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ELULS
THE ENVIRONMENTAL AND LAND USE LAW SECTION
Robert Volpe, Chair • Derek Howard, Christopher Berg, Co-Editors • www.eluls.org

Reflections on 50 Years of Environmental and Land Use Regulation in Florida

A Collective Article by the ELULS Executive Council[1]

Introduction[2]

From its world-renowned coastlines to its iconic springs, Florida's diverse natural resources and beauty have long been a popular attraction for early settlers, explorers, farmers, fisheries, developers, entrepreneurs, retirees, Parrotheads,[3] and tourists. As Florida's population grew and industries took root, environmental and land use conflicts inevitably ensued. So did laws and regulation. The biggest legislative tide came in the 1970s with the passage of the Florida Environmental Land and Water Management Act, the Water Resources Act, the Environmental Protection Act of 1971, and the State Comprehensive Planning Act. It was during this time that the Environmental and Land Use Law (ELULS) was first born as the Environmental Law Committee thanks to the foresight of several pioneering attorneys.[4]

Since ELULS was born 50 years ago, the Section has endeavored to help practitioners sharpen and share their expertise in environmental and land use law and navigate developments in caselaw and legislation. In 1986, ELULS first published The Florida Environmental and Land Use Law Treatise, a collection of articles on environmental and land use topics authored by members of the Section. Due to its popularity as one of the premier authorities on Florida environmental and land use law, the Treatise was re-published in 1997 and again in 2001. The Treatise has been updated and published for a fourth time in commemoration of the Section's 50th Year Anniversary. For a more in-depth treatment of environmental and land use regulation in Florida, readers are encouraged to check out the new Treatise update (the introduction to the new Treatise update, which includes a timeline of ELULS history and regulatory developments, is reprinted in this issue). The intention of this article is to provide a more informal and reflective treatment of select topics by members of the ELULS Executive Council.

The Community Planning Act[5]

Florida has a long, robust history of planning, zoning, and growth management legislation. The most recent iteration is the Community Planning Act, Chapter 163, Part II, Florida Statutes. Reflections on the full history of growth management policy could, and has, filled volumes. This is a brief history the highlights, with a slightly more in-depth review of the Community Planning Act.

- In 1972, the Florida Legislature adopted state regulations of large-scale developments called "developments of regional impact" and of "areas of critical state concern."
- In 1975, the Legislature adopted the Local Government Comprehensive Planning Act (Chapter 75-257, Laws of Florida), which included a requirement that local governments adopt comprehensive plans.
- In 1984, the Legislature adopted the Florida State and Regional Planning Act of 1984 (Chapter 84-257, Laws of Florida), adopting standards and procedures for adoption of comprehensive plans.
- In 1985, the Legislature adopted the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 85-55, Laws of Florida), also known as the Growth Management Act, implementing compliance and ...

See "Reflections on 50 Years" page 17

INSIDE:

From the Chair

As we wrap up the 50th anniversary, and look forward to the next chapter, I want to pause and express heartfelt thanks to our Executive Council. Their dedication has been nothing short of amazing. Thank you, all. And a special thank you to you, ELULS members, for your participation in the Section and commitment to the practice.

Looking ahead, we are excited about several offerings and initiatives. First, the commemorative 50th-anniversary edition of the Treatise, with updated articles and additional content, is now available for purchase in a stunning two-volume hard copy.

We're also ramping up our commitment to professional growth through continuing legal education content. Keep an eye out for new courses and CLE options. And we are increasing and expanding our partnerships with other sections of the Florida Bar and various professional groups to offer more connections for our members and present new collaborative opportunities.

Have you had a chance to explore our refreshed ELULS website? Check it out at eluls.org. The site now offers easy access to educational resources, networking events, and a rich archive of our publications, including this Reporter.

Finally, I want to personally invite each of you, our members, partners, and affiliates, to deepen your engagement with ELULS. Whether it's by serving on a committee, contributing scholarly or continuing education content, or organizing and participating in networking events, your involvement is the reason that we celebrate 50 years of success and look forward to many more. To get involved, please reach out to me, our dedicated administrator, Whitney Bledsoe, or any of our Executive Council members.

Together, we are shaping the future of environmental and land use law practice in Florida.

Robert Volpe

Chair, The Florida Bar Environmental and Land Use Law Section

From the Immediate Past Chair

It has been an honor to serve as ELULS Chair for this monumental 50th Year of the section. From the opening Annual Update Weekend in Ameilia Island in September 2022 to the Long-Range Planning Retreat in Nashville in May 2023, I could not be more proud of the accomplishments we made this year.

At the 2019 Long-Range Planning Retreat in Savannah, Rachael Santana, Jon Harris Maurer, Robert Volpe and I (along with a few others) set a goal to re-energize and strengthen participation within the section. Our strategy was to "Make ELULS Fun Again!" Never in our wildest dreams (especially given the full year of only Zoom meetings during the pandemic) did we envision this level of success in such a short time. And with the current leadership in place, I fully expect the section to continue to thrive and successfully serve its members for years to come.

Thank you from the bottom of my heart to everyone who helped make this year-long celebration a success. There isn't enough room in this reporter to thank everyone who contributed or participated in the various events that occurred during the 50th anniversary celebration, but I would be remised if I didn't give a special thank you to Cheri Wright, Rachael Santana, Hillary Stephens, Brendan Mackesey, George Gramling and the entire ELULS Treatise Committee. I can't wait to see what the next 50 years has in store for ELULS!

Joshua C. Coldiron, Immediate Past Chair

Gramling Environmental Law, P.A. – Tampa, Florida

ON APPEAL

By Larry Sellers, Holland & Knight LLP

Note: Status of cases is as of October 12, 2023. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Jupiter Compound v. Testa, Case No. 2023-0848. Petition to review the question certified in *Testa v. Town of Jupiter Island*, Case No. 4D22-232 (Fla. 4th DCA 2023): "Where an ordinance proposed for adoption is initially advertised for a date certain public meeting in compliance with section 166.041(3)(a), Florida Statutes (2018), and the proposed ordinance is considered at the advertised public meeting, but the proposed adoption is postponed on the record from the advertised public meeting to a subsequent date certain public meeting, does section 166.041(3)(a) require the municipality to re-advertise the ordinance proposed for adoption for the subsequent date certain public meeting in compliance with section 166.041(3)(a)?" Status: Notice to invoke discretionary jurisdiction filed June 9, 2023. Note: recently-enacted legislation appears designed to address this issue. *See* Ch. 2023-309, Laws of Florida.

FIRST DCA

NE 32nd Street, LLC, et al., v. The Board of Trustees of the Internal Improvement Trust Fund and FDEP, Case No. 1D22-532. Appeal from final order rejecting challenge to portions of Chapter 18-21 of the *Florida Administrative Code*, because they do not contain provisions on how to determine land is actually owned by the state before use or disposition is authorized by FDEP. DOAH Case No. 21-2495RX. Status: Affirmed *per curiam* on September 6, 2023.

Trend Exploration, LLC v. Department of Environmental Protection, Case No. 1D23-1837. Appeal from a DEP final order denying an application for a permit to drill oil and gas in the Upper Sunniland Formation within the boundary of the Big Cypress Watershed. Status: Notice of appeal filed July 21, 2023.

Sarasota County, Florida, et al., v. Ramirez, and Department of Commerce, Case No. 1D23-1058. Appeal from final order determining that Sarasota County Ordinance No. 2021-047 is inconsistent with the Sarasota County Comprehensive Plan. The subject ordinance removes residential density limits from transient accommodations (i.e., hotels and motels) within the commercial zoning districts throughout the county. Status: Notice of appeal filed May 3, 2023.

Semmer v. Lee County, Southern Comfort Storage, Case No. 1D23-359. Appeal from a final order of the Administration Commission determining plan amendment to be "in compliance," notwithstanding a contrary recommendation by the ALJ. The ALJ had recommended that the amendment be found not in compliance because it did not meet the criteria in section 163.3178(8)(a), Florida Statutes, thereby rejecting the county's determination that the plan amendment complied with that section by providing for appropriate mitigation of hurricane evacuation and sheltering impacts attributed to the plan amendment. Status: Notice of appeal filed on February 13, 2023.

Northshore Holdings, LLC, et al., v. Walton County, Florida, Case No. 1D22-0895. Appeal from final order denying request for a declaration that Florida's judicial "adoption of customary use violates the 5th and 14th amendments to the U.S. Constitution," because it amounts to a "judicial taking and/or a violation of due process" that "eliminates the fundamental and established property right to exclude." Status: On April 12, 2023, the appellate court issued an opinion dismissing the appeal, vacating the final judgment, and remanding to the trial court with instructions to dismiss appellants' amended complaint with prejudice.

Maddan v. Okaloosa County, Case No. 1D22-0699. Appeal from a final order granting summary judgment in favor of Okaloosa County regarding the Maddans' claims of trespass and nuisance for injunctive relief regarding alleged continuous flooding of the Maddan's real property. Status: On March 29, 2023, the court affirmed, ruling that the claims were barred by the statute of limitations.

Florida Wildlife Federation, Inc., v. The Florida Legislature, et al., Case No. 1D22-3142. Appeal from order dismissing case as moot and order allowing automatic statutory continuance as to the Legislature, as well as the associated order on reconsideration, the order on motion to tax costs and the final judgment. This appeal stems from a challenge to numerous 2015 legislative appropriations from the Land Acquisition Trust Fund, in which appellants assert that the Legislature had violated the constitutional restriction that money from the Fund could be appropriated "only for" specifically listed purposes. The complaint alleged that about $300 million of the Fund had been appropriated for impermissible purposes. The challenged order dismissed the case based on its finding that the appellants could have but did not reach judgment before the end of fiscal year 2015-16. Status: Motion for oral argument denied August 18, 2023.

Florida Defenders of the Environment v. Lee, et al., Case No. 1D22-3463. Appeal from the same final order as in *Florida Wildlife Federation*, above: Status: Motion for oral argument denied August 18, 2023.

Devil's Garden Investment, LLC v. SFWMD, Case No. 1D22-1960. Appeal from DOAH final order determining that the challenged statement is not an unadopted rule. The challenged statement requires the appellant to provide an "engineering analysis, signed and sealed by a professional engineer, demonstrating that the property does not discharge during a 100 year 3-day storm event." Status: Notice of appeal filed June 27, 2022; oral argument held January 10, 2023; affirmed on April 12, 2023.

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, and this issue is the subject of the cross appeal. Status: Oral argument scheduled for October 25, 2023.

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, Florida Statutes, and implement the provisions of those laws. Status: Reversed and remanded on February 15, 2023. DEP Corrected Final Order on Remand issued on June 30, 2023; motion to enforce mandate filed on October 6, 2023.

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) of the Florida Rules of Appellate Procedure 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 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: Reversed and remanded on November 30, 2022; opinion on amended motion for rehearing on clarification issued on January 18, 2023. Note: Following the issuance of the opinion, Seven Springs filed an administrative challenge to the rule, and the ALJ entered a final order determining that the rule is invalid because it was not adopted in accordance with the applicable rulemaking requirements; in particular, the rule is a procedural rule that differs from the Uniform Rules and has not been approved as an exception to the Uniform Rules by the Administration Commission. *Seven Springs Water Co. v. Suwannee River Water Mgmt. Dist.*, Case No. 22-3908RX (DOAH Feb. 6, 2023).

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: On May 17, 2023, the court dismissed for lack of jurisdiction, ruling that the challenged order is not a non-final order that the court has jurisdiction to review under Rule 9.130 of the Florida Rules of Appellate Procedure.

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), Florida Statutes. 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, Florida Statutes, 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: 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 section 120.595, Florida Statutes. 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: affirmed on January 25, 2023. The court also granted a motion for attorney's fees on appeal and remanded for

determination of the amount.

SECOND DCA

MHC Cortez Village, LLC v. Cortez Road Investments and Finance, Inc., and SWFWMD, Case No. 2D23-1315. Appeal of a final order adopting the Administrative Law Judge's recommended order and issuing an environmental resource permit to Cortez Road Investments. The permit authorized the construction of a linear dock for a residential development located along an upland-cut canal off of Anna Maria Sound. The Administrative Law Judge found that the proposed project would not significantly impede navigability and met all other applicable conditions for issuance of a permit. Status: Notice of appeal filed June 22, 2023.

