that data collection component of the International Coastal Cleanup, we know what the top items found on Florida's beaches are. And the number one item will come as a surprise to many people, who would guess plastic straws or Styrofoam containers or plastic bags – those items are all in the top ten, but they are not number one.

No, the number one item found during the International Coastal Cleanup on Florida's beaches, which has been the number one item found every year since 1992, is cigarette butts. In 2021, volunteers collected nearly 150,000 cigarette butts during a single day of the cleanup statewide in Florida.

Cigarette butts are fundamentally plastic litter – the filter is made of tightly bound strands of cellulose acetate, which beyond being unsightly can break down in the environment

and affect birds and other wildlife, and can have negative impacts on human health in the long run.

In the 2022 session, the Florida Legislature passed a bill that will give the right to local governments to ban cigarette smoking on their beaches. This common-sense legislation will hopefully help us knock cigarette butts out of the top ten items collected during the International Coastal Cleanup.

Floridians can unite against marine debris this September by joining a cleanup during the International Coastal Cleanup (go to www.signuptocleanup.org to find a cleanup happening near you or start your own), and by lobbying their local governments to enact ordinances and regulations in compliance with the new legislation that will prohibit or curtail smoking on local beaches. Something as small as a cigarette butt can have an outsized impact on our Floridian environment, and we as Floridians can do something to fix that.

Jon Paul “J.P.” Brooker is the Director of Florida Conservation and an attorney with Ocean Conservancy, the world's oldest marine conservation non-profit. He is a sixth generation Floridian from Brevard County, currently based in St. Petersburg, and sits on the Executive Council of ELULS. His opinions are his own.

ELULS TIMELINE

1972-1973: The Florida Environmental Law Committee is formed with Wade L. Hopping as its first chairman.



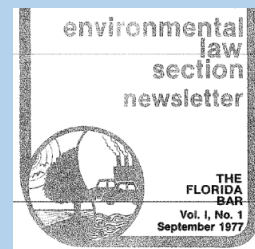
1974: The Environmental Law Committee begins assembling federal and state environmental legislation, administrative rulings and laws. This compilation later became the widely respected ELULS Treatise.

The Florida Environmental and Land Use Law Treatise

1975: The Environmental Law Committee hosts its first meeting at Amelia Island. This becomes a popular annual update conference.



1977: The Florida Bar elevates the Environmental Law Committee to the Environmental Law Section and the first newsletter was published. This newsletter later became the ELULS Reporter.



1981: The Florida Bar approves a name change to the Environmental and Land Use Law Section.



1985-1986: ELULS membership reaches 1,000 and the first ELULS Treatise is published.

1990: ELULS has first Long Range Planning Retreat in Monroe County.

2006: The Treatise is made available online in digital format for the first time.

1997: The ELULS website launches as the Section celebrates its 25th Anniversary.



2022: ELULS celebrates its 50th Anniversary by reprinting an updated Treatise for the first time since 2001, and hosting the first update conference on Amelia Island since 2014.



Happy Silver Anniversary ELULS

As we approach the end of our Section's twenty fifth anniversary year, I'm delighted to share with you some personal observations about the Section's birth and formative years.

Bob Rhodes, who served as the first chairman of the Section in 1976, and others wrote birthday wishes for ELULS when the Section turned 25. Those wishes contain unique historical insight to the Section and are reprinted in their entirety below.

In the early and mid 1970s, a tsunami of new environmental and growth management legislation swept over Florida. The Florida Environmental Land and Water Management Act, the Water Resources Act, the Environmental Protection Act of 1971, the State Comprehensive Planning Act, the first local government comprehensive planning legislation and property rights protection legislation were all enacted.

Not content with developing a significant new body of law, policy makers also reorganized state environmental agencies and created new agencies to provide additional oversight and regulation.

Few people recognized what an extraordinary moment it was for Florida. A new course was set for the state and a framework for environmental protection and growth management was crafted for decades to come. There were few polestars, precedents or models. And many concepts were cut from new cloth. One thing was clear though – Florida's future had changed and the state was about to embark on an evolutionary policy development process that would impact all of its citizens, including the Bar.

In 1973 an informal, ad hoc group of attorneys began discussing the need to define, refine and ensure effective administration of the new laws. In time, we concluded the Florida Bar should formally recognize the maturing legal discipline.

Later that year, the Florida Bar Environmental Law Committee was created to service and help shape the new practice area. Forming this committee was an important first step, but our goal was to achieve section status.

In the summer of 1976, we filed our petition to create an environmental law section. We believed section status would elevate environmental law issues and help attract top legal talent to work on them. Not all of our colleagues shared this view. In fact, the Bar's Board of Governors received our petition with considerable initial skepticism.

The Board had several concerns. Few members were familiar with the subject.

Though environmental awareness was increasing, environmental law was breaking new ground and few precedents had been established. Some questioned whether environmental law was a solid discipline. Others believed environmental and land use issues would be best addressed by existing sections and committees. And, some Board members didn't approve of our aggressive efforts to gain section status; it was very "un-bar like."

In November 1976, I presented our petition to the Board. Though we were advised to prepare for an informal discussion with the Board, the discussion was contentious. The Local Government and Administrative Law Sections opposed section status. They objected primarily on the grounds we would raid their ranks and duplicate significant parts of their mission.

But our arguments for section status were compelling. The rapid development, dramatic growth and high visibility of environmental and land use law were strong motivants for the Bar to recognize and devote resources to this increasingly important practice area.

And the Environmental Law Section of the Florida Bar was born with 400 eager members.

Because we were new, we were able to define our mission, goals and principles, and working process. In these early years, the section developed its own personality and characteristics that endure today.

We embraced an "open arms policy" and encouraged broad participation in all section activity. We sought out fresh, diverse views. We recruited hard to ensure that all points of view – from across the state – were represented on the Executive Council. And we actively recruited new members to serve on the Executive Council and continued to benefit from the participation of former section chairs as ex-officio Executive Council members.

Intellectual vigor has always been a core value. We are committed to provide a superior written product, and this is reflected in our first environmental handbook, and later in the manual, treatise, newsletters and Bar Journal columns. The competitive Maloney Writing Competition has helped attract law student interest to environmental law. We continue to offer outstanding continuing legal educational opportunities, workshops and seminars.

I am proud that our section has been built on a spirit of meritocracy. For twenty-five years, talented people have ascended the leadership ladder through hard work

on section committees and projects, not through popularity or political clout. And fortunately, our section work has been ably managed and enhanced by a team of extraordinary Florida Bar administrators, most recently Jackie Werndli.

Today, we have more than 2,000 members, including a significant number of non-lawyer affiliates. Our practice touches many disciplines. We benefit from the expertise and perspective of engineers, scientists, planners and economists. And these contacts have enabled us to build section membership with professionals from related professions. They have enriched our section.

