

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT**

**CASE NO. 3D08-3185  
Lower Tribunal No. CA-P-07-316 (Garcia, J.)**

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**GENEVA SUTTON,**

**APPELLANT,**

**vs.**

**MONROE COUNTY, A POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA,**

**APPELLEE.**

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**APPELLANT'S REPLY BRIEF**

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## I. ARGUMENT

A. **The County's first argument, that it adopted confiscatory zoning ordinances in 1986 that would give rise to facial regulatory taking claims, is inconsistent with Florida's regulatory taking jurisprudence. The supreme court's 1984 decision in *Dade County v. National Bulk Carriers* made it clear that confiscatory land use ordinances were unconstitutional on due process grounds**

(1) *The standard of review is de novo*

This is a question of law. The standard of review is *de novo*. *Wickham v. State*, 998 So. 2d 593, 596 (Fla. 2008).

(2) *Appellee's argument that Monroe County adopted confiscatory zoning regulations on September 15, 1986, is inconsistent with the Beneficial Use Determination (BUD) process adopted at the same time.*

In 1979, National Bulk Carriers applied for a permit to excavate a lake on its Dade County property, and to use the resulting fill to elevate the remainder of the land. The county denied the permit as "the project would conflict with the policies of Dade County's Comprehensive Development Master Plan and the Florida State Comprehensive Plan to *preserve the land in its natural state* In *Dade County v. National Bulk Carriers*, 450 So. 2d 213, 216 (Fla. 1984), the supreme court held:

*If a zoning ordinance is confiscatory, the relief available is a judicial determination that the ordinance is unenforceable and must be stricken. ... We hold that this cause should be remanded to the circuit court for a determination of whether the county's action is confiscatory and constitutes a taking without just compensation, in which event the action of the board must be stricken.*

[Emphasis added; citations omitted.]

Despite the Supreme Court's decision in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987), *National Bulk*

*Carriers* is still good law, as evidenced by the supreme court's decision in *Joint Ventures, Inc. v. Dept. of Transportation*, 563 So. 2d 622 (Fla. 1990) (Statutes that freeze land uses are unconstitutional on due process grounds, unless landowners have a direct avenue to eminent domain proceedings)

In 1986, Monroe County had to have been aware of *National Bulk Carriers*, as the County incorporated, into its Comprehensive Plan, what appears to be the nation's first Beneficial Use Determination (BUD) procedure. The 1986 BUD, RI: 99-100, is attached as **Appendix A**. The County now argues that *some* 1986 zoning regulations are facially confiscatory (and subject to invalidation on due process grounds, according to *National Bulk Carriers* and *Joint Ventures*) and any taking claims arising from said regulations ripened on September 15, 1986.

Since September 15, 1986, the BUD ordinance has shielded the County from taking claims. But, the BUD also shields landowners from statutes of limitation. Monroe County cannot have it both ways, and this argument must be rejected.

**B. Regulatory taking claims do not accrue – nor statutes of limitation attach – until claims are ripe for judicial review. Ripening requires a final decision, or giving the local government “an opportunity to change its mind.” Florida Keys’ governments have BUD procedures that allow them to override any land use regulation to avoid taking claims. In the Keys, regulatory taking claims cannot ripen without obtaining a BUD.**

- (1) *This is a question of law and the standard of review is de novo*
- (2) *In 2005, the BUD Policy adopted, as part of the Year 2010 Comprehensive Plan, did not require any prior applications for a particular use, and could be requested by a landowner at any time.*

On January 4, 1996, Monroe County and the Florida Administration Commission amended the County's Comprehensive Plan, adding a BUD policy. The

1996 BUD policy, *RI: 47*, is attached as **Appendix B**. On September 12, 1998, Monroe County replaced its 1986 BUD ordinance with Ordinance 21-1998,<sup>1</sup> *RI: 48-64*, attached as **Appendix C**.

At some time in 1996, Appellant submitted an application for a building permit to construct a single-family residence on Lot 8. (She did not propose combining Lots 8 and 9 at that time.) Her permit application was apparently refused, and she appealed to the Planning Commission, without success, in 1997. *RI: 10, par. 4*. Eight years later, she applied for a BUD. A Special Master conducted the BUD hearing in July 2005.

During the hearing, Landowner proposed constructing a 2,000 ft<sup>2</sup> residence on the least sensitive portion of the approximately ¼ acre of upland that spans Lots 8 and 9. Her proposed use required a 50% reduction in the 50 ft. setback from wetlands, and a 50% reduction in the 25 ft. front setback (both could have been granted as part of a BUD). *RI: 10, at par 6*. Monroe County stood mute during the BUD hearing, refusing to comment on Landowner's proposed use. For that reason, the Special Master did not recommend her proposed use to the County Commission. *RI: 11, at par 7* and *RI:12, at par 12*.