Reed Fischbach, Christopher W. McCullough and Joseph B. Sumner, III v. Hillsborough County, Case No. 2D22-3270. Appeal from final order determining Hillsborough County Comprehensive Plan Amendment HC/CPA 20-11 to be "in compliance." The Plan Amendment amends the County's Comprehensive Plan by replacing the text of the Future Land Use Element Residential Plan-2 ("RP-2") category and changing the requirements necessary to obtain an increased density level per acreage in the RP-2 category. Status: Notice of appeal filed October 6, 2022; oral argument set for November 15, 2023.

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: On December 2, 2022, the court reversed and remanded and certified conflict with the decision in *Imhof v. Walton County*, 328 So. 3d 32 (Fla. 1st DCA 2021). *Note*: Recently-enacted legislation would resolve this conflict by clarifying that the scope of the circuit court's review in a development order challenge is limited to inconsistencies between the comprehensive plan and the order's alteration of the use or density or intensity of use on a property. *See* Ch. 2023-115, *Laws of Florida.*

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: Oral argument held on September 12, 2023.

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. 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. On September 20, 2022, the court denied: Appellants' Motion for Rehearing and Clarification; Appellees' Motion for Rehearing, or, in the Alternative, for Certification to the Florida Supreme Court; and Appellees' Motion for Rehearing En Banc. Petition for review denied on January 13, 2023, Case No. SC22-1424. *Note*: recently-enacted legislation appears to address the district court of appeal's decision by exempting a certain initiative from certain evacuation time constraints and specifying that certain comprehensive plan amendments are valid. *See* Ch. 2023-17, *Laws of Florida.*

FOURTH DCA

Blue Water, LLC vs. South Florida Water Management District, Case No. 4D23-0552. Appeal from a SFWMD final order suspending Blue Water's right to sell any of the wetland mitigation credits awarded to Blue Water upon recordation of the conservation easement over the Lucky L lands. Blue Water also appeals that portion of the final order ruling that the long term/perpetual maintenance financial assurance mechanism must be fully-funded upon the sale of any wetland mitigation credits. Status: Notice of appeal filed March 3, 2023.

Robin Cartwright v. City of Stuart, Case No. 4D23-908. Appeal from final order of the Administration Commission determining the challenged FLUM amendment adopted by the City of Stuart to be "in compliance," notwithstanding a contrary recommendation by the ALJ. Status: Notice of appeal filed April 12, 2023. Order granting notices of voluntary dismissal on June 21, 2023.

FIFTH DCA

SJRWMD v. CeCe, Case No. 5D22-2426. Petition for review of non-final agency action regarding ALJ's order rejecting remand after the ALJ recommended the denial of the permit. Status: On August 11, 2023, in response to a motion for written opinion, the court denied the petition and remanded to SJRWMD for final order either issuing or denying the application, which agency's decision then may be appealed if the losing party chooses to do so.

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:

Affirmed per curiam on March 21, 2023; motion for rehearing en banc and for written opinion denied on September 8, 2023.

SIXTH DCA

Wilde Cypress Branch, et al., v. Noah Valenstein, as Secretary, and Beachline South Residential, LLC, Case No. 6D23-1412. 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 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), Florida Statutes. The order also rejected claims that the preemption statute is unconstitutional. Status: Notice of appeal filed on July 28, 2022; transferred to Sixth DCA on January 1, 2023.

Rubinson v. Oklawaha Valley Audubon Society, Inc., et al., Case No. 6D23-2787. Appeal from order granting defendants' motion for final summary judgment, determining that an Audubon Chapter in Central Florida can sell off six acres of century-old forest that were donated for conservation despite a former president's promise to preserve the parcel in perpetuity. Status: Notice of appeal filed June 1, 2023.

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: Oral argument held November 17, 2022.

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

Loper Bright Enterprises, et al., v. Gina Raimondo, et al., Case No. 22-451. Petition to review D.C. Circuit opinion upholding National Marine Fisheries Service rules requiring the fishing industry to pay for federal inspectors onboard. The Court granted certiorari to the fishing companies on one of the two questions in their petition: "Whether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granting elsewhere in the statute does not constitute an ambiguity requiring deference to the agency." Status: Review granted on May 1, 2023.

Suncor Energy (USA) Inc., et al. v. Board of County Commissioners of Boulder County, et al., Case No 21-1550. Petition for writ of certiorari asking the Court to resolve a conflict among the circuits on two questions: (1) whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate, and (2) whether a federal district court has jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. Status: Petition denied on April 24, 2023.

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: On May 25, 2023, the Court reversed. The majority held that "the CWA extends to only those wetlands that are 'as a practical matter indistinguishable from waters of the United States.' *Rapanos*, 547 U. S., at 755 (plurality opinion) (emphasis deleted). This requires the party asserting jurisdiction over adjacent wetlands to establish 'first, that the adjacent [body of water constitutes] . . . 'water[s] of the United States,' (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins.'"

MONTANA SUPREME COURT

State of Montana v. Rikki Held, Case No. DA23-0575. Appeal from various orders, including order determining that youth plaintiffs have a fundamental constitutional right under the Montana state constitution to a clean and healthful environment and that the Montana Environmental Policy Act, which forbids the state and its agents from considering the impacts of greenhouse gas emissions or climate change in their environmental reviews, violates their right to a clean and healthful environment and is unconstitutional on its face. Status: Appeal filed September 28, 2023.

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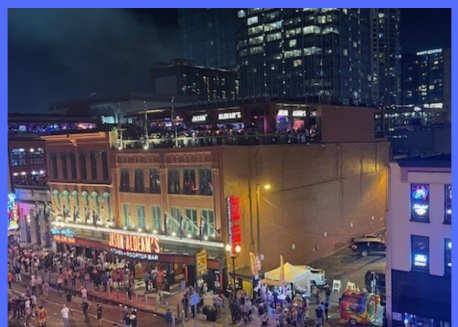
50 Years in Photos

50TH Year Update, Omni Amelia Island Resort

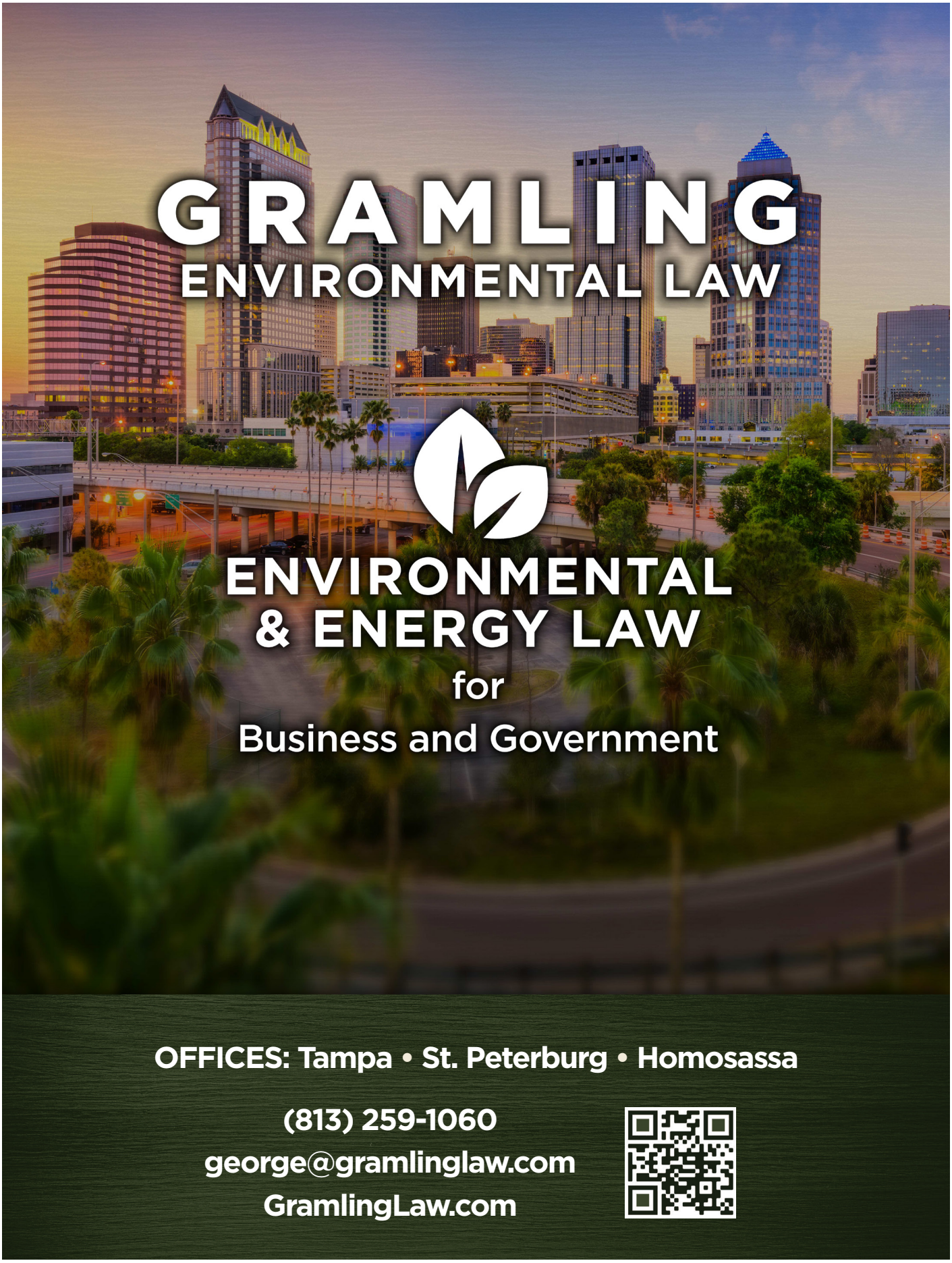
50 Years in More Photos

50TH Year Update, Omni Amelia Island Resort

2023 Long Range Planning Retreat in Nashville



Executive Council Meeting in Tallahassee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Florida's Proposed Clean Water Amendment: Mni Wichoni

By: William D. Slicker[1]

Fern Hammock Springs, located in the Ocala National Forest

To many indigenous peoples, water is sacred. The Lakota phrase "Mni wichoni" meaning "water is life" is being chanted by Native Americans protesting the depletion of water across the United States[2]. In Canada, the First Nation peoples are actively working with the English Speaking Union in advocating concerns about maintaining water systems[3]. In New Zealand, the Maori were successful in having the Whanganui River recognized as a legal person.[4] In Colombia in 2016, the Constitutional Court declared the Atrato River a legal subject entitled to protection under Colombia's Constitution. Other courts in Colombia have since recognized other ecosystems as legal subjects entitled to constitutional protection.[5] In 2020, the Appellate Division of the Supreme Court of Bangladesh upheld a lower court decision that declared the Turag River and all other rivers in the country are living entities with the rights as legal persons.[6]

Here in the United States, there are increasing shortages of clean water. The seven states that share the Colorado River are having difficulty agreeing on usage reductions.[7] In the south, Florida's freshwater aquifers are increasingly susceptible to saltwater intrusion due to over-extraction.[8] Tampa Bay has lost 12% of its seagrass in the last two years and Sarasota Bay has lost 26% of its seagrass in the last six years.[9] The seagrass is necessary for acting as a nursery for baby fish and invertebrates.[10]

Some Floridians have taken the lead in trying to place legal rights of waterways into the Florida Constitution. Several Florida environmental protection groups are trying to collect enough signatures to add a "right to clean water" provision to the Florida Constitution.[11] The full text is set out below.[12] The proposed amendment is based on an Orange County "Right to Clean Water" initiative that passed in November, 2020 by an 89% majority.[13] "The amendment would recognize the legally enforceable rights of all waterways across Florida to 'exist, flow, be free of pollution, and maintain a healthy ecosystem.' The amendment then provides that any Floridian or Florida organization can file a legal action on behalf of those waterways to require their protection, repair, and restoration." [14]

Blair Wickstrom, senior editor of Florida Sportsman magazine addressed why such an amendment is necessary: "And right now we have water quality issues statewide. We have fish kills in Southwest Florida, polluted springs in the Northwest, seagrass die-offs in East Central and Southeast Florida, and a starving Everglades and over-salty Florida Bay."[15]

Gil Smart, executive director of VoteWater lamented that the sugar and phosphate industries have "spent over $11 million on campaign contributions for the 2022 election cycle and employment a small army of lobbyists" that has kept the legislature from doing enough to protect Florida's waters.[16] That has led to the effort to bypass the the state legislature and to seek a citizen initiative.[17]

Mari Margil, executive director of the Center for Democratic and Environmental Rights expressed her view that "For too long, state governments have enabled developers who want to destroy Florida's waterways. This amendment represents a re-programming of government to a system that protects, rather than destroys, nature. In establishing the rights of waterways, the amendment is an opportunity to protect and restore nature, following in the footsteps of countries around the world which are changing how they protect threatened ecosystems." [18]

In 2021, New York became the first state to add a water rights amendment to its constitution.[19] Since then, Pennsylvania and Montana have also added water rights amendments or "green amendments" to their constitutions.[20] A similar amendment is being proposed in New Mexico. [21]

If the proponents of the Florida amendment get enough signatures by November, 2023, and the citizens vote in favor of it, then Florida will join the other states and countries recognizing legal rights for water. Mni Wichoni.