The breadth of our practice also offers special opportunities to cross market. Rather than pirate their members, we share 372 members with the Administrative Law Section and 537 with Local Government.

In the past twenty-five years we have accomplished much. And we are much more specialized. Consider these benchmarks. The first Environmental Law Section handbook comprised seven chapters that addressed federal and state regulatory programs, litigation techniques and the administrative process. It had ten authors, two hundred pages of text and an appendix. Today, our handbook is a three volume treatise – thirty chapters, 1600 pages, forty subjects, 122 authors – and available on CD-ROM. Yes, we are more specialized and we will become even more specialized as our area of law continues to evolve.

And our practice area is more complex. Complexity presents tremendous practice opportunity. But attached to this opportunity is an even greater responsibility to reach out to our communities and schools and to elected and appointed officials to explain the relevance and importance of environmental and land use law and new policy initiatives.

I am proud that Florida has been on the front line of environmental law and growth management policy innovation since the early 1970s. And our section members have contributed strongly. Your work has had a tremendous impact on the Florida we live in today – and will live in tomorrow. The cases and decisions our members participate in, the work we do every day, will continue to have a lasting impact on our quality of life, as well as our grandchildren's. This, rightly, is the finest anniversary gift one could ask for. Happy silver anniversary, ELULS.

CONFERENCE SCHEDULE OF EVENTS

SEPTEMBER 22-24, 2022

THURSDAY | SEPTEMBER 22

03:00 PM - 05:00 PM | Executive Council Meeting

06:00 PM - 07:00 PM | Welcome Reception Honoring Past ELULS Chairs

FRIDAY | SEPTEMBER 23

07:00 AM - 03:00 PM | Conference Registration Desk & Exhibitor Expo

07:30 AM - 08:30 AM | Continental Breakfast

08:30 AM - 12:00 PM | Morning CLE Programming

12:00 PM - 02:00 PM | Luncheon- ELULS Over the Years: Looking Backward, Looking Forward

12:15 PM - 12:45 PM | The Terry & Larry Show

01:00 PM - 02:00 PM | Special Presentations

03:00 PM - 04:30 PM | Afternoon CLE Trolley Tour

06:00 PM - 08:00 PM | Closing Reception with Live Music

SATURDAY | SEPTEMBER 24

09:00 AM - 12:00 PM | Select Outdoor Activities

CLE SCHEDULE OF EVENTS

Florida Environmental and Land Use Milestones: Looking Back and Looking Forward

8:30 AM - 8:40 AM | WELCOME AND INTRODUCTION

Lauren D. Brooks, CLE Program Chair, Lewis, Longman & Walker, P.A., Tallahassee

8:40 AM - 9:30 AM | ENVIRONMENTAL AND LAND USE MILESTONES - PART I

Sidney F. Ansbacher, Upchurch, Bailey and Upchurch, P.A., St. Augustine

Janet E. Bowman, Senior Policy Advisor for the Florida Chapter of The Nature Conservancy, Tallahassee

Douglas M. Halsey, Douglas M. Halsey, P.A., Miami

Brooke Lewis Humphrey, Berger Singerman, Tallahassee (Moderator)

9:40 AM - 10:30 AM | ENVIRONMENTAL AND LAND USE MILESTONES - PART II

R. Steven Lewis, Lewis, Longman & Walker, P.A., Tallahassee

Kathryn Mennella, Former General Counsel, St. Johns River Water Management District, Retired

Irene M. Kennedy Quincey, Pavese Law Firm, West Palm Beach

10:40 AM - 11:30 AM | STATE & FEDERAL PRIORITIES LOOKING FORWARD: CHANGES UNDER THE CURRENT ADMINISTRATION

Kim A. Jones, United States Environmental Protection Agency, Smyrna, GA

C. Jade Rutland, United States Environmental Protection Agency, Atlanta, GA

FDEP Representative (invited)

11:30 AM - 12:00 PM | ETHICS AND TECHNOLOGY IN ENVIRONMENTAL AND LAND USE LAW

Kathryn B. Rossmell, Lewis, Longman & Walker, P.A., West Palm Beach

12:15 PM - 12:45 PM | THE TERRY & LARRY SHOW

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

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

3:00 PM - 4:30 PM | WATER, NATURAL RESOURCES, AND COASTAL REDEVELOPMENT ISSUES

Tour of Select Locations in Amelia Island presented by Geosyntec Consultants

ON APPEAL

By Larry Sellers, Holland & Knight LLP

Note: Status of cases is as of August 22, 2022. Readers are encouraged to advise the author of pending appeals that should be included.

FIRST DCA

Delasol Homeowners' Association, Inc. v. Lenka Vojtkova and Department of Environmental Protection, Case No. 1D22-1532. Appeal from DEP final order dismissing: (1) appellant's request for an extension of time to file a petition for administrative hearing after the expiration of the relevant time period and for failure to show good cause and (2) its amended petition for an administrative hearing as both untimely and legally insufficient. Status: Notice of appeal filed May 17, 2022.

In re: Affirming Existence of Recreational Customary Use on 1,194 Private Properties Located in Walton County, Florida, Case No. 1D21-3532. Appeal from Final Judgment as to Certain Parcels, determining that the County is unable to establish that customary use on certain defendants' properties has been either "uninterrupted" or "ancient," both of which elements must be proven under the judicially adopted customary use test. The final judgment also rejected an argument that the judicially created customary use doctrine

is unconstitutional. Status: Notice of appeal filed November 19, 2021; notices of cross appeal filed December 2, 3 and 8, 2021.

Kenneth L. Williams v. DEP, Case No. 1D21-2594. Appeal from order granting DEP's motion for contempt, for failure to comply with the terms of the final judgment requiring Williams to undertake certain corrective actions in regard to a solid waste storage facility. Status: Notice of appeal filed August 25, 2021.

Sierra Club, et al. v. DEP, Case No. 1D21-1667. Appeal from final order adopting recommended order rejecting challenge to five BMAPs (the Suwannee River BMAP, Santa Fe River BMAP, Silver Springs, Upper Silver River and Rainbow Spring Group BMAP, Wekiwa Spring and Rock Springs BMAP, and Volusia Blue Springs BMAP), and determining that these BMAPs were valid because they were designed to achieve the TMDLs, as required by Sections 373.807 and 403.067, F.S., and implement the provisions of those laws. Status: Oral argument held on June 14, 2022.

Florida Environmental Regulation Specialists, Inc. v. DEP, Case No.: 1D21-0741. An appeal from a trial court order granting DEP's motion

for summary judgment on a claim for breach of contract relating to the termination of an agency term contract for the cleanup of petroleum contaminated sites. Status: Affirmed on June 1, 2022; motion for rehearing denied June 21, 2022; motion for rehearing en banc denied July 6, 2022; notice of intent to seek review by Florida Supreme Court filed June 28, 2022, Docket No. SC22-850.