On November 15, 2006, the County Commission accepted the Special Master's recommendations, *RI: 6*, and offered to purchase Landowner's two lots, approximately 4 to 5 acres, *RI: 9*, on the ocean, on Key Largo, for \$37,000 – that the

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<sup>1</sup> Portions of the 1986 BUD ordinance had been declared unconstitutional. *See Monroe County v. Gonzalez*, 293 So. 2d 1143 (Fla 3d DCA 1992).

County Commission posits was the fair market value of the property in 1986 – plus 20 years of simple statutory interest, for a total of \$113,423. *RI*: 6.

**(3) *A regulatory taking claim does not accrue – nor does the statute of limitation begin to run – until it is ripe.***

This principle was recently re-stated by the Court of Federal Claims in *Royal Manor, Ltd. v. United States*:<sup>2</sup>

*[T]he court agrees with the government that a regulatory takings claim accrues at the same time that it ripens..... As with any other type of claim, a takings claim accrues ... “when all events have occurred that fix the alleged liability of the Government and entitle the Landowner to institute an action.” Accordingly, a regulatory takings claim will not accrue until the claim is ripe.*<sup>3</sup>

In *Bayou des Familles Devel. Corp. v. United States*, the Federal Circuit stated: “[t]he controlling question raised on appeal is, therefore, when did BDF’s takings claim become ripe for adjudication, *starting the statute of limitations clock.*”<sup>4</sup>

In *Williamson County*, the Supreme Court defined ripeness thus: “a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the

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<sup>2</sup> *Royal Manor, Ltd. v. United States*, 69 Fed. Cl. 58, 61 (Ct. Cl. 2005) [Emphasis added].

<sup>3</sup> Citing *Alliance of Descendants of Texas Land Grants v. United States*, 37 F.3d 1478, 1481 (Fed. Cir. 1994) (citing in turn, *Japanese War Notes Claimants Ass’n v. United States*, 373 F.2d 356, 358 (Ct. Cl. 1966)). [Emphasis added.]

<sup>4</sup> *Bayou des Familles Devel. Corp. v. United States*, 130 F.3d 1034, 1038 (Fed. Cir. 1997).

property at issue.” In other words, a state court regulatory taking claim is not ripe until the landowner gives the government the opportunity to “change its mind.”<sup>5</sup>

In *Suitum* the Supreme Court states *Williamson County’s* ripeness requirement “applies to decisions about how a taking Landowner’s own land may be used, and it responds to the high degree of discretion characteristically possessed by land use boards in softening the strictures of the general regulations they administer.”<sup>6</sup>

In *Palazzolo v. Rhode Island*, the Supreme Court held:

Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner’s first having followed *reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law.*<sup>7</sup>

**(4) *Ripeness – and, therefore, accrual – of regulatory taking claims in the Florida Keys is controlled by the BUD process.***

This appeal follows the line of BUD cases: *Berg*,<sup>8</sup> *Bauknight*,<sup>9</sup> *Collins*,<sup>10</sup> and *Shands*.<sup>11</sup> In *Berg*, this Court concluded Berg’s “regulatory ‘taking’ claim [was] not ripe for judicial determination,” as the City’s comprehensive plan “allows the

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<sup>5</sup> *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985).

<sup>6</sup> *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 738 (1997).

<sup>7</sup> *Palazzolo v. Rhode Island*, 533 U.S. 606, 619-22 (2001) [Emphasis added.]

<sup>8</sup> *City of Key West v. Berg*, 655 So. 2d 196 (Fla. 3d DCA), *rev. denied*, 663 So. 2d 629 (Fla. 1995).

<sup>9</sup> *Bauknight v. Monroe County*, 994 So. 2d 362 (Fla. 3d DCA 2008).

<sup>10</sup> *Collins v. Monroe County*, 999 So. 2d 709 (Fla. 3d DCA 2008), *rev. denied* (Fla., July 16, 2009).

<sup>11</sup> *Shands v. City of Marathon*, 999 So. 2d 718 (Fla. 3d DCA 2008).

City to grant a ‘beneficial use’ exception to an applicant ... when the literal application of the Plan’s provisions would deny all economically reasonable or viable use of the subject property.” This Court remanded with instructions to dismiss Berg’s regulatory taking claim as “not being ripe for judicial determination.”