Endnotes

1. William D. Slicker served as a law clerk to the Honorable Steven H. Grimes at Florida's Second District Court of Appeal and as a law clerk to the Honorable Warren H. Cobb at Florida's Fifth District Court of Appeal. He has received the Florida Bar President's Pro Bono Award for the Sixth Circuit, the Ms. JD Incredible Men Award, the St. Petersburg Bar Foundation's Heroes Among Us Award, the Community Law Program Volunteer of the Year Award, and the Florida Coalition Against Domestic Violence Lighting the Way Award.

2. LPier, "Why is Water Sacred to Native Americans?" The Conversation, March 21, 2017. https://theconversation.com/why-is-water-sacred-to-native-americans–74732

3. Honoring Water, Assembly of First Nations,

https://www.afn.ca/honoring-water

4. Harumi, The New Zealand river that became a legal person, March 19, 2020. https://www.bbc.com/trave/article/20200319-the-new-zealand-river-that-became-a-legal-person

5. Macpherson, Ventura, and Ospina, Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia, Cambridge University Press, July 8, 2020 https://www.cambridge.org/core/journals/transnational-environmental-law/article/constitutional-law-ecosystems-and-indigenous-peoples-in-colombia-biocultural-rights-and-legal-subjects/43A29974BD5A3E948AB0461003627951

6. Margil, Bangladesh Supreme Court Upholds Rights of Rivers, Aug 24, 2020 https://mari-margil.medium.com/bangladesh-supreme-court-upholds-rights-of-rivers

7. James, How the over-tapped Colorado River reached its current dire state, Los Angeles Times, February 10, 2023. https://www.latimes.com/california/newsletter/2023-02-10/essential-california-colorado-river-water-crisis-essential-california

8. Why is America running out of water? National Geographic, August 12, 2020. https://www.nationalgeographic.com/science/article/partner-content-americas-looming-water-crisis#:~:text=Groundwater%20is%20being%20pumped%20faster,water%20in%20just%20four%20years.

9. Chechnya, Tampa Bay Times, Section A, Page 1, 15 February 2023.

10. https://myfwc.com/research/habitat/seagrasses/information/importance/#:~:text=Seagrasses%20perform%20numerous%20functions%3A,Maintaining%20water%20quality

11. Florida Right to Clean Water Initiative (2022) https://ballotpedia.org/Florida_Right_to_Clean_Water_Initiative

12. (a) Every Floridian has a right to clean water. (b) The Everglades, Florida Springs, the Indian River Lagoon, the St. Johns River, the Caloosahatchee River, the Suwannee River, the Santa Fe River, Apalachicola Bay, Biscayne Bay, Tampa Bay, Pensacola Bay and all other Florida waters have a right to clean water, and that right shall include the rights of those waters to exist, flow, be free from pollution, and maintain a healthy ecosystem. (c) Any resident, nongovernmental organization, or government entity of this state shall have standing to enforce and defend the rights secured by this section in any court possessing proper jurisdiction. (d) Waters may enforce and defend the rights secured by this Section through an action brought by any resident, nongovernmental organization, or government entity of this state pursuant to (c), in any court possessing proper jurisdiction, in the name of the waters as the real party in interest. Damages awarded under this section shall be measured by the cost of fully restoring the waters to their pre-damaged state, and shall be paid to an appropriate governmental or nongovernmental entity, as designated by the court, to be used exclusively for the full restoration of the waters. (e) The rights secured in this section shall not be interpreted to confer liabilities, duties, obligations, or responsibilities on waters. (f) Any Florida county, city, and town may enact local laws providing additional protections for clean water provided that those local laws do not establish standards and requirements that are lower or less stringent than those imposed by this Section or by state law. (g) Local laws adopted pursuant to subsection (f) of this section shall not be subject to preemption by state law. (h) The provisions of this section shall not apply to constructed wetlands, which means a non-natural pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality. (i) To the extent that any provision of this amendment is deemed by a court to impermissibly conflict with federal law, such provision shall be severable and all other provisions shall remain fully enforceable. (j) Definitions. (1) "Clean Water" shall mean waters free of the non-natural presence of any one or more substances, contaminants, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoors recreation. CONSTITUTIONAL AMENDMENT FULL TEXT Initiative Information Date Approved_____05/20/2021_____ Serial Number_____21-03_____ Sponsor Name: FL5.org Sponsor Address: 555 Winderley Place, Suite 300 Maitland, FL 32751 Page 2 of 2 (2) "Flow" shall mean the steady and continuous movement of waters, the diminishment of which would be significantly harmful to the water resources or ecology of a particular area. (3) "Waters" shall mean all rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters, as well as all coastal waters within the jurisdiction of the state. (k) This section is self-executing and shall take effect immediately upon the passage of this amendment by the voters.

13. Press Release: First in the U.S.: "Rights of Nature" State Constitutional Amendment Filed in Florida to Protect Waterways https://www.centerforenvironmentalrights.org/news/first-in-the-us-rights-of-nature-state-constitutional-amendment-filed-in-florida-to-protect-waterways

14. Press Release, supra

15. Wickstrom, The Right to Clean and Healthy Water, Florida Sportsman, February 2023, p10.

16. Wickstrom, supra

17. Van Hoose, a Watershed Moment, Florida Sportsman, February, 2023, p24

18. Press Release, supra

19. Bonasia, Court case highlights strengths of clean water amendment, Ft. Myers New Press reprinted in Yahoo! News January 8, 2023 https://news.yahoo.com/court-case-highlights-strengths-clean-110230161.html

20. Bonasia, supra

21. Wyland, Dem lawmakers plan to push for Green Amendment again during session, The Santa Fe New Mexican, January 10, 2023 https://www.yahoo.com/lifestyle/dem-lawmakers-plan-push-green-05010082.html

Florida State University College of Law Fall 2023 Update

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

Erin Ryan, Associate Dean for Environmental Programs

In what we hope will not become an annual tradition, we saluted the new semester with a near direct hit by Hurricane Idalia. Though Tallahassee was merely grazed, the increasing force of storms like Idalia, together with worldwide incidents of record flooding—including Greece, Libya, China, Brazil, Myanmar, and major metropolitan centers throughout the United States—speaks to the important roles we are training students to play in working to mitigate natural disasters through wise energy and environmental policy, and to redesign communities for greater resilience and adaptation. On this latter point, we are proud to celebrate the new $1 million grant that the CDC awarded to an FSU team including our own Professor Tisha Holmes to help communities build resilience to health threats emerging as a result of climate change.

I am also thrilled to welcome the newest member of our faculty team, Brian Slocum, who joined FSU as the Stearns Weaver Miller Professor this fall after a distinguished early career at the University of the Pacific McGeorge School of Law. Professor Slocum joins our slate of administrative law scholars, with a specialization in legal interpretation. He is the author of "Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation" (University of Chicago Press, 2015) and many other works exploring the linguistics and philosophy of legal meaning, a subject of increasing importance to environmental law. Professor Slocum will share his expertise with our students in teaching Administrative Law, one of the core courses of the FSU Environmental Certificate Program. Finally, don't miss our excellent line up of upcoming scholarly events this academic year.

Shi-Ling Hsu, D'Alemberte Professor

Faculty Scholarship and News

Recruiting Capitalism for Environmental Protection, in CAN DEMOCRACY AND CAPITALISM BE RECONCILED? (Milkis, S. and S. Miller, eds, forthcoming 2024).

Western Water Rights in a 4ºC Future, in ADAPTING TO HIGH-LEVEL WARMING: EQUITY, GOVERNANCE, AND LAW (Craig, R., J. Salzman & J.B. Ruhl, eds., forthcoming 2023) (with Kevin Lynch and Karrigan Bork).

Non-market Values in the Draft Update of Circular A-4, Yale J. Reg. Notice & Comment (2023).

On Electric Vehicles and Environmental Policies for Innovation (a Review of John Graham's The Global Rise of the Modern Plug-in Electric Vehicle), 14 Hastings Sci. & Tech L.J 231 (2023).

Climate Insecurity, 2023 Utah L. Rev. 129 (2023).

Erin Ryan, Elizabeth C. & Clyde W. Atkinson Professor

Sackett vs. EPA and the Regulatory, Property, and Human Rights Based Strategies for Protecting American Waterways, 74 Case Western Res. L. Rev. (2023).

Privatization, Public Commons, and the Takingsification of Environmental Law, 171 U. Penn. L. Rev. 617 (2023).

How the Successes and Failures of the Clean Water Act Fueled the Rise of the Public Trust Doctrine and Rights of Nature Movement, 73 Case Western Res. L. Rev. 475 (2022).

Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement, 42 Cardozo L. Rev. 2447 (2021) (with Holly Curry & Hayes Rule).

The Twin Environmental Law Problems of Preemption and Political Scale, in Environmental Law, Disrupted (Keith Hirokawa & Jessica Owley, eds., 2021).

Mark Seidenfeld, Patricia A. Dore Professor of Administrative Law

Rethinking the Good Cause Exception to Notice and Comment Rulemaking in Light of Interim Final Rules, 75 Admin. L. Rev. __ (forthcoming 2023).

2022 Allen L. Poucher Lecture: The Implications of West Virginia v. EPA on the Administrative State, 74 Fla. L. Rev. For.(forthcoming 2023) (with Jessica Owley & Nathan Richardson).

The Limits of Deliberation about the Public's Values: Reviewing Blake Emerson, The Public's Law: Origins and Architecture of Progressive Democracy, 119 Mich. L. Rev. 1111 (2021) (Book Review).

Textualism's Theoretical Bankruptcy and Its Implications for Statutory Interpretation, 100 B.U. L. Rev. 1817 (2020).

The Bounds of Congress's Spending Power, 61 Ariz. L.

REV. 1 (2019).

Brian Slocum, Stearns Weaver Miller Professor

Major Questions, Common Sense? (with Kevin Tobia & Daniel Walters) , __ S. CAL. L. REV. (forthcoming 2023)

The Linguistic and Substantive Canons, __ HARV. L. REV. For. __ (forthcoming 2023) (with Kevin Tobia).

Textualism's Defining Moment, 123 *Colum. L. Rev.* __ (forthcoming 2023) (with Willian N. Eskridge Jr. & Kevin Tobia).

Ordinary Meaning and Ordinary People, 171 U. PENN. L. REV. 365 (2023) (with Kevin Tobia & Victoria Nourse).

Unmasking Textualism: Linguistic Misunderstanding in the Transit Mask Order Case and Beyond, 122 COLUM. L. REV. For. 192 (2022) (with Stefan Th. Gries, Michael Kranzlein, Nathan Schneider & Kevin Tobia).

Tisha Holmes, Courtesy Professor of Law, Assistant Professor, Deparment of Urband & Regional Planning

Grants:

Uejio, C., Holmes, TJ., and Powell, E. 2023-2025. Center for Disease Control and Prevention. Building Resilience Against Climate Effects Program. Award: $1 million.

Fang, L. and Holmes, TJ. 2023-2024. Transfer of Development Rights Program for Managed Coastal Retreat: Conceptual Design and Practical Applications. FSU Council on Research and Creativity. Award: $9,940.