Suwannee River Water Management District v. Seven Springs Water Company, Case No. 1D21-888. The SRWMD filed an appeal of its own final order adopting the ALJ's recommended order and renewing the water use permit authorizing Seven Springs to withdraw water in Gilchrist County for bulk sale to an adjacent water bottling facility. Status: Dismissed pursuant to Rule 9.350(a) on June 8, 2021.

Florida Springs Council v. SRWMD and Seven Springs Water Company, Case No. 1D21-1445. This appeal involves the dismissal of a petition seeking to challenge the final order renewing a water use permit that was the subject of the appeal in Case No. 1D21-888. The petitioner argues that an SRWMD rule authorizes

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

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ON APPEAL

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the filing of the petition because the Governing Board took final action (granting the permit) that substantially differs from the written notice of the District's decision describing the intended action (which was to deny the permit). Status: Notice of appeal filed May 14, 2021.

City of Newberry, City of Archer and City of Alachua vs. Alachua County, Florida and the Alachua County Charter Review Commission, Case No. 1D21-640. Appeal from an order granting summary judgment and determining that the ballot title and summary of the County's Charter Amendment establishing a County Growth Management Area comply with the requirements of section 101.161, Florida Statutes, as well as the relevant case law. Status: Oral argument scheduled for September 21, 2021 cancelled.

Crum v. Florida Fish & Wildlife Conservation Commission, Case No. 1D21-367. Appeal from two orders granting motions to dismiss two successive amended complaints that challenge the rulemaking authority of the Florida Fish and Wildlife Conservation Commission with respect to marine life pursuant to its constitutional authority in Article IV, Section 9 of the Florida Constitution. Status: Affirmed *per curiam* on March 2, 2022; on June 13, 2022, the court denied the motion for rehearing en banc and for certification but granted the motion for rehearing, withdrew its prior opinion and issued a substitute opinion affirming the amended complaints. Judges B. L. Thomas and Roberts dissented from the denial of the motion for rehearing en banc. Notice to invoke discretionary jurisdiction of Florida Supreme Court filed July 13, 2022, Docket No. SC22-912.

Palafox, LLC v. Carmen Diaz, Case No. 1D20-3415. Appeal from ALJ's final order denying motion for attorney's fees pursuant to Section 120.569(2)(e), F.S. The ALJ concluded that Diaz and her attorney filed the amended petition for an improper purpose, but that the motion for fees and sanctions was not timely filed. Note: The ALJ also entered a supplemental recommended order granting the motion for attorney's fees pursuant to Section 120.595, F.S., because Diaz participated in the proceeding for an improper purpose. The agency entered a final order adopting the recommended order, and Diaz has appealed that order. See *Diaz* appeal listed below. Status: Notice of appeal filed November 25, 2020; oral argument held on January 12, 2022; reversed on February 9, 2022.

Diaz v. Northwest Florida Water Management District and Palafox, LLC, Case No. 1D21-2699. Appeal from final order adopting recommended order awarding fees and costs to Palafox and against Diaz in the underlying administrative matter as a sanction pursuant to s. 120.595, F.S. The ALJ found and recommended that the district enter a final order finding the respondent shall pay Palafox its reasonable attorney's fees and taxable costs in the amount of \$136,161. Status: Notice of appeal filed September 8, 2021; request for oral argument denied on July 5, 2022.

Vickery v. City of Pensacola, Case No. 1D19-4344. Appeal from trial court order denying motion to dissolve a temporary injunction to prevent a property owner from removing a live oak tree located in the Northern Hill Preservation District, part of Pensacola governed by specific ordinances to protect Heritage trees, notwithstanding s. 163.045(1), F.S. Status: Reversed on February 16, 2022; motion for rehearing, rehearing en banc and for certification of

question of great public importance denied on June 22, 2022; Judge Markar dissented from the denial of certification. Note: During the 2022 Regular Session, the Florida Legislature enacted a measure clarifying the statute, Chapter 2022-121, Laws of Florida.

SECOND DCA

Conservancy of Southwest Florida, Inc. v. Collier County, Florida and Collier Enterprises Management, Inc., Case No. 2D21-2094. Appeal from final judgment for defendants rejecting challenge to development order for Rivergrass Village as inconsistent with Collier County's comprehensive plan. Status: Oral argument held August 10, 2022.

THIRD DCA

Tropical Audubon Society, et al v. Miami-Dade County, Florida et al, Case No. 3D21-2063. Appeal from final order of the Administration Commission determining comprehensive plan amendment for the construction of the Kendall Extension in Miami-Dade County to be in compliance. Status: Notice of appeal filed October 19, 2021.

Mattino v. City of Marathon, et al., Case No. 3D20-1921. Appeal from final order of the Department of Economic Opportunity determining that comprehensive plan amendments by the cities of Marathon, Islamorada, and Key West in the Florida Keys are "in compliance." The challenged plan amendments allow up to 1,300 new permanent residential units to be built that are deed-restricted for workforce affordable housing and require residents to evacuate in Phase I of the two-phase hurricane evacuation plan. Status: On August 3, 2022, the court reversed the determination with respect to the cities of Marathon and Islamorada, and affirmed with respect to the City of Key West.

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ON APPEAL

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Motions for rehearing and rehearing en banc filed.

FOURTH DCA

John H. Holshouser, et al. v. Niranajan Reddy and Department of Environmental Protection, Case No. 4D22-1490. Appeal from final order dismissing a petition for administrative hearing because it was not timely filed. The final order also rejected the petitioners' claim of equitable tolling. Status: Notice of appeal filed June 1, 2022.

FIFTH DCA

Wilde Cypress Branch, et al., v. Noah Valenstein, as Secretary, and Beachline South Residential, LLC, Case No. 5D22-1870. Appeal from order granting defendants' motion to dismiss a complaint seeking to enjoin both Beachline from building and DEP from issuing a permit in connection with a mixed-use residential and commercial development in Orange County. The complaint is based on a recently-enacted provision in the Orange County charter, which in pertinent part seeks to confer rights on bodies of water within Orange County, provides injunctive relief as a remedy for any violation of those rights, and confers standing on certain persons to enforce those rights. The order dismissed the complaint because the charter provision is preempted by Section 403.412(9)(a), F.S. The order also rejected claims that the preemption statute is unconstitutional. Status: Notice of appeal filed on July 28, 2022.

River Cross Land Company, LLC and Christopher Dorworth v. Seminole County, Florida, Case No.

5D22-293. Appeal from declaratory judgment in favor of Seminole County declaring that Article V, Section 5.2, of the Seminole County Home Rule Charter (relating to rural boundary and rural area) is constitutional and is not void for vagueness. Status: Notice of appeal filed February 2, 2022.