Articles:

Evaluating public health strategies for climate adaptation: Challenges and opportunities from the climate ready states and cities initiative. PLOS Clim 2(3): e0000102 (2023) (with Joseph HA, Mallen E, McLaughlin M, Grossman E, Locklear A, et al.).

Spatial disparities in air conditioning ownership in Florida, United States, J. of Maps, 19: (2023) (with Yoonjung Ahn, Christopher K. Uejio, Sandy Wong, and Emily Powell).

What's Slowing Progress on Climate Change Adaptation?: *Evaluating Barriers to Planning for Sea Level Rise in Florida*, Mitigation & Adaptation Strategies for Global Change (in press) (with Milordis, A., and Butler, W.).

Can Florida's Coast Survive Its Reliance on Development? Fiscal Vulnerability and Funding Woes under Sea Level Rise. J. of Am. Planning Assoc. (in press) (with Shi, L., Butler, W., et al.).

continued...

Tricia Ann Matthews

Rural Communities Challenges and ResilientSEE: Case Studies from Disasters in Florida, Puerto Rico, and North Carolina, 7 Soc. Sci. & Human. Open (2023) (with Ivis Garcia Zambrana and Shaleen Miller).

Professor of Legal Writing Tricia Matthews teaches Animal Law and advises our award winning student chapter of the Animal Legal Defense Fund, which was recently elected as a national chapter of the year for a second consecutive year by the Animal Legal Defense Fund. In August, Professor Matthews participated in a speaker's panel in this year on "Non-Human Laws: Animal Rights and Animal Welfare – What is the Difference Between the Two Again?" This event was part of Tallahassee Women Lawyers (TWL) CLE Events.

Additionally, as discussed below, two of Professor Matthews recent students won hororable mention in the Eleventh Annual Animal Law Writing Competition for papers written in Professor Matthews upper level writing class, Animal Law.

Upcoming Events: Fall 2023 Distinguished lecture

Michael Gerrard

On November 9, the Center proudly welcomes our Fall 2023 Distinguished Lecturer, Michael Gerrard. Professor Gerrard is the Andrew Sabin Professor of Professional Practice at Columbia University, and the faculty director of the groundbreaking Sabin Center for Climate Change Law. A widely respected expert on climate law and policy, Professor Gerrard's lecture will focus on his upcoming article, Urban Flooding: Legal Tools to Address a Growing Crisis, which will be featured in FSU Law's Journal of Land Use and Environmental Law.

As Professor Gerrard will discuss, climate change is making extreme precipitation events more intense and frequent in many parts of the world. This has led to damaging and often life-threatening flooding in many cities. Urban drainage systems were designed to accommodate rainfall patterns that no longer exist. A host of actions are required to help cities cope with the flooding that is now happening and that will become more severe in the decades to come: improved drainage systems; more "green infrastructure" to allow stormwater to infiltrate the soil; systems to store water temporarily; barriers to hold back water; elevating and otherwise redesigning buildings so that critical elements are above flood levels; and relocation of some uses away from vulnerable areas. His lecture will explore the legal issues that arise with each of these types of actions, discuss how they can be financed, and make

recommendations for legal reforms. It also will consider the difficult task of setting priorities and making tradeoffs among potential actions.

Professor Gerrard's lecture will be held November 9 from 3:30-4:30 p.m. in the FSU Law Rotunda, with a reception to follow.

Matthew Dietz on Emotional Support Animals

On November 1, the Center will welcome Matthew Dietz, a member of the Executive Council of the Florida Bar Animal Law Section, to deliver his talk -

Emotional Support Animals - Benefits, Liabilities and Fraud in the Use of Human/Animal Interaction to Address the Effects of a Disability. Dietz's talk will be hosted on Zoom, with a link to be sent out shortly, and all are invited to attend.

Matthew Dietz

RECENT EVENTS
Hurricanes and Climate Change

On October 4, The Center hosted Dr. Allison Wing, the Werner A. and Shirley B. Baum Professor in the Department of Earth, Ocean, & Atmospheric Science at Florida State University, for a guest lecture on what we know (and what we don't know) about the influence of climate warming on hurricanes. Her talk, attended by a live and online audience, covered what changes to hurricanes have already occurred as a result of climate change, what can we expect in the future.

Two Recent Grads And One Current Sudent Awarded for Articles

Catherine Awasthi

Fall 2022 graduate Catherine Awasthi's paper, *Staving Off Starvation: How Florida's Invasive Plants Could Sustain the State's Marine Mammals*, won Second Place in the Eleventh Annual Animal Law Writing Competition, sponsored by the Florida Bar Animal Law Section and Pets Ad Litem. Awasthi was awarded $1,000, and her article will appear in an upcoming APA-PLD newsletter.

Awasthi is currently working as an Assistant District Counsel for the U.S. Army Corps of Engineers in the Jacksonsville District, which she joined through the Chief Counsel's Honors Attorney Program in March 2023.

Two other FSU students also were honored in the competition. Spring 2023 graduate Mackie Taranto's paper, *Florida's Sea Turtle Strife: Changing the ESA and Florida Law to Include Climate Change*, received an Honorable Mention.

Laura Moore

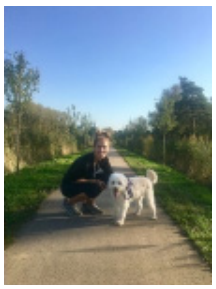
Current LLM student Laura Moore was also awarded an Honorable Mention for her paper, *Legitimizing Humane Labels: How a Dedicated Federal Certification Program Will Clarify and Consolidate Livestock Welfare Standards.*

Both Taranto and Moore wrote their articles for Professor Patricia Matthews' Animal Law class. For their achievements, Taranto and Moore were each awarded a cash prize of $100 and a Certificate of Achievement.

Student Organization Spotlight

We are proud to introduce the 2023-2024 Board members of FSU Law's Journal of Land Use and Environmental Law.

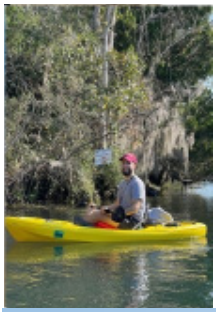
Lindsay Peterson (Editor-in-Chief) is a 3L who has always been fascinated by the interaction between humans and the natural environment. After graduation, she will be practicing real estate law in Tampa, Florida, and plans to pursue pro-bono opportunities in the fields of environmental and animal law.



Hilary Porter (Articles Editor) is a 3L who has been following the Environmental Law Certificate Program during school. After graduation, she will be joining a Tallahassee-based firm focused on regulatory and administrative law.

Andrew Lanza (Executive Editor) is a 3L and currently works at the Florida Department of Environmental Protection's Office of General Counsel. His role there is to assist the Department's litigation attorneys with his research and writing so they can better enforce Florida's environmental statutes against violators.

Ashley Landwerlen (Administrative Editor) is a 3L interested in working in global ocean policy. She hopes to leverage her law degree and professional experience working with marine mammals to advance ocean conservation and strengthen legal protections for wild and captive wildlife. And finally,



Justin Montoto (Executive Editor) is a 3L interested in the intersection between climate change, water rights, and policy.

Alumni Spotlight

Ahjond Garmestani, JD (Class of '01), PhD, a Research Scientist at the U.S. Environmental Protection Agency, Office of Research and Development, has continued to work on important, transdisciplinary studies and articles on climate change, sustainable development, and adaptive governance. In addition to his role at EPA, Garmestani is also a Fellow at the Utrecht Centre for Water, Oceans and Sustainability Law, Utrecht University School of Law, The Netherlands; Associated Faculty in the Department of Environmental Sciences at Emory University in Atlanta, Georgia; and an Adjunct Professor and Fellow at the University of Nebraska in Lincoln, Nebraska.

Garmestani's recent publications include:

Global change scenarios in coastal deltas and their sustainable development implications. Global Envtl. Change 82: 102736 (2023) (with Scown, M.W., F.E. Dunn, S.C. Dekker, D.P. van Vuuren, S. Karabil, E.H. Sutanudjaja, M.J. Santos, P. Minderhoud, and H. Middelkoop).

How resilience is framed matters for governance of coastal social-ecological systems. Envtl. Pol'y and Governance (2023) (with Clement, S., J. Jozaei, M. Mitchell, and C.R. Allen).

Towards a global sustainable development agenda built on social-ecological resilience. Global Sustainability 6, e8, 1-14 (2023) (with Scown, M.W., R.K. Craig, C.R. Allen, L. Gunderson, D.G. Angeler, and J.H. Garcia).

Adaptive governance of river deltas under accelerating environmental change. Utrecht L. Rev. 18: 30-50 (2022) (with Paauw, M., M. Scown, A. Triyanti, and H. Du).

Social vulnerability, social-ecological resilience and coastal governance. Global Sustainability 5, e12, 1-9 (2022) (with Jozaei, J., W. Chuang, and C.R. Allen).

Katherine Hupp Joins Lewis, Longman & Walker

West Palm Beach, Fla., – Florida law firm Lewis, Longman & Walker, P.A. is excited to announce Katherine Hupp has joined the firm as an associate in its West Palm Beach office.

Katherine is an excellent addition to the firm as it continues to expand its environmental and land use law practice in Florida.

After previously serving as a law clerk in LLW's Tallahassee office, Katherine obtained the role of Assistant General Counsel at the St. Johns River Water Management District where she supported District staff by providing legal advice regarding the interpretation and application of relevant law and policy to the District's permitting, water supply planning, and regulatory enforcement programs. Katherine also assisted in defending District permitting decisions in administrative proceedings and state court, and reviewed conservation easements, deed restrictions, and financial assurance instruments.

Katherine is an active member of the following Florida Bar Sections: Environmental and Land Use Law (ELULS), Administrative Law, Appellate Practice, and Young Lawyers. She is a member of the ELULS Executive Council and is Co-Chair of the Social Media and Technology Committee. Within the ABA's Section of Environment, Energy and Resources, Katherine serves as Co-Vice Chair of Written Content for the Oceans and Coasts Committee.

Katherine earned her Juris Doctor, magna cum laude, along with her Environmental Law Certificate, with Highest Honors, from Florida State University College of Law. She received a Master's Degree in Public Administration with a concentration in Environmental Policy, Management, and Law from the University of Colorado, and a Bachelor of Arts in Political Science from the University of North Florida.She can be reached at khupp@llw-law.com or at 561-640-0820.

ELULS

- consistency requirements.
- In 1986, the Florida Legislature introduced concurrency into the growth management scheme.
- In 1995, the Legislature adopted the Bert J. Harris, Jr. Private Property Rights Protection Act.
- And in 2011, the Legislature substantially changed growth management in Florida through the adoption of the Community Planning Act (Chapter 2011-139, Laws of Florida). The Community Planning Act significantly modified the process for review of comprehensive plans and plan amendments, allowing plans to proceed through the expedited review process.

Certainly, the maturation of growth management law in Florida includes many more laws, amendments, rules, cases, and therefore nuance; these are the high points that lead to the Community Planning Act. The Community Planning Act made significant changes to Florida's previous growth management scheme by greatly reducing the State's oversight role. If there is a theme for the Community Planning Act, it is the return of authority over comprehensive planning to local governments. This policy decision has shaped development and growth in Florida since.

Some of the changes since 2011 include additional changes of state oversight of local government comprehensive plans, the elimination of certain concurrency requirements, and the reduction of state review of local government development orders. The state's review role now focuses on the protection of "important state resources and facilities."

The impact of the Community Planning Act has been widely debated and discussed. And as Florida continues to be a magnet for growth, so will the need for growth management.

Florida's Beaches and Coastline[6]

In early 2015, I was asked by Paula Cobbs, the then-Deputy Secretary over Regulatory Programs at the Florida Department of Environmental Protection ("Department"), to lead the Division of Water Resource Management ("DWRM"). At that time, DWRM included the beaches programs: Coastal Construction Control Line ("CCCL"); Beaches, Inlets and Ports Program ("BIPP"); and (for support) the Engineering, Hydrology and Geology section. Prior to joining the Department in 2013, my experience had been in water and wastewater, so the Department's beach regulations were new to me.