11th CIRCUIT COURT OF APPEAL

Lionel Alford, et al v. Walton County, Case No. 21-13999. Appeal from a federal judge's ruling in a dispute about whether waterfront property owners should receive compensation after Walton County temporarily closed beaches early in the COVID-19 pandemic. Status: Appeal filed November 15, 2021.

In Re: ACF Basin Water Litigation, Case No. 21-13104. Appeal from ruling that allows Atlanta-area cities to take more water from the Chattahoochee River upstream from Alabama and Florida's Apalachicola Bay. The order dismisses claims by the National Wildlife Federation, the Florida Wildlife Federation and Apalachicola Riverkeeper that the Army Corps of Engineers is holding back too much water in federal reservoirs upstream from Florida's Apalachicola River. Status: Notice of appeal filed October 6, 2021.

UNITED STATES SUPREME COURT

Sackett, v. EPA, Case No. 21-454. Petition to review the Ninth Circuit's decision. Issue presented: Whether Rapanos v. United States — in which the Supreme Court held that the Clean Water Act does not regulate all wetlands, but without a majority opinion explaining why that is so — should be revisited to adopt the plurality's test for wetlands jurisdiction under the Clean Water Act, in which only those wetlands that have a continuous surface water connection to regulated waters may

themselves be regulated. Status: Certiorari granted on January 24, 2022; review limited to: "Whether the Ninth Circuit Set Forth the Proper Test for Determining Whether Wetlands are 'Waters of the United States' under the Clean Water Act, 33 U.S.C. §1362(7)." Oral argument scheduled for October 3, 2022.

West Virginia, et al v. EPA, et al, Case No. 20-1530; *North American Coal Corp. v. EPA, et al*, Case No. 20-1531; *West Moreland Mining Holdings v. EPA, et al*, Case No. 20-1778; and *North Dakota v. EPA, et al*, Case No. 20-1780. Petition to review the D.C. Circuit's split decision concluding that the EPA has broad authority to regulate greenhouse gas emissions from power plants under the Clean Air Act. The opinion invalidated the Trump Administration's repeal of the Obama Administration's Clean Power Plan and adoption of the Affordable Clean Energy rule designed to replace it. Question presented: In 42 U.S.C. § 7411(d), an ancillary provision of the Clean Air Act, did Congress constitutionally authorize EPA to issue significant rules including those capable of reshaping the nation's electricity grids and unilaterally decarbonizing virtually any sector of the economy-without any limits on what the agency can require so long as it considers cost, non-air impacts, and energy requirements? Status: Reversed and remanded on June 30, 2022. In a 6-3 opinion, with Justice Neil Gorsuch issuing a concurring opinion, the court determined that federal administrative agencies must point to "clear congressional authorization" when they claim the power to make decisions of "vast economic and political significance." The court concluded that EPA's power plant emissions regulations, originally undertaken under the Obama-era Clean Power Plan, involved such a "major question" and that EPA failed to demonstrate that Congress granted clear authorization to regulate greenhouse gas emissions from power plants.

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Environmental and Land Use Case Law Update

By Gary K. Hunter, Jr., Chad Revis, et. al., Holtzman Vogel

Citizens for Responsible Dev., Inc. v. City of Dania Beach, 2022 Fla. App. LEXIS 4690

The appellant organization challenged the procedures used by the City to approve certain development agreements. The Fourth DCA reversed the trial court's finding that the appellant lacked standing for a lack of injury-in-fact, a failure to demonstrate associational standing requirements, and a failure to show special damages which is required for parties seeking to enforce a zoning ordinance. Based on precedent from the First DCA, the court found that an organization like the appellant was even more motivated by an affected interest than an average citizen, so the necessary elevated interest was shown.

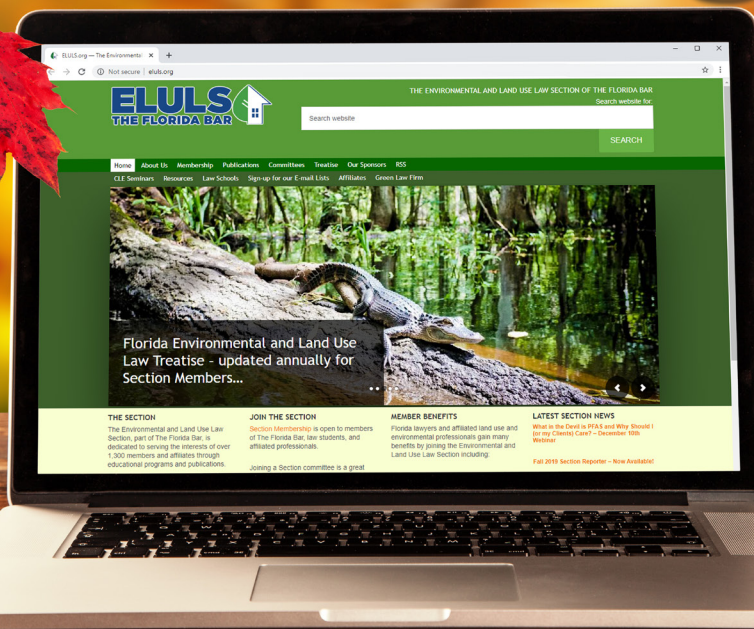
Barnett v. Hibiscus Homeowners Ass'n, Inc., 2022 Fla. App. LEXIS 4897

The Architectural Review Committee of the appellant's subdivision denied their proposed shared access drive and rejected additional access routes to their lots. The appellants then requested a declaratory judgment that allowed them to build a driveway on one of their lots without a plat amendment. They also sought judgment declaring that the Committee is not allowed to refuse to approve any shared access drive. The First District held that the trial court erred by upholding the Committee's decision not to approve additional access routes because based on the subdivision's Declaration Amendment and the Shared Access Drive

Agreement, the appellants were entitled to a shared access drive to their three lots. The court noted that the Committee is allowed input on the location, but that by outright refusing its construction the Committee had infringed on the rights set forth in the Declaration Amendment and section 720.3035(4), *Florida Statutes*.

Gary K. Hunter, Jr., is a Shareholder at Holtzman Vogel and entering his 4th decade of practicing environmental and land use law in Florida. Chad Revis is an attorney at Holtzman Vogel and recently clerked for Supreme Court Justice Muniz. He is now practicing environmental, land use and government law in the Holtzman Vogel Tallahassee offices.

Visit Our Website
eluls.org



Florida State University College of Law Summer 2022 Update

By Erin Ryan, Associate Dean for Environmental Programs
and Director of FSU Center for Environmental, Energy, and Land Use Law

On behalf of the Center for Environmental, Energy, and Land Use Law here at FSU, I am delighted to announce that **Professor Tisha Joseph Holmes** has joined our Program as a Courtesy Professor of Law. As a faculty member in FSU's Department of Urban and Regional Planning, her research focuses on promoting grassroots climate response capacity through community outreach and participatory engagement. Professor Holmes teaches climate change and community resilience, land use planning, and coastal planning. She will welcome our law students into her Land Use Planning course next fall, which will emphasize environmental justice.