Prior to formally taking over, I started "showing up" more often in the DWRM Director's office and asking more pointed questions during meetings with DWRM staff. (I was Deputy General Counsel "over programs," so, my presence was not totally out of the norm.) I recall one meeting specifically where I was playing devil's advocate and asked then-Director Mark Thomasson and then-CCCL Program Administrator, Tony McNeal, why I couldn't build my property way out near the water, in front of the frontal dune, if I were willing to assume the risk. While their responses were well-thought out and considered (they might have started to suspect my appointment to Director was on the horizon), their eyes said it all—"This guy doesn't get it." In any event, Tony and Mark explained the coastal dynamics of my hypothetical and how it would destroy the dune system behind the house, resulting in the potential damage or destruction of the property immediately behind the dune system, including any public infrastructure behind the dune system.

That conversation really emphasized to me the importance of the Department's role in regulating our coastline. First, through its CCCL program, the Department balances the rights of property owners with the protection our dune system provides to everything behind the dune system. Second, through the issuance of Joint Coastal Permits ("JCPs") by BIPP. It is through JCPs that our beaches are renourished, which, in addition to adding sand for all of the domestic and international tourists enjoying Florida's beaches, adds sand to provide storm protection, like the dune system, for Florida's critical infrastructure. While the regulations governing coastal systems can seem harsh to the applicant at times, these regulations are in place for the benefit of all Floridians. And, the Department's staff does an exceptional job protecting our natural resources, our infrastructure and working with permit applicants.

Sea Level Rise[7]

Sea levels in Florida have risen up to eight inches since 1950. *See* National Oceanic Atmospheric Administration, *Tides and Currents – 8724580 Key West, FL*, https://tidesandcurrents.noaa.gov/waterlevels.html?id=8724580&units=standard&bdate=19500101&edate=20171231&timezone=GMT&datum=MSL&interval=m&action=data (last checked August 6, 2023). Due to numerous human and environmental factors debated by scientists, the rate of sea level rise has accelerated over the last decade in particular, in some locations as much as one inch every three years. *See id*. Different local governments have taken different approaches to account for this new frightening reality, with many communities focusing on adaption, *see, e.g.*, Broward County Land Use Policy 2.21.7 (adopted January 7, 2020); *see also* Broward County Ordinance 2020-11 (adopted March 31, 2020) (codified as Ch. 39, Art. XXV, Code of Ordinances, Broward County, FL), and some even considering retreating from vulnerable areas, *see, e.g.,* Ron Brackett, *In Florida Keys, Not Every Home and Road*

Can Be Saved From Sea Level Rise, Officials Warn, The Weather Channel (December 9, 2019), https://weather.com/science/environment/news/2019-12-09-monroe-county-florida-keys-sea-level-rise-costs. As local governments struggle with these decisions, potential tort and takings claims loom in the background. *See Jordan et. al. v. St. John's Cnty.*, 63 So. 3d 835 (Fla. 5th DCA 2011).

Finally, around 2020, the Legislature began aggressively addressing SLR. First, the Legislature required public agencies using State funds to build in the coastal zone to first perform sea level rise impact projection (SLIP) studies. *See* Ch. 2020-119, Laws of Fla. (codified at "§ 161.155, Fla. Stat.); *see also* Fla. Admin. Code ch. 62-7 (adopted July 1, 2021). Then it adopted a series of laws providing unprecedented levels of State funding for planning and implementation resiliency projects. *See* Ch. 2021-28, Laws of Fla. (codified at Fla. Stat.§§ 380.093, 380.0933); Ch. 2021-29, Laws of Fla. (codified at § 380.0935, Fla. Stat.); Ch. 2021-39, Laws of Fla. (codified at Fla. Stat.§ 201.15(4)(g); *see also* Fla. Admin. code ch. 62S-8 (adopted August 22, 2022). Notably, this Legislation requires local governments to perform vulnerability assessments with very specific criteria outlined in sections 380.093(3)(c) and (d), Florida Statutes, to be eligible for implementation project funding. *See* § 380.093(5), Fla. Stat. The State awarded $400 million in implementation grants in State Fiscal Year 2021-2022, see Office of the Governor, *Governor Ron DeSantis Announces Award of More Than $404 Million for 113 Projects Through the Resilient Florida Grant Program* (February 1, 2022), https://www.flgov.com/2022/02/01/governor-ron-desantis-announces-award-of-more-than-404-million-for-113-projects-through-the-resilient-florida-grant-program/, and $275 million in Fiscal Year 2022-2023, *see* Office of the Governor, *Governor Ron DeSantis Announces Award of More than $275 Million through the Resilient Florida Grant Program*, (February 6, 2023). https://www.flgov.com/2023/02/06/governor-ron-desantis-announces-award-of-more-than-275-million-through-the-resilient-florida-grant-program/. Most recently, the Legislature created the Statewide Office of Resilience within the Office of the Governor for the purpose of "reviewing all flood resilience and mitigation activities in the state and coordinating flood resilience and mitigation efforts with federal, state, and local governmental entities and other stakeholders." *See* Ch. 2022-89, Laws of Fla. (codified at §§ 14.2031, 339.157 Fla. Stat.). This new office is currently led by Chief Resiliency Officer Wesley Brooks.

Submerged Lands[8]

Like other states, "sovereign submerged lands" (SSL) vested in the State of Florida when it joined the Union. *See Geiger v. Filor*, 8 Fla. 325, 338 (Fla. 1859). In the case of Florida, that occurred in 1845. SSL are those that underly "navigable waters," which are (paraphrasing) waters that, in 1845, were permanent in character in their ordinary and natural state that were used or capable of being used as a highway for commerce a sufficient capacity of the year by the people in the locality where the waterbody is located. *See Odom v. Deltona Corp.*, 341 So. 2d 977 (Fla. 1976). For many years, Florida encouraged development in SSL. Under the Riparian Act, Ch. 1856-25 Laws of Fla. Laws (repealed 1921), and Bulkhead Act, Ch. 1921-332 Laws of Fla. (repealed 1957), upland ("riparian") owners could extend their fee ownership as far as they filled into SSL. Ultimately, the significant environmental impacts of so much unregulated filling becoming apparent, causing the Legislature to repeal the Butler Act via the Bulkhead Act, Ch. 1957-806, Laws of Fla. Under the Bulkhead Act (and current Florida law) riparian owners may only extend their fee ownership into SSL after passing a rigorous public interest test; further, filling can only be done up to a "bulkhead line" approved by FDEP. *See* § 253.12(2), Fla. Stat.

With all that said, fee ownership in SSL is not required for filling or otherwise modifying it. Several activities presenting *de minimis* impacts are exempt altogether, such as mangrove trimming. *See* Fla. Admin. Code R. 18-21.005(1)(a)5. Similarly, many activities receive "consent by rule"—most notably many smaller single-family docks. *See* Fla. Admin. Code R. 18-21.005(1)(b); *see also* § 403.813(1)(b), Fla. Stat. Conversely, larger single-family docks and other activities presenting material impacts require a letter of consent. *See* Fla. Admin. Code R. 18-21.005(1)(c)1, 2. Finally, commercial structures and operations (marinas, mooring fields, mining ventures) generally require a lease, *see* Fla. Admin. Code R. 18-21.005(1)(d)1, 2, 3, 4, 8, 9, while significant public works (bridges, groins, oil/gas pipelines) require an easement. *See* Fla. Admin. Code R. 18-21.005(1)(e), 2, 6. However, while SSL remain subject to significant private use today, the State's regulatory scheme nevertheless preserves the public trust doctrine over SSL, which is set forth in the Common Law Florida Constitution. *See* Fla. Const. art. X, § 11; *Walton County v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102, 1109 (Fla. 2008). The public trust doctrine guarantees that the public will continue to be able to access, navigate, fish, and bathe in navigable waters—notwithstanding surrounding private uses. *See Coastal Petroleum Co. v. Am. Cyanamid Co.*, 492 So. 2d. 339, 343 (Fla. 1986).

Mangroves[9]

Before 1984, the regulation of mangroves was left solely to local governments. Post-1984, the State

adopted a series of rules that were poorly received by the regulated community. *See* Fla. Admin. Code ch. 17-27 (adopted May 21, 1985). In 1995, the Legislature passed the first comprehensive State law—the Mangrove Trimming and Preservation Act—preempting local governments in the process. *See* Ch. 95-299, Laws of Fla. A series of 1996 Amendments (Ch. 96-206, Laws of Fla.) returned some power to local governments, *see e.g.*, § 403.9324(6), Fla. Stat. (authorizing stricter permitting standards), but only after receiving delegation from FDEP to enforce the State Act. *See id.*; *see also Town of Jupiter v. Byrd Family Trust*, 134 So. 3d 1098 (Fla. 4th DCA 2014) (holding that the Legislature preempted the Town from regulating mangrove trimming/alteration unless it receives delegation). To date, only seven such local governments have received such delegation: Miami-Dade, Broward, Hillsborough, Pinellas, and Sarasota Counties, as well as the Town of Jupiter Island and City of Sanibel. *See* Florida Department of Environmental Protection, *Mangrove Trimming – Delegated Local Governments*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mangrove-trimming-delegated-local (last updated May 31, 2023).

The State Act distinguishes between mangrove "trimming" and "alteration." Basically, "alteration" means "removing, defoliating, or destroying" mangroves, whereas "trimming" constitutes everything else. *See* § 403.9325(1), (8), Fla. Stat. Alteration requires a permit that may only be granted after certain criteria like that required for an individual ERP are satisfied; if the criteria cannot be satisfied, alternatives (first) and mitigation (second) must be considered. *See* § 403.9328(2), Fla. Stat. Trimming may be performed via (State) general permit, so long as a professional mangrove trimmer ensures that certain height, area, and width requirements are adhered to. *See* § 403.9327(1)(a), Fla. Stat. Notably, riparian owners do not need to hire a PMT—or even obtain a permit—to trim the "riparian mangrove fringe" affronting their property. *See* §403.9326(1)(a)-(c), Fla. Stat. (setting forth the different "riparian mangrove fringe" exemptions); § 403.9325(7), Fla. Stat. (defining "riparian mangrove fringe"). The "riparian mangrove fringe" exemption is a topic for much longer article.

Threats to Wildlife and Habitat[10]

Florida is now the third most populous state in the country, and we are seeing 1,000 people moving here every day. We now have 22 million permanent Floridians. In 2022, 137.6 million people visited Florida, making it one of the most visited tourist destinations on the planet. The Sunshine State has never been more popular for both new residents and tourists alike, but it's this popularity that might be driving some of the greatest threats to our wild ecosystems and animals.

People come to Florida because of its special environment. We have beautiful weather, unrivalled water that includes beaches, lagoons, rivers, and the ocean. We have teeming inland wilderness ranging from forests to swamps to the iconic Everglades. People are coming here to enjoy the wild beauty that makes Florida unlike any other state in the country.

But the fact is, we are loving Florida too much. Without commonsense approaches to development and population growth, we run the risk of jeopardizing the ecosystems that drive our Floridian economy and that underpin our Floridian identity. More people bring more stressors to our wastewater infrastructure, to our aquifer demands, and to our land use requirements. More people mean more highways that slice and dice our wildlife corridors and interfere with wildlife migration patterns, more boats that tear across our seagrass flats and our reefs, and more consumers of our natural resources including fisheries.

We Floridians want to perpetuate the beauty and magic of Florida forever, but we can't do that without enacting smart policies and legislation that conserve and protect our water and sensitive lands while striking a delicate balance that maintains the fire in Florida's roaring economic engine. We are smart enough to do this, and we have smart people working on this, but it is incumbent on all Floridians and all of those who visit Florida to make investments in conservation a #1 priority in the Sunshine State.

Vacation Rentals[11]

Vacation rentals continue to proliferate and thrive throughout Florida. While they provide needed tourist housing and micro-level investment opportunities, they are also creating headaches (and nightmares) for many local communities. This is particularly so for Florida's communities that contend with shortages of permanent, workforce, or affordable housing for their residents. The continued conversion of such housing units to vacation rental use is increasingly a critical issue for many communities, including those in the Florida Keys where I practice. These conversions exacerbate the problem of workforce/affordable housing, limiting the ability of essential service providers to live in the communities where they work, and creating transportation congestion and challenges that are difficult if not impossible to overcome for workers and employers. Vacation rentals can also become a nuisance in many residential neighborhoods where they are located due to overcrowding of units, increased noise, parking congestion, and trash generation. In the Florida Keys, problems with vacation rentals are

routinely the subject of complaints to code compliance departments and horror stories of living next to vacation rental "party houses" abound throughout the State.