Professor Holmes holds a Ph.D. in Urban Planning from UCLA, an MPA in Environmental Science and Policy from Columbia University, and a BA in Political Science and Environmental Studies from Williams College. She is the lead researcher in the Florida Building Resilience Against Climate Effects (BRACE) Program, which is working to improve public health sector efforts to respond to climate variability by incorporating the best available science into routine public health practice. The Robert Wood Johnson Foundation awarded her a 2022 research grant for her work on fostering transformative policies at the intersection of climate, health equity, and environmental change. She is also a recipient of the FSU University Community Engaged Teaching Award.



Professor
Tisha Holmes

"I am excited to join the FSU Environmental Law community as a Courtesy Faculty member. I look forward to creating spaces of learning for Law and Planning students to critically engage with each other on environmental, climate change and justice issues in interdisciplinary and collaborative ways." – Professor Tisha Holmes

Recent Student Achievements and Activities

- Congratulations to our J.D. graduates who completed the Certificate Program during the Spring 2022 term: Catherine Bauman and Katherine Hupp (with Highest Honors), Taylor Greenan and Barclay Mitchell (with High Honors), Keirseey Carns (with Honors), and Macie Codina, Cassidy Farach, Christopher Perrigan, Cameron Polomski, and Rylie Slaybaugh.
- We also congratulate E. Marion Brummal of Montgomery, AL, who completed his Environmental LL.M. degree at the end of fall semester. The LL.M. in Environmental Law and Policy enriches the education experience of LL.M. students by enabling them to acquire post-graduate expertise in the areas of environmental, energy, and land use law.

- **Catherine Bauman, Katherine Hupp, and Barclay Mitchell** participated in the 34th Annual Jeffrey G. Miller National Environmental Law Moot Court Competition hosted by the Pace University Elisabeth Hubbs School of Law on February 23-26, 2022. The team won the Best Brief for State of the New Union. **Segundo Fernandez, Tim Atkinson,** and Professor **Shi-Ling Hsu** served as the team coaches.
- The **FSU Environmental Law Society (ELS)** has concluded elections and finalized the new 2022-2023 Executive Board. The officers are as follows: **Juan Gonzalez Moreno** as President; **Melissa Gallo** as Vice President; **Robin Rodriguez** as Bookkeeper; **Ryan Stocks** as Mentor Chair; and **Kate Andrews** as Social Media Chair. If any readers would like to reach out to the new board, please email fsuenvironmentallawsociety@gmail.com.

Faculty Achievements

- D'Alemberte Professor **Shi-Ling Hsu** published *Whiter, Rationality?*, in 120 Mich. L. Rev. 1165 (2022) and *Adapting to a 4C World*, in 52 Env'tl. L. Rep. 10211 (2022) with 17 others. Forthcoming publications include the Climate Insecurity, in 2023 Utah L. Rev. __ (2023).
- **Tricia Matthews** will teach a course in Animal Law this fall. She also teaches Legal Writing and Research to first-year students. In the fall, she will continue to serve as faculty advisor for the Animal Legal Defense Fund Chapter of FSU Law School.
- Associate Dean and Elizabeth C. & Clyde W. Atkinson Professor **Erin Ryan** received the **2021-2022 University Teaching Award for Innovation in Teaching** at the graduate level. She was recognized for her dynamic and interactive **Negotiations Workshop**, which introduces both the theory and practice of negotiation in a simulation clinical setting.

continued...



Florida Lawyers Helpline
833-FL1-WELL



Professor Ryan, upper left, teaching the Negotiation Workshop over Zoom during the pandemic.

- **Mark Seidenfeld**, our Patricia A. Dore Professor will teach a course on Administrative Law this coming fall. He published *The Limits of Deliberation about the Public's Values: Reviewing Blake Emerson, The Public's Law: Origins and Architecture of Progressive Democracy*, in 199 Mich. L. Rev. 1111 (2021).
- Dean Emeritus **Donald Weidner** have a forthcoming publication in Bus. Lawyer, Spring 2022, *The Unfortunate Role of Special Litigation Committees in LLCs*.
- Courtesy Professor of Law **Tisha Holmes** published the *Assessment of an Evacuation Shelter Program for People with Access and Functional Needs in Monroe County, Florida during Hurricane Irma*, in Vol 306, Social Science & Medicine (2022) with Patrice Williams, Sandy Wong, Kathryn Smith, John Bandzuh, & Christopher Uejio.

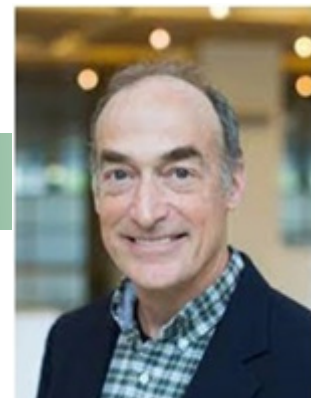
Upcoming Events

The FSU Center for Environmental, Energy, and Land Use Law will be hosting a full slate of exciting environmental, land use, energy, and administrative law events and activities in the coming academic year.

The Center will also host an Environmental Law Career Panel, a number of enrichment seminars and a Spring semester field trip. We will share full information about our slate of events for the 2022-2023 academic year in our next newsletter, and the full list will always be updated on our webpage: <https://law.fsu.edu/academics/academic-programs/juris-doctor-program/environmental-energy-land-use-law/environmental-program-recent-upcoming-events>.

We hope Section members will join us for one or more of these events.

Distinguished Environmental Lectures: Each year, the College of Law's nationally Distinguished Environmental Law program features some of the profession's leading environmental, energy, and land use scholars and policy makers. This year, we will be joined by **Elizabeth Kronk Warner**, Dean and Professor of law at S.J. Quinney College of Law at the University of Utah, and **William Buzbee**, the Edward and Carole Walter Professor of Law at the Georgetown Law Center, who will share their expertise with our communities in the Fall and Spring, respectively.



Dean Elizabeth Kronk Warner of University of Utah and Professor William Buzbee of Georgetown

CASE COMMENTS

by

Ross A. McVoy

Island-In-The-Sun Condominium of Key West, Florida, Inc. v. Governor and Cabinet of the State of Florida 354 So 2d 831 (1st DCA 1977) Per Curiam. This appeal is interesting because a Hearing Officer, under the 1961 APA (FS 1973), at final hearing entered the equivalent of involuntary dismissal for the state. Only a brief opinion was written but the pertinent files are in the custody of DER in Tallahassee.