Peer-to-peer short-term rentals have been around for nearly thirty years since the Vacation Rental By Owners ("VRBO") platform was launched in 1995. A renewed interest in short-term vacation rentals occurred in 2008 with the launch of the AirBnB platform. At the time, such rentals were illegal in many cities, towns, villages, and counties in Florida. Florida responded by passing preemption legislation in 2011 that prevented local governments from enacting any new law, ordinance or regulation that: (a) restricted the use of vacation rentals; (b) prohibited vacation rentals; or (c) regulated vacation rentals based solely on their classification, use, or occupancy.[12] The 2011 preemption legislation "grandfathered" any local law, ordinance, or regulation of vacation rentals enacted on or prior to June 1, 2011. The vacation rental market experienced growth subsequent to the 2011 legislation.[13]

In 2014, the Legislature narrowed the scope of its preemption to preempt only those regulations that prohibit vacation rentals or regulate their duration or frequency. The grandfather provision for regulations adopted on or before June 1, 2011, was retained. Section 509.032(7)(b), Florida Statutes, now states: "A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." Local governments thus can regulate vacation rentals to minimize their adverse community impacts to the extent those regulations do not prohibit or restrict the duration or frequency of vacation rentals. In Florida, vacation rentals are also subject to registration with and payment of sales taxes to the Florida Department of Revenue. In addition to state tax registration, Florida also requires vacation rentals to be licensed through the Department of Business and Professional Regulation.

In my view, the Florida Legislature's preemption of local government vacation rental regulation is misguided. While the retained grandfather provision benefits local governments that adopted regulations prohibiting vacation rentals prior to June 1, 2011, some of these regulations need to be refined or expanded to keep pace with the problems that have come to light the past decade, including use conflicts and rates at which limited permanent housing stocks are being converted to short-term vacation rental use. Their amendment, however, risks their grandfathered status. Unless local governments are given more leeway to prohibit and regulate vacation rentals, many local communities that tourists enjoy visiting will continue to suffer the impacts of vacation rentals until their community character, quality of life, and tourist appeal are no longer the same.

Regulatory Takings[14]

"[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. (the "Takings Clause").

The long history of regulatory takings developed elsewhere. *Pa. Coal Co. v. Mahon*, 260 U.S. 393 (1922) (recognizing that the Takings Clause extended to overly burdensome regulations of property); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (establishing the ad hoc balancing test for regulatory takings); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992) (establishing the rule for "total" takings where the government has deprived a landowner of all economically beneficial uses). The sister "Takings Clause" concept of exactions (permit conditions), likewise developed in other states. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) (holding that a permissible exaction must have an "essential nexus" to the harm caused by the development); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (holding that an exaction must be "roughly proportional" to the harm caused by the development).

But Florida has played a unique and important role in the development of takings jurisprudence. Cases with roots in Florida have established the concept of judicial takings (*Stop the Beach Renourishment v. Fla. Dep't of Env't Prot.,* 560 U.S. 702 (2010)) and expanded unconstitutional exactions to the demand for monetary payment, and even when the government denies the permit. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013). This is a brief summary of those two "Florida-based" seminal cases in takings law.

Judicial Takings—Stop the Beach Renourishment v. Florida Department of Environmental Protection, 560 U.S. 702 (2010).

In 2003, under the 1961 Beach and Shore Preservation Act ("BSPA") the Florida Department of Environmental Protection ("FDEP") filed for an application to dredge sand from a shoal to rebuild a beach in Walton County, Florida. Stop the Beach Renourishment, Inc. ("SBR"), an association of waterfront homeowners, challenged the issuance of the permit and the constitutionality of the BSPA. The Florida First District Court of Appeal rescinded the permit, holding that issuance would have resulted in an unconstitutional taking, and certified a question to the Florida Supreme Court on the constitutionality of the BSPA.

The Supreme Court of Florida held that the BSPA was not unconstitutional, reasoning that it did not deprive land owners of littoral rights without just compensation. Plaintiffs petitioned the United States Supreme Court on the theory that the Florida Supreme Court's rejection of littoral rights as constitutionally protected amounted to a taking without just compensation in violation of the Fifth and Fourteenth Amendments.

The U.S. Supreme Court held 8-0 that the Florida Supreme Court did not take property without just compensation. Justice Antonin Scalia authored the opinion that maintained that there could be no taking because property owners could not show that they had rights to future exposed land and to contact with the water superior to Florida's right to fill in its submerged land.

However, Justice Scalia, with a plurality of the Court noted that "if a court declares that what was once an established right of private property no longer exists, it has taken that property in violation of the Takings Clause." Thus, establishing the concept of Judicial Takings. *Stop the Beach Renourishment Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702 (2010).

Unconstitutional Exactions—Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013).

The legal test for constitutional exactions development in *Nollan* and *Dolan* was expanded by *Koontz*. The courts had previously established that conditions on land-use permits must have an essential nexus to the land use and be roughly proportional to the effects of the proposed land use. The Court expanded this in *Koontz*, holding that this standard applies even when the government does not approve the permit but instead demands that the condition be met before granting the permit.

Coy Koontz applied for a permit from the St. Johns River Water Management District for development of his property. The District agreed to issue the permit if Koontz deeded the remainder of his property (that portion not proposed for development) into a conservation area or pay for additional mitigation activity offsite. The District denied the permit when Koontz did not agree to the mitigation.

The Orange County Circuit Court found that the offsite mitigation amounted to an unconstitutional exaction in violation of the *Nollan/Dolan* test—the mitigation did not have an essential nexus or rough proportionality to the impact of the proposed development. The Florida Supreme Court reversed, holding that the Nollan/Dolan test did not apply because the permit was denied and because the District demanded payment rather than property.

The United States Supreme Court held that the essential nexus and rough proportionality requirements apply to conditional demands even when the permit is denied and when the conditional demand is for money rather than property. By making conditional demands such asking for property or money from an applicant, burden the applicant's property which violates the Constitutional protections against having property taken without just compensation.

Florida has and continues to play an important role in the development of takings jurisprudence.

Regulatory Takings Jurisprudence Going Rogue—*Shands v. City of Marathon*

I have been representing Monroe County in regulatory takings cases for nearly twenty years. In my view, the development of takings jurisprudence in Florida has generally been balanced and tracked developments across the jurisdictional board. However, the Third District's May 3, 2023, decision in in *Shands v. City of Marathon* (No. 3D21-1987) threatens to turn takings jurisprudence on its head and should be alarming to local governments and environmental interests across the State, especially those that rely on a market-based approach to conservation through Transferable Development Rights (TDRs) programs. The decision, which is predominantly based on dissenting opinions and a law review comment by a law student, is radically regressive and adopted some of the Pacific Legal Foundation's more extremist views on property ownership and rights previously rejected by courts. The decision is one for land use practitioners to watch, and may be a sign of things to come from an increasingly conservative and emboldened judiciary in the State.

The Invention of a New Regulatory Taking Category in *Shands v. City of Marathon*

In *Shands*, the panel invented a new form of regulatory taking—a "per se as-applied regulatory taking," or "*Lucas* as-applied claim." No such takings category exists and its very title is a contradiction of terms. The decision conflicts with *Collins v. Monroe County*, 999 So. 2d 709 (Fla. 3rd DCA 2008), which provides an excellent primer on the settled distinctions between a *Lucas* categorical (or "facial" or "per-se") claim that becomes ripe upon the adoption (not application) of the regulation at issue, and an "as-applied" claim that becomes ripe with a final decision and is evaluated under the *Penn Central* three-prong test:

"A facial taking, also known as a per se or categorical taking, occurs when the mere enactment of a regulation precludes all development of the property, and deprives the property owner of all reasonable economic use of the property." *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1017, 112 S.Ct. 2886, 120 L.E.2d 798 (1992); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. 302, 122 S.Ct. 1465, 152 L.E.2d 517 (2002) (holding that the deprivation of economic value

required for a facial takings claim is limited to the extraordinary circumstance when no productive or economically beneficial use of the land is permitted). Anything less than a complete elimination of economically beneficial use or value of the land is not a facial taking. *Lucas*, 505 U.S. at 1019-20 n. 8, 112 S.Ct. 2886; *Taylor v. Village of North Palm Beach*, 659 So.2d 1167, 1170-71 (Fla. 4th DCA 1995 (holding that the standard of proof for a facial taking is whether the regulation at issue has resulted in deprivation of all economic use); *Golf Club of Plantation, Inc. v. City of Plantation*, 717 So.2d 166, 170 (Fla. 4th DCA 1998) (overview of federal takings analysis).. . .

In an as-applied claim, the landowner challenges the regulation in the context of a concrete controversy specifically regarding the impact of the regulation on a particular parcel of property. Taylor, 659 So.2d at 1167. The standard of proof for an as-applied taking is whether there has been a substantial deprivation of economic use or reasonable investment-backed expectations. *See generally Penn Central Transp. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) (considering the economic impact of the regulation on the claimant, the extent to which the regulation has interfered with distinct investment-backed expectations, and the character of the government action; diminution in the property value alone cannot establish a taking); *Taylor,* 659 So.2d at 1167. The question presented is whether the record shows that the Landowners were deprived by the enactment of the 2010 Comprehensive Plan of all economic use of their property, which amounts to a facial taking, or were deprived of substantial use of their property, but left with some economic value, which is an as-applied taking.
Id. at 713-714 (emphasis added). *See also* 21 Fla. Jur 2d Eminent Domain § 67 (citing *Collins* for the proposition that "a facial taking, also known as a per se or categorical taking, occurs when the mere enactment of a regulation precludes all development of the property, and deprives the property owner of all reasonable economic use of the property"); 31 Am. Jur. Proof of Facts 3d 563 (same). In *Collins*, the Court thus recognized that the terms "facial," "per se," and "categorical" are all synonyms for a *Lucas* taking.

The panel opinion's holding that a *Lucas* taking may take the form of a facial or an as-applied claim also conflicts with the holdings of multiple other district courts of appeal. *See Lost Tree Vill. v. City of Vero Beach*, 838 So. 2d 561, 572 (Fla. 4th DCA 2002) (recognizing "the difference between facial or 'per se' takings claims and 'as-applied' or balancing of interest taking claims"); *Manatee Cnty. v. Mandarin Dev., Inc.,* 301 So. 3d 372 (Fla. 2nd 2020) (holding a facial challenge considers only the text of the statute, not its application and citing *Collins* for the proposition that facial, per se, and categorical takings are the same thing); *Town of Ponce Inlet v. Pacetta, LLC,* 226 So. 3d 303, 312 (Fla. 5th DCA 2017) ("A regulatory taking can be either total or partial. In a 'total' or 'per se' taking, the government's regulations effectively deny all economically beneficial use of the property. In a 'partial' or 'as-applied' taking under *Penn Central* [ ], the court must evaluate: (1) the economic impact of the regulation on [the property owner]; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of governmental action."); *Ocean Palm Golf Club P'ship v. City of Flagler Beach,* 139 So. 3d 463 (Fla. 5th DCA 2014) (affirming trial court's holding that a total taking under *Lucas* did not occur, and stating "[t]he standard for evaluating as-applied claims originates from the Supreme Court's decision in *Penn Central* [ ]."). Monroe County filed an amicus brief in support of the City of Marathon's pending motion for rehearing because if not corrected, the *Shands* decision will have major and deleterious repercussions for planning and natural resource protection at all levels of government, but the impact will be felt more harshly at the local level where fiscal budgets and the opportunity to offset takings judgments among a taxpayer base are more constrained. As recognized in *Collins*, the distinction between per se and as-applied taking claims is consequential because "each raises different ripeness and statute of limitations issues," and the claims are evaluated differently. 999 So.2d at 713. In creating the hybrid "per se as-applied taking," the panel opinion dramatically increases liability exposure by effectively allowing an owner to revive a per se claim that became extinguished four years after the adoption of the regulation at issue by making an application for development that is facially proscribed by the regulation. The decision also allows as-applied claims cast as per se ones to escape evaluation under the factors set forth in *Penn Central Transp. v. City of New York,* 438 U.S. 104 (1978), including analysis of the claimant's investment-backed expectations.