Farrugia v. Frederick, Jr. et. al. 344 So 2d 921 (1st DCA 1977). Petitioner applied for a permit to construct a boat basin and access channel on privately owned submerged lands in navigable waters and to excavate an upland canal. The Trustees and DPC (now DER) denied the application. A Hearing Officer, under the 1961 APA (FS 1973) recommended permits and certification for the boat basin and access channel be granted but recommended denial of the proposed canal. The Secretary of DER and the Cabinet upheld this ruling. Petitioner's certiorari to the 1st DCA was denied on the ground that there was competent and substantial evidence to support the final agency action. The taking issue is briefly discussed in the opinion.

Berkley v. DER, (1st DCA 1977) DER denial of permit application to fill privately owned lands behind bulkhead line in Biscayne Bay Aquatic Preserve held error. The Court considered Berkley's evidence uncontroverted that his project would "enhance" the preserve. Perhaps more important is footnote 8. The Court stated it would not reach petitioner's argument that "... such a statutory burden would render the statutory provision unconstitutional."

Cross Key Waterways v. Askew - August 10, 1977, (1st DCA 1977)

The areas of critical state concern sections of Ch. 380.05 (1), (2)(a) and (b) were declared unconstitutional as violating Art. II §3 Fla. Constitution. The statutory sections delegated to the Governor and Cabinet (Administration Commission) the power, "... initially without statutory discipline ..." to determine whether the Cabinet or local government shall be the lawgiver under the statutes.

Postal Colony v. Askew - 2-171 - (1st DCA, May 12, 1977)

Initially, the court overturned the Green Swamp critical area designation on procedural

grounds and indicated in dicta, that the state's substantive case for designation had been demonstrated. However, on rehearing, the Green Swamp designation was held invalid on the basis of the Cross Key Waterways case.

Moviematic Industries, Inc. v. Board of County Commission 76-983 (3rd DCA Aug. 9, 1977) Petitioners 1200 acres in Dade County were rezoned from heavy industry to single family on five (5) acre lots. The rezoning was based on an intent to protect the Biscayne Aquifer, a major drinking water source. The action was upheld. The court stated that the inclusion of ecological considerations in zoning ordinances was "... long overdue" The court did not rule out that the petitioner might be entitled to compensation upon taking positive steps to develop its property. Petitioner proves it has been so restricted in its development efforts that "... it is being deprived of beneficial use of the property for the purpose of conferring a public benefit."

Jupiter Inlet Corp. v. Village of Tequesta 76-783 (4th DCA August 9, 1977)

A municipality "took" water from the shallow aquifer underneath an owner's land. The court ruled the shallow aquifer was a form of property and depriving the owner of its beneficial use was inverse condemnation.

Markham v. Nationwide Development Co. 76-872 (4th DCA August 9, 1977)

A land developer paid more than three times the assessed valuation of a dairy farm. The court held the developer could not continue to claim the agricultural exemption under 193.461 F.S.

Estuary Properties, Inc. v. Board of County Commissioners of Lee County, Florida, et al. CASE NO. 76-1560.

An administrative hearing held before the Division of Administrative Hearings January
continued on pg. 5

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

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

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Tallahassee

CHAIRMAN'S MESSAGE

This is our Section's Inaugural Newsletter. Primarily, it reports the results of the 1977 session. The Section's present intent is to devote one newsletter issue following the legislative session to new "environmental laws."

Because this is our initial publication, we still have some rough edges. This issue was prepared for the most part by Newsletter Editor, Ross A. McVoy. However, other individuals have been recruited to develop and expand future newsletters. Case comments will be handled by Bill Earle of Miami; DER administrative decisions and proposed rules by Sylvia Alderman of Tallahassee; DER news in general by Dick Williams (non-lawyer) of DER, Tallahassee; and George Craig of Jacksonville will provide Corps input. Suggestions for improvement are welcome.

Further newsletters will cover a broad range of pertinent topics. The following are features presently under consideration:

- (1) Short lead article.
- (2) Editor/Chairman's column.
- (3) Announcements of meeting, workshops, proposed rules, Corps, DER, Game and Freshwater Fish Commission.
- (4) Case comments on recent decisions, both judicial and administrative, state and federal corps., DER, etc.
- (5) Settlements of cases at state and federal levels.
- (6) Technical articles.
- (7) Notices of new publications.
- (8) Cabinet affairs.
- (9) One issue devoted to legislation.

It is a section goal this year to develop a high quality newsletter for our almost 400 members. It is my hope that at the end of the year you will agree this goal has been accomplished. □

F. Ronald Mastriana
Chairman

CORPS OF ENGINEERS REGULATORY FUNCTIONS SEMINAR

The Corps of Engineers is sponsoring a seminar to discuss the regulatory permitting field. Those invited include developers and other businessmen, public associations, conservationists, state and federal congressmen, senators and state and federal agency personnel.

The seminar will be held November 6, 7, & 8, at the Sandpiper Bay Resort at Port St. Lucie.

Due to facility limitations and the Corps' wish to make the seminar very productive and decisive, attendance will be limited to 300. Reservations should be made *in writing* and will be taken as received until the quota is filled. No further openings will be made unless cancellations occur. Reservations are only to be made through Mr. Steve Rose, P.O. Box 4970, Jacksonville, Florida 32201. Please make room deposit checks payable to Sandpiper Bay Resort, Inc. Only 200 rooms are available at the Sandpiper (\$24.00, single; \$28.00, double). Rooms may also be found in Ft. Pierce and Jensen Beach. The Sandpiper has many amenities available for the family and comes an early check-in on Sunday, November 6, 1977.

There is no registration fee; however, two

luncheons (\$5.20 each) and a poolside cookout/banquet (\$12.00) have been planned. The resort promises an outstanding cookout. (Guest speakers will be: Gov. Reubin O'D. Askew, Nathaniel P. Reed and Lou Fischer, Florida Chamber of Commerce). In addition, breakfast will be available at the Brass Sandpiper Restaurant at your discretion.

The program will originate with three case studies of hypothetical Department of the Army permit applications. The case studies are intended to illustrate the methods, procedures, conflicts, evaluations and misunderstandings that are found in the regulatory process.

The first two cases will be written handouts and will outline the pertinent factors in reaching a final decision for a permit.

The attendees will then be asked to be prepared to give their reasons why the third case study permit should be issued or denied as based on a live presentation to be given in the form of a mock public hearing. (Your involvement is crucial to the success of the seminar - you may be one of the ones given an opportunity to voice your opinion on why the permit should be issued or denied).

In the interest of active participation, we will mail copies of the three case studies upon receipt of a written reservation, with deposit, so attendees may be fully prepared for the public hearing.

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LEGISLATIVE SESSION, cont'd

- .864 and repeals 381.2611, 381.281 and 381.293. This act establishes a safe drinking water supply program for Florida implemented by DER and DHRS. DER is authorized to adopt primary and secondary drinking water regulations and for operators of water purification and wastewater treatment plants. The Act also establishes primary enforcement authority in the state. According to the July, 1977, DER Newsletter, failure to pass the Act "... would have resulted in EPA taking over control of the program." (Effective July 1, 1977.)

5. LOCAL GOVERNMENT REZONING AND LAND USE PLAN PROCEDURES - Ch. 77-331 (C.S. for H.B. 833) Amends 125.66, 163.3181, 163.3184, 163.3187 and 166.041. This law specifies procedures by which local governments shall enact ordinances which rezone real property, for adopting an element of the LGCP and amending elements of an adopted LGCP. (Effective July 1, 1977.)

6. DREDGE AND FILL - PERMIT SYSTEMS FOR SPOIL SITE APPROVAL Chapter 77-21 amends 403.061 and requires DER to establish a permit system for spoil site approval for maintenance of dredging projects after July 1, 1977. Approval is effective for ten (10) years. (Effective July 1, 1977.)

7. OTHER LEGISLATION OF NOTE.

a. Chap. 77-369 (S.B. 1298) creates 403.0615 which establishes a program for *restoration of water resources*. (Effective July 1, 1977.)

b. Chap. 77-126 (S.B. 56) revision of Ch. 258 for administration of *State Wilderness System*. (Effective June 7, 1977.)

c. Chap. 77-367 (S.B. 1138) amends 373.507 and provides for *performance audits WMD's, basins and taxing authorities* in a three (3) year period, the audit year to be determined by DER. (Effective July 1, 1977.)

d. Chap. 77-271 (H.B. 671) amends 865.06 relating to *endangered plant list*. (Effective July 1, 1977.)

e. Chap. 77-333 (H.B. 868) amends 377.601 and declares *state energy policy*. (Effective June 24, 1977.)

f. Chap. 77-223 (S.B. 270) amends 163.3174 and .3194 by providing for creation of *local planning agencies by special act* and *preserves tax-exempt status of agricultural land* if land meets exemption criteria. (Effective July 1, 1977.)

g. Chap. 77-308 (S.B. 900) amends 381.272 and provides circumstances when *septic tanks* may be used in residential subdivisions.

(Effective October 1, 1977.)

h. Chap. 77-268 (S.B. 920) amends 60.05 to provide if *state nuisance abatement* action had no reasonable grounds and prevails *costs and attorneys' fees* shall be taxed against state. (Effective June 17, 1977.)

i. Chap. 77-65 (S.B. 488) amends 370.081 to prohibit importation or possession of *nonindigenous marine plant or animals* which may endanger state marine resources. (Effective July 1, 1977.)

j. Chap. 77-404 (C.S. for S.B. 936) creates 373.191 and directs DER and the So. Fla. WMD to seek congressional authorization to study Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. (Effective July 1, 1977.)

k. (1) 1977 *Game and Freshwater Fish Acts* may be found at Chap. 77-1, 311, 375, 405 and 70. As to forestry practices see Chap. 77-17 and 101.

(2) Chaps. 77-142, 206, 197, 181, 208, 95, 310, 92, 186, 381 and 207, were passed relating to *saltwater fisheries* regulation.

(3) Revisers bill relating to environmental laws Chaps. 77-114 and 113.

(4) APA 1977 Amendments may be found at Chaps. 77-53, 453 and 468.

CASE COMMENTS, cont'd.

17, 18, 19, 20 and 21, 1977 at Fort Myers and a Recommended Order entered June 20, 1977. Hearing Officer K. N. Ayers' order was eighteen pages in length. (Copies may be obtained by writing the Division of State Planning c/o Henry Dean, 660 Apalachee Parkway, Tallahassee, Florida 32304.)

Lee County denied petitioner's application to develop a parcel of land of some 6,500 acres which included wetlands. Petitioner proposed to deed certain environmentally sensitive areas, dig an interceptor waterway (intended to function in an environmentally beneficial manner); use fill from the waterway and some 27 lakes, that would act as "scrubbers" for the waterway, dredged on site to bring the land to be developed up to grade; construct 26,500 residential units with a density of 4.1 dwelling units per acre and upon completion establish a population estimated at 73,500.

Project denial by the County was supported by the Hearing Officer's order. There were numerous reasons discussed including loss of mangroves and their assimilative capacity, transportation problems, the novelty of the interceptor waterway (which had never before been tried in a fully natural habitat and nutrient removal capacity was questioned by

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CORPS SEMINAR, cont'd.

Following the case studies, the seminar will continue in the form of a panel address to the entire assemblage which then will be divided into ten groups for individual topic discussion. Each participant will have a specific topic group moderator and room assignment made at registration. Additionally, the topic group room number and moderator's name will appear on the lower right-hand corner of your name badge. A location map for the topic rooms may be found in the registration foyer outside the Florida Ballroom, South. If you wish to be in the same group as someone else, please let us know so we can make our assignments accordingly.

Division into the same ten topic groups and locations will be typical for each interest area: Agency, conservation, business, as shown by the agenda. Thus, each area will have equal time for explanation of the role played and discussion of the problem areas.

Each of the topic discussions will be headed by a professional moderator and technical advisors in the three interest areas. Formal notes will be taken and a concise summary of the accomplishments will be made by Mr. Garald G. Parker during the wrap-up of the seminar. The summary will be available in written form as soon as feasible following adjournment of the seminar.

continued on pg. 7

RECENT PUBLICATIONS

DEPARTMENT OF ENVIRONMENTAL REGULATION

Preliminary State Water Pollution Control Plan
- Fiscal year 1978, June 15, 1977.

Report to ERC and DER by the Ad Hoc
Committee on Florida's Water Quality Problems,
August, 1977.

State Air Pollution Control Plan Preliminary
Submission - Fiscal year 1978, June 15, 1977.

State of Florida Environmental Permitting
System - Report of the State of Florida DER in
response to H. B. 4251 (1976), March 1, 1977.

Florida Water Management Activities Vol. 3-
No. 6, June - July, 1977.

DER Newsletter, July, 1977.

For copies write:

Office of Public Information and
Legislative Liaison
Dept. of Environmental Regulation
2562 Executive Center Circle East
Tallahassee, Florida 32301

DOA — DIVISION OF STATE PLANNING

August 15, 1977, Draft, Elements of State
Comprehensive Plan:

- Employment and Manpower
- Human Resources
- Recreation/Leisure
- Water
- Energy Utilities

Summary Explanation of New Elements and
Invitation to Meetings on Plan, August 15, 1977.

Copies may be obtained by writing:

Division of State Planning
Bureau of Comprehensive Planning
660 Apalachee Parkway
IBM Bldg.
Tallahassee, Florida 32304

CASE COMMENTS, cont'd.

the Hearing Officer), lake depths, hurricane protection, water supply and water treatment. A modification of project plans was made by petitioner at the hearing but the Hearing Officer would not consider the modification because it had not been previously considered by local government or the Regional Planning Council.