The Rejection of TDR Value and Embrace of a "Traditional Framework of Ownership"

While recognizing that "TDRs have emerged as a popular and effective tool for local governments to promote conservation efforts and urban growth management," the panel's opinion erroneously holds that TDRs are not to be taken into account in determining whether a taking has occurred, even if they infuse the property with fair market value. *Shands*, Case No. 3D21-1987, at *4-6. The panel opinion incorrectly states that the Supreme Court has "yet to clarify [the] conundrum" of whether TDRs are to be considered in determining takings liability. In *Penn Central*, the Supreme Court stated: "[w]hile these rights [TDRs] may well not have constituted 'just compensation' if a 'taking' had occurred, the rights nevertheless undoubtedly mitigate whatever financial burden the law has imposed on appellants and, for that reason, are to be taken into account in considering the impact of regulation." 438 U.S. at 13. *See also City of Hollywood v. Hollywood, Inc.,* 432 So. 2d 1332, 1338 (Fla. 1st DCA 1983) (citing Penn Central and holding that the presence of TDRs limited economic impact of regulation and thus landowner's property had not been taken without just compensation).

The *Shands* court found persuasive Justice Scalia's concurrence in *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, (1997), which in the words of the court observed that "any income associated with TDRs does not flow from the cultivation or development of the property in the traditional framework of ownership. Instead, the potential revenue is generated from the non-use of the property." *Id. In Good v. U.S.,* 39 Fed. Cl. 81 (1997), the court provides a more thorough analysis of TDRs and related decisional authority, holding Monroe County's TDR program was properly considered by the government's appraiser in determining the fair market value as burdened by the complained up regulatory imposition. Good also directly addressed Justice Scalia's concurrence in *Suitum* that "dissented to the portion of the majority opinion that analyzed the question of whether the plaintiff should have to sell her TDRs in order to present a ripe claim." *Id.* at 108. *Good* correctly observed that Justice Scalia's opinion "underscores the Court's reaffirmance of the *Penn Central* holding that the value of TDRs is to be considered to answer the threshold question of whether a taking has occurred." *Id.*

The panel's opinion shifts the focus of the takings inquiry under *Lucas* from market value to whether the property can actively be used for cultivation or development. The focus of a regulatory taking inquiry is market value because "that establishes the existence of residual economically feasible uses." *Pace Res. v. Shrewsbury Twp.,* 808 F.2d 1023, 1031 (3rd Cir. 1987). *See also Lucas*, 506 U.S. at 1006 ("This case requires us to decide whether the Act's dramatic effect on the economic value of Lucas's lots accomplished of private property . . . requiring the payment of 'just compensation.'"); *Id.* at 1033-34 (Kennedy, J. concurring) ("[The lower court's finding] that petitioner's real property has been rendered valueless . . . presume[s] that the property has no significant market value or resale potential."); *Corn v. City of Lauderdale Lakes,* 95 F.3d 1066, 1072-73 (11th Cir. 1996) ("The standard is not whether the landowner has been denied those uses to which he wants to put his land; it is whether the landowner has been denied all or substantially all economically viable use of his land.").

The panel's suggestion that a regulation constitutes a per se taking if it requires property to be left in its natural state directly conflicts with *Graham v. Estuary Props., Inc.,* 399 So. 2d 1374 (Fla. 1981), which held a limitation on the filling of submerged lands did not constitute a taking and agreed that "an owner of land has no absolute and unlimited right to change the essential natural character of land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others." *See also Namon v. State Dept. of Env'l Regulation,* 558 So. 2d 504 (Fla. 3rd DCA 1990) (citing *Graham v. Estuary Props.,* and finding no taking of six-acre tract that could not be developed because of wetlands while observing "the property continues to exist in the state in which appellants have contracted to acquire it" and "a subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property."); *Lucas*, 506 U.S. at 1027 ("This accords, we think, with our 'takings' jurisprudence, which has traditionally been guided by the understanding of our citizens regarding the content of, and the State's power over, the 'bundle of rights' that they acquire when they obtain title to property. It seems to us that the property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers, '[a]s long as recognized, some value are enjoyed under an implied limitation and must yield to the police power.'").

Brownfields Redevelopment Act[16]

Florida's Brownfields Redevelopment Act (the "Act") was enacted in in 1997 and codified at Chapter 376, Florida Statutes to provide incentives for local governments and individuals to voluntarily clean up and redevelop brownfield sites. A brownfield site is defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination."

The primary goals of the Act are to reduce public health and environmental hazards on existing commercial and industrial sites that are abandoned or underused due to these hazards; create financial and regulatory incentives to encourage voluntary cleanup and redevelopment of sites; derive cleanup target levels; create a process for obtaining a "no further action" letter using risk-based corrective action principles; and provide the opportunity for environmental equity and justice.

The Act authorizes the Department of Environmental Protection's ("DEP") Brownfields Redevelopment Program. Participation in the program results in environmental cleanup, protection of public health, reuse of infrastructure, and job creation. For a property to participate in the program, a local government must first designate the site as a brownfield area by resolution.

The local government may then identify a "person responsible for brownfield site rehabilitation," which simply entitles the identified person voluntarily to execute a "brownfield site rehabilitation agreement" with DEP or an approved local program. If actual contamination exists at the site, the person must enter into such an agreement.

Pursuant to the Act, a brownfield site rehabilitation agreement must contain several elements, including a brownfield site rehabilitation schedule; a commitment to conduct site rehabilitation activities in accordance with applicable cleanup criteria; a commitment to implement reasonable pollution prevention measures; and certification that the local government approves of the proposed redevelopment.

Since 1997, Florida has amassed 533 locally designated brownfield areas encompassing approximately 291,679 acres, and resulted in 473 Site Rehabilitation Agreements encompassing 7,692 acres, with 178 site rehabilitation completion orders having been issued.

"In terms of execution, the takeaways are simple – establish a rapport with the lead environmental professional in the DEP District in which you're proceeding. Currently there are six districts under five such professionals (the Southeast and South District are under one).

Assuming you have a complete brownfield site rehabilitation agreement package pursuant to Chapter 62-780, Florida Administrative Code (F.A.C.), advise your clients to build additional time into the process, as it will generally take longer than both you and your client expect.

Finally, acquaint yourself with F.A.C. 62-780-550, "Nonpetroleum De Minimis Discharges", as it may contain alternatives for clients who discover affected contaminants and bring it to your attention timely."

CERCLA[26]

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9675 (2018), (aka Superfund) was enacted in 1980 to address pollution problems at abandoned dumps and waste sites, such as the infamous "Love Canal." The United States Environmental Protection Agency (EPA) administers CERCLA. The legal framework of CERCLA has been followed by many states, including Florida in Chapter 376 of the Florida Statutes. There are approximately 40,000 federal Superfund sites across the country, and about 1,600 of those sites are listed on the National Priorities List (NPL). Florida alone has over 50 Superfund sites on the NPL. Under CERCLA, the USEPA has the responsibility to: (1) conduct removal actions where immediate action needs to be taken to protect public health or negative impact to the environment; (2) to enforce against potentially responsible parties; and (3) to ensure community involvement. The Superfund clean-up process is challenging and sites can take decades to reach final compliance. CERCLA has resulted in much litigation, and the act continues to be interpreted by different courts and administrative agencies.

Conclusion

The past 50 years have been a momentous period for land use and environmental regulation in Florida. The next 50 years will undoubtedly usher in significant changes in the regulatory landscape as Florida and the world responds to increasing threats such as climate change, sea level rise, population increase, and land consumption. ELULS remains committed to build on its history and help practitioners navigate developments in land use and environmental law.

Endnotes

[1] This article was compiled and edited by Derek Howard and Christopher Berg. The reflections and opinions expressed herein are not necessarily those of ELULS, the ELULS Executive Council, or the members that contributed to this article.

[2] Contribution by Derek Howard, Senior Assistant County Attorney with the Monroe County Attorney's Office.

[3] Rest in peace Jimmy Buffett (1946-2023). Your songs allowed an Ohio boy to dream of far-off places. Your early inspiration is why I ended up practicing in the Florida Keys.

[4] The September 2022 issue of the Reporter that helped kick off ELULS's 50th Anniversary reprinted Happy Silver Anniversary that provides additional insight to the Section's birth and formative years.

[5] Contribution by Robert Volpe, a partner at Holtzman Vogel Baran Torchinsky & Josefiak in in Tallahassee.

[6] Contribution by Frederick L. Aschauer, Jr., a shareholder at Lewis, Longman & Walker, PA.

[7] Contribution by Brendan Mackesey, a Senior Assistant County Attorney with the Pinellas County Attorney's Office. He is Board Certified in City, County, and Local Government Law.

[8] Contribution by Brendan Mackesey.

[9] Contribution by Brendan Mackesey.

[10] Contribution by Jon Paul "J.P." Brooker, Director of Florida Conservation and an attorney with Ocean Conservancy, the world's oldest marine conservation non-profit.

[11] Contribution by Derek Howard.

[12] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), Fla. Stat.

[13] Melissa Maynard, As Short-Terms Rentals Boom, Regulation at Issue, The Pew Charitable Trust (June 6, 2013).

[14] Contribution by Robert Volpe.

[15] Contribution by Derek Howard.

[16] Contribution by Stephen L. Conteaguero, an attorney with Nason, Yeager, Gerson, Harris & Fumero, P.A.

[17] Chapter 97-277, Laws of Fla; ss. 376.77-376.85, F.S.; Dep't of Environmental Protection (DEP), Florida Brownfields Redevelopment Program, Annual Report: August 2021 (2021), 3, available at https://floridadep.gov/sites/default/files/Florida_Brownfields_Redevelopment_Program_Annual_Report_August2021.pdf (last visited Jan. 24, 2022).

[18] Section 376.79(4), F.S.

[19] DEP, Brownfields Program, https://floridadep.gov/waste/waste-cleanup/content/brownfields-program (last visited Jan. 24, 2022).

[20] DEP, Florida Brownfields Redevelopment Program, Annual Report: August 2021 (2021), 3, available at https://floridadep.gov/sites/default/files/Florida_Brownfields_Redevelopment_Program_Annual_Report_August2021.pdf (last visited Jan. 24, 2022).

[21] Section 376.80, F.S.; *see also* s. 376.79(5), F.S. (defining a "brownfield area" as a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution).

[22] Section 376.80(2)(d), F.S.; *see also* s. 376.79(15), F.S. (defining the "person responsible for brownfield site rehabilitation" as "the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site"); *see also* DEP, Florida Brownfields Redevelopment Program, Annual Report: August 2021 (2021), 9, available at https://floridadep.gov/sites/default/files/Florida_Brownfields_Redevelopment_Program_ Annual_Report_August2021.pdf (last visited Jan. 24, 2022) (providing that DEP has delegated authority to administer the program to three county governments: Broward, Hillsborough, and Miami-Dade counties).

[23] Section 376.80(5), F.S.

[24] Section 376.80(5), F.S.; see Fla. Admin. Code Ch. 62-780 (containing cleanup criteria requirements that apply to site rehabilitation governed by a brownfield site rehabilitation agreement).

[25] DEP, Florida Brownfields Redevelopment Program, Annual Report: August 2021 (2021), 4-5, available at https://floridadep.gov/sites/default/files/Florida_Brownfields_Redevelopment_Program_Annual_Report_August2021.pdf (last visited Jan. 24, 2022).

[26] Contribution by George F. Gramling, III and Josh Coldiron, both of whom are past Chairs of the ELULS and attorneys with Gramling Environmental Law in Tampa.

[27] Editorial Footnote from ELULS Past-Chair, George F. Gramling, III: Does anyone remember Superfund (aka "Super Fun")? The Super Fun Statute (42 USC 9601 et. seq.,) is one of the United States Congress' biggest, best, most complicated, least well drafted and lawyer friendly pieces of legislative environmental sausage. This gargantuan policy initiative put long fangs into the mouth of "polluter pay" advocates. And why should a polluter (black hat) pay only for the damage IT caused to the environment? Golly Gosh, the United States Supreme Court says its fine to make the Black Hat pay for all of it – his, her's theirs, thou's and its – back to the beginning of time, ad infinitem, World without End. From the perspective of those attorneys who rode on the back of the Super Fun monster since its inception in 1980, the liability landscape looks now looks like a Game of Thrones battlefield, or, changing the metaphor, like a tar baby to which is stuck all manner of potentially responsible parties whimpering over checkbooks. The days of PRP group hotel conference room get togethers, used oil "trip tickets", quibbing about "fingerprinting" the waste and hearing "NO" from DOJ are all but gone. Although the Super Fun monster is still alive, its appetite has waned. Will we see another seemingly constitutional and delightfully "lawyerish" sausage like Super Fun from Congress? Hopefully, our elected sausage makers will tackle even bigger pollution problems, cranking out pepperoni, Chorizo or Bratwurst statutory mandates, although PFAS does not have sufficient caloric value to fueleven ONE Game of Thrones battle.

The Florida Environmental and Land Use Law Treatise

50th Anniversary Commerative Edition

The Enviromental and Land Use Law Section of the Florida Bar

DEDICATION

The Environmental Land Use Law Section of The Florida Bar (ELULS or Section) dedicates this 50th Anniversary Commemorative Edition of the Treatise to the late Mary F. Smallwood and the late Christopher T. Byrd, whose efforts on behalf of the Treatise are immeasurable. Mary served as chair of the ELULS Treatise Committee and ELULS Treatise Editorial Board for many years, and authored several articles within the Treatise. She is known within the Section as one of the original pioneers of the Treatise. Chris was one of the first to lead the Section's Young Lawyers Committee and was an integral part of the ELULS Treatise Committee for several years. Chris also co-authored an article in the Treatise.

The Environmental and Land Use Law Section of the Florida Bar 2022 – 2023

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ELULS MISSION

The mission of ELULS is to provide a forum for attorneys to share technical and legal knowledge regarding the complex and ever-evolving area of Florida environmental and land use law. The Treatise is a reliable guide to environmental and land use law from the experts across the many subdisciplines that form ELULS' membership.

TREATISE INTRODUCTION & HISTORY

The Treatise is a collection of articles on environmental and land use law topics, many of them Florida-specific. It is a publication originated and authored by members of the Section. This three-volume set includes 140 peer-reviewed articles (over 2,000 pages) ranging from ethics and professionalism, the role of consultants, how to obtain environmental and land use permits, pollution and remediation, climate change, water law, administrative, civil and enforcement proceedings, and more.

Since its first publication in 1986, the Treatise has been recognized as one of the premier authorities on Florida environmental and land use law. Due both to popularity and evolving law, the Treatise was re-published in 1997 and again in 2001. In 2006, ELULS moved the Treatise online where it has been available to Section members only. See the Section's website, www.eluls.org, which includes an easy-to-use search feature for convenience.

In 2019, the ELULS Treatise Committee undertook enormous efforts to update the content and style of the Treatise articles. The Treatise Committee created and implemented a new style guide and engaged a paralegal, Kaitlynn Reneke, to assist with editing and checking citations for the updated articles. The Treatise Committee also established a regular schedule for updating the electronic version of the articles moving forward and has started to explore additional publication opportunities.

50TH ANNIVERSARY COMMEMORATIVE EDITION OF THE TREATISE

ELULS celebrates its 50th Year Anniversary in 2022-2023. The Section is excited to offer this 50th Anniversary Commemorative Edition of the Treatise in conjunction with its 50th Year Update Celebration in Amelia Island in September 2022.

This is the fourth official publication of the Treatise and the first in more than 20 years. As so eloquently stated in the 2001 version, the Treatise is "the predominant and affordable general reference authority on environmental and land use law in Florida" and an "educational forum for Florida's experts and specialists on environmental and land use law." "The contribution of Section members is essential, thus providing a diverse perspective on environmental and land use law issues."

The ELULS Treatise Publication Committee recognizes the value of honoring the past 50 years and hopes to inspire Section membership for the 50 years to come with this Commemorative Edition. The ELULS Treatise Committee and ELULS Executive Council members invite you to participate in the continued success of the Treatise by using it, referring others to it, and authoring, editing, updating or submitting article ideas of your own to the ELULS Treatise Committee. We look forward to collaborating with you.

TREATISE ORGANIZATION

The Treatise is organized into three volumes. The first volume of the 50th Anniversary Commemorative Edition includes a timeline of noteworthy state and national events and developments in environmental and land use law, as well as the history of ELULS beginning with its origination in 1972.

The 140 Treatise articles are organized by chapter and are categorized by topic (for example, all land use regulation articles are located in Chapter 25). Each article within a chapter is numbered (i.e. 25-1, 25-2, etc.) and the articles are tabbed accordingly. An index at the front of each volume lists each chapter and corresponding articles, making it easy to navigate and locate a specific topic and its corresponding volume.

The Treatise is a secondary legal source. Although the ELULS Treatise Committee has made immense efforts to ensure the accuracy of each of the articles, some may require updating or become updated online. Each article includes the latest date of publication in the top right corner of the article. The Treatise does not constitute legal advice. Please consult primary legal sources.

ACKNOWLEDGEMENTS

I would like to personally thank Kaitlynn Reneke for her countless and continued time editing the Treatise, the ELULS Treatise Committee, the ELULS Treatise Publication Committee, members of the ELULS Executive Council and many others for their continued support of the Treatise. Additionally, publication of this 50th Anniversary Commemorative Edition would not have been possible without the continued support of our legal and affiliate sponsors. A special thank you to our longtime Section webmaster, Ken Tinkler, our beloved Section administrator, Cheryl Wright, and ELULS Past-Chair, Rachael Santana, for looking backwards to ELULS's past, while also looking forwards for the next generation of ELULS members.

Joshua C. Coldiron, Esq.
Chair of the Environmental and Land Use Law Section of the Florida Bar (2022 - 2023) and Chair of the ELULS Treatise Publication Committee

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ELULS THE FLORIDA BAR

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1969

The Florida State Department of Natural Resources is created.

1970

The United States Environmental Protection Agency is created.

The Florida Department of Air and Water Pollution Control is created. It was Florida's first agency devoted strictly to environmental quality.

Congress passes the Clean Air Act of 1970, authorizing EPA to set national air quality, auto emission, and anti-pollution standards.

1971

Grand opening of Magic Kingdom at Walt Disney World in Orlando, Florida.

Celebrating

50 YEARS OF ELULS

1971

The Florida Department of Air and Water Pollution Control becomes the Florida Department of Pollution Control.

1972

The Florida legislature passes several landmark environmental laws, including the Florida Land and Water Management Act, the Florida Water Resources Act and the Land Conservation Act.

Congress passes the Federal Water Pollution Control Act (known as the Clean Water Act).

1973

The Florida Environmental Law Committee is formed.

1974

The Florida Environmental Law Committee begins assembling a notebook containing references and descriptions of federal and Florida environmental legislation, administrative rulings and laws (later converted into what is now the ELUL Treatise).

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1974

The Florida Game and Freshwater Fish Commission is created.

The Florida Department of Environmental Regulation is established (now, the Florida Department of Environmental Protection).

1975

Local Government Comprehensive Planning Act is the first state planning legislation that required all local governments to adopt comprehensive land use plans.

The Florida Environmental Law Committee meets in person for the 1st time in Amelia Island.

1976

Congress passes Resource Conservation and Recovery Act, giving EPA authority to control hazardous waste from the 'cradle-to-grave.'

THE FLORIDA BAR JOURNAL

Florida Environmental Law Committee sponsors the 1st publication in the "Environmental Law" column in the Florida Bar Journal.

Celebrating

50 YEARS OF ELULS

1977

The Florida Bar elevates the Florida Environmental Law Committee into a Section known as the "Environmental Law Section" and the first Section newsletter is published.

1980

The Environmental Law Section holds the 1st Environmental Law Update in Amelia Island.

AMELIA ISLAND
FLORIDA

1981

ELULS

The Environmental Law Section is renamed "The Environmental and Land Use Law Section."

1984

The Florida legislature passes the State Comprehensive Planning Act.

1985

ELULS exceeds 1,000 members making it one of the fastest growing sections of the Florida Bar.

ELULS

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1986

The ELUL Treatise is published for the 1st time. It was republished in 1997 and again in 2001.

1987

The Water Rights Compact is signed by the Seminole Tribe of Florida & the State.

1989

The Florida Manatee Recovery Plan is approved by the United States Fish and Wildlife Service. Florida manatees were first protected via Florida State Law in 1893.

1990

ELULS holds its 1st Annual Long Range Planning Retreat in Monroe County.

1991

The Florida legislature passes The Everglades Protection Act.

The Abandoned Tank Restoration Program is created by to assist in cleaning up discharges of petroleum across the state.

Celebrating

50 YEARS OF ELULS

ELULS exceeds 2,000 members, including over 200 affiliates.

1992

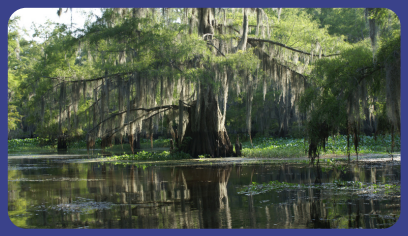
The Kissimmee River Restoration Project begins.

The State of Florida begins construction of Stormwater Treatment Areas.

1994

The Everglades Forever Act went into effect to protect and restore the Everglades.

EPA launches the federal Brownfields Program.



1995

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1995

The Florida Dry-Cleaning Cleanup Program is established, which provides state-funding for cleanup of contaminated dry-cleaning facilities.

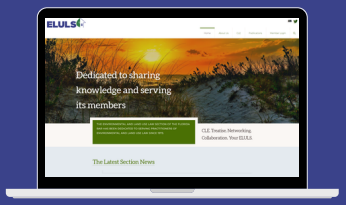
1996

Florida established the Florida Brownfields Redevelopment Act.

1997

25 YEAR

ELULS celebrates its 25th anniversary and launches the Section website.



Florida passes the "Polluter Pays" amendment.

1998

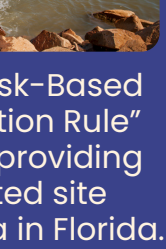
Florida Forever replaced Preservation 2000 and broadened land purchasing criteria to include historic preservation.

Celebrating

50 YEARS OF ELULS

2005

The "Global Risk-Based Corrective Action Rule" was enacted providing contaminated site cleanup criteria in Florida.



Florida's Oceans and Coastal Resources Act goes into effect.

2006

The ELULS Treatise is available online in digital format for the 1st time.

The EPA issues the strongest national air quality standards for particle pollution in its history.

2007

The American bald eagle is removed from the endangered species list after decades of environmental advocacy.

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2009

The Walt Disney Company announces it's plan to cut carbon emissions from fuels in half by 2012.

2014

ELULS holds its last Annual Update (prior to 2022) in Amelia Island.

Florida voters pass the Water and Land Conservative Initiative, which sets aside 33% of state fees on real estate transactions for conservation purposes.

2016

The Florida Springs and Aquifer Protection Act is adopted to protect Florida springs fed by the Floridan Aquifer.

2020

ELULS holds its first Zoom conference in the midst of the global COVID-19 pandemic.

Celebrating

50 YEARS OF ELULS

ELULS establishes a theme of "Looking Backwards, Looking Forwards" to commemorate their 50th year.

2020

2022

ELULS celebrates its 50th Year!

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2023- 2024

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Without important partners like you, the Section would be unable to maintain its purpose and accomplish its goals. The Section's purpose is to provide an organization within The Florida Bar for those interested in environmental and land use law, provide a forum for discussion and idea exchange, and to study proposed and existing legislation affecting the environment and use of land. Your partnership will help us grow Section membership, expand outreach and idea exchange, provide quality continuing legal education seminars, and continue to serve the Florida legal community to the best of our ability.

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ELULS Partnerships

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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.

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Want to contribute to the ELULS Reporter? We are always looking for new content from our members and can be flexible with formatting, length, and style of articles. Article submission due dates for each triannual issue in 2024 are listed below.

February Issue - Articles Due January 27
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Submit your articles to Christopher Berg (Christopher.berg@gray-robinson.com) or Derek Howard (howard-derek@monroecounty-fl.gov) today!

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