The Hearing Officer felt certain research requirements placed on the developer and limitation of development to townhouses and garden apartments was unreasonable. Also considered questionable was the requirement that the petitioner aid in finding a cost of the impact of the development on Lee County. The developer agreed to pay the fees if all other developers were likewise required to do so.

The final paragraph of the order stated:

"From the foregoing it is concluded that the proposed development would have an adverse impact on the ecology of an environmentally sensitive area and would result in the degradation of the waters of San Carlos, Hurricane, Hell-Peckish and Estero Bays with a resulting adverse impact on the economy of the area."

SEMINARS AND CONFERENCES

October 6-7, San Francisco, "Industrial Development and Pollution Control Financing" (Practicing Law Institute - for information write 810 7th Ave., New York, New York, 10019, or call [212]-765-5700). The same program will be sponsored by PLI in New York City, November 17-18, 1977, (Association of the Bar of the City of New York).

November 3-4, 1977, Shoreham Americana Hotel, Washington, D. C., "Second Annual Conference on Toxic Substances Regulation by EPA" (Write Executive Enterprises, Inc., 10 Columbus Circle, New York, NY 10019).

A.L.I. — A.B.A. CURRICULUM FOR 1977-78

September 29-October 1, Washington, D.C., "Atomic Energy Licensing and Regulation."

continued...

SEMINARS, CONFERENCES, cont'd.

October 6-7, Washington, D.C., "**Water and Air Pollution**", (co-sponsored by the Environmental Law Institute).

October 20-22, Kansas City, Missouri, "**Land Use Litigation: Critical Issues for Attorneys, Developers, and Public Officials**" (co-sponsored by the Urban Land Institute).

February 9-11, (1978), Washington, D.C. "**Environmental Law**" (co-sponsored by the Environmental Law Institute and the Smithsonian Institution).

May 4-6, Houston, "**Energy and the Law: Problems and Challenges of the Late '70's.**"

Further information may be obtained from Donald M. MacClay, Director, Courses of Study, A.L.I. - A.B.A. Joint Committee, 4025 Chestnut Street, Philadelphia, Pennsylvania, 19104, (telephone 215/387-3000).

NATIONAL INSTITUTES OF THE AMERICAN BAR ASSOCIATION

November 3-4, Washington, D.C., "**Current Issues in the Regulation of Public Utilities**", (section of Public Utility Law).

May 18-19 (1978), Houston, "**Environmental Law**" (section of Natural Resources Law).

Further information may be obtained from American Bar Association National Institutes, American Bar Association, 1155 E. Sixtieth Street, Chicago, Illinois, 60637 (telephone 312/947-3950).

CORPS SEMINAR, cont'd.

For those planning to fly to West Palm Beach, please let us know your schedule in advance so we can plan to have transportation ready. Otherwise, the standard limousine service runs \$15.00 per person.

See you there!

Steve Rose
Seminar Coordinator

CORPS INFORMATION COLUMN

Through this column, the Jacksonville District, U. S. Army Corps of Engineers hopes to keep the environmental law practitioner up to date on all matters which fall within the District's regulatory responsibilities. Future columns will discuss the organization of the Regulatory Branch, enforcement practices and procedures, and provide commentary on portions of the new regulations. The column will also assemble latest news releases from the Corps regarding significant permit decisions and enforcement actions.

On July 19, 1977, the Corps of Engineers issued new regulations governing the permit programs of the Corps of Engineers. The new regulation clarifies terms used in the Section 404 program (discharging dredged or fill material into the water) and provides for the issuance of nationwide permits for certain discharge activities. (Copies of the new regulation may be obtained by writing the District Engineer, U.S. Army District Jacksonville, Attn: Regulatory Branch, P.O. Box 4970, Jacksonville, FL 32201.)

Recently the Jacksonville District has sent out 5000 letters to individuals whose names appear on the land ownership inventory of the State of Florida Department of Natural Resources. These letters are intended to inform owners of submerged lands, wetlands, or waterfront property of the changes in the Corps of Engineers regulatory program. The District discovered that the lists it had been using to send these letters are far from perfect. It is conceivable that individuals holding property which is not subject to the Corps' regulatory jurisdiction will receive a letter.

In any event, should an individual wish a determination of the extent of the Corps' regulatory jurisdiction, he should contact any of the Corps Area Offices:

Panama City	904-763-2781
Palatka	904-328-2737
Tampa	813-228-2576
Clewiston	813-983-8101
Miami Beach	305-672-7718

ENGINEERS ESTABLISH "HOTLINE"

JACKSONVILLE—In order to better serve the people of the state of Florida, Army Engineers in Jacksonville have installed a toll-free telephone "HOTLINE" which is available

continued...

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CORPS HOTLINE, cont'd.

to all interested and concerned Florida citizens and organizations when inquiring about Corps of Engineers' projects of activities. The development of the HOTLINE was recently announced by Colonel Donald A. Wisdom, District Engineer. "This added service is another attempt by the Engineers to establish a faster and more efficient system of communication between the Jacksonville District and the many and varied publics we serve," Wisdom said, "and is open at all times—24 hours a day, seven days a week."

The telephone has been installed in the Public Affairs Office and will be monitored by Public Affairs personnel during regular duty hours Monday through Friday, Wisdom added. It is equipped with a Code-a-phone recorder which takes over and records all calls from 4:30 p.m. till 7:30 a.m. the next scheduled workday. The calls will then be transcribed, researched through all sources of information on the subject matter, and as complete an answer as possible will be provided to the caller with the minimum time delay.

The toll-free number is 1-800-342-5950, and is good only within the state of Florida.

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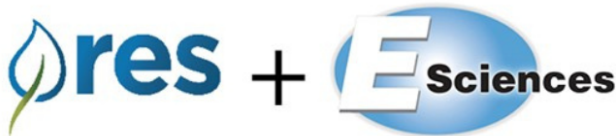


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MEMBERSHIP OPTIONS / DUES

The Florida Bar dues structure does not provide for prorated dues; your Section dues cover the period from July 1 to June 30. Your application and check should be mailed to The Environmental and Land use Law Section, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

I AM... (check one)	MEMBERSHIP OPTION	ANNUAL DUES
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	AFFILIATE – Professionals and Faculty	\$50
	AFFILIATE – Students	\$20

I understand that all privileges accorded to members of the section are accorded affiliates and law students, except that affiliates may not advertise their status in any way, and neither affiliates nor law students may vote, or hold office in the Section or participate in the selection of Executive Council members or officers.

CERTIFICATION: I hereby certify that I have never been denied admission to any bar, or been the subject of any proceeding questioning my moral character, disbarred from any legal bar, convicted of a felony, expelled from any University or Law School, or investigated for fraud, misappropriation or mismanagement of funds.

SIGNATURE: _____ DATE: _____