In *Bauknight*, this Court held: “[t]he *Williamson* logic applies here. The owners were obligated to pursue relief under the beneficial use ordinance ... before the owners’ taking claims were ripe. .... With the making of that [BUD] decision, the owners’ claims became ripe for judicial consideration.”<sup>12</sup>

In *Collins*, this Court held landowners’ “BUD Resolutions were a final decision from the appropriate governmental entity as to the nature and extent of the development that will be permitted. Once the BOCC rendered a final decision on the BUD applications, the Landowners’ claims became ripe.”<sup>13</sup> And, in *Shands*, this Court held “the statute of limitations did not begin to run until ... the City of Marathon rejected with finality the Special Master’s BUD recommendation and denied the Shands’ BUD application.”<sup>14</sup>

Ms. Sutton’s claim *ripened* and *accrued* when BOCC Resolution 602-2006 was recorded in the Public Records on December 14, 2006. *RI: 5-13*. Her Complaint was filed May 23, 2007, 160 days after the claim accrued. The 4-year Statute of Limitation had not run. The trial court’s decision is inconsistent with Florida and federal law, as the general rule, as set forth in § 95.031, Fla. Stat., is that “the

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<sup>12</sup> *Bauknight*, *supra* n.9, at 365-66.

<sup>13</sup> *Collins*, *supra* n., at 717.

<sup>14</sup> *Shands*, *supra* n., at 726.

time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues” and “*a cause of action accrues when the last element constituting the cause of action occurs.*”<sup>15</sup>

The County argues, in essence, that a building permit denial can ripen a taking claim just as a Beneficial Use Determination can. There is no substance to such a theory. Just as the landowners in *Williamson County, supra* n.5, had to exhaust every avenue available for relief before their claim would become ripe, Monroe County landowners must do the same. The BUD process is not just a variance proceeding, it is a *super-variance* proceeding. Whereas most variance proceedings have well-defined limits beyond which a “variance” may not go, the BUD process has no known limitations. The County’s second argument, therefore, must also be rejected.

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<sup>15</sup> See *Sarasota Welfare Home, Inc. v. City of Sarasota*, 666 So. 2d 171, 172-73 (Fla 2d DCA 1995). [Emphasis added.]

C. **Once again, the government posits the 90-day limitation in § 380.085 (2) supersedes the four-year statute of limitation of § 95.11(3)(p). Appellee’s “Topsy Coachman” argument has no legislative or judicial support, and is the identical argument the government raised, and was rejected *sub silentio*, in *Collins v. Monroe County*.<sup>16</sup>**

(1) ***This is a question of law and the standard of review is de novo.***

(2) ***Chapter 78-85 was enacted by a legislature that was unhappy with the Fourth District Court of Appeal’s decision in *Mailman Development Co. v. Hollywood*, a 1974 regulatory taking claim directed at a zoning ordinance.***

In *Mailman*, the Fourth DCA held “enactment of a zoning ordinance under the exercise of police power does not entitle the property owner to seek compensation for the taking of the property through inverse condemnation.”<sup>17</sup> After three sessions, the legislature passed Ch. 78-85 which, in the end, had nothing to do with zoning regulations.

(3) ***The March 1975 Final Report of the Governor’s Property Rights Study Commission laid the groundwork for Chapter 78-85.***

Shortly after *Mailman*, Governor Askew appointed a “1975 ” (GPRSC) to examine conflicts between property rights and land use regulations and recommend legislation. The GPRSC, made of legislators, agency heads, developers, and

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<sup>16</sup> Though the State’s answer brief devoted 12 pages to it, the *Collins* opinion did not address the 90-day statute of limitation. This means the Court considered the issue meritless. *See, e.g., Rogers v. Board of Public Instruction of Alachua County*, 156 Fla. 161, 23 So. 2d 154 (Fla. 1945) (“[T]he presumption is that all the facts in the case bearing on the points decided have received due consideration whether all or none of them are mentioned in the opinion.”); *see also*, Philip J. Padovano, *FLORIDA APPELLATE PRACTICE*, 2007-08 Ed., § 18.7, citing *Bowles v. D. Mitchell Inv., Inc.*, 365 So. 2d 1028 (Fla. 3d DCA 1978).

<sup>17</sup> *Mailman Development Co. v. Hollywood*, 286 So. 2d 614, 615 (Fla. 4<sup>th</sup> DCA 1973), *cert. denied*, 293 So. 2d 717 (Fla. 1974), *cert. denied*, 419 U.S. 844 (1974).

attorneys – with land use attorney Robert M. Rhodes as its Executive Director – released a Final Report on March 17, 1975.<sup>18</sup> A copy of the GPRSC report is attached as **Appendix D**.

In 1978, Robert Rhodes published an article describing Chapter 78-85’s legislative history, from the *Mailman* decision to enactment.<sup>19</sup> Mr. Rhodes’ article is attached as **Appendix E**. In the 1978 session, the House proposed four amendments to the Senate, of which three were accepted. Two major changes accepted by the Senate were (a) removing all local government regulations from the ambit of the bill, and (b) adding a “prevailing party” attorneys’ fee provision that allowed agencies to recover attorneys’ fees. The Senate rejected an amendment to *strike the provision that the act is cumulative to other legal remedies*.<sup>20</sup> The House receded from that request and the bill became law on May 29, 1978. Five identical statutes were enacted by the bill: §§ 161.212, 253.763, 373.617, 380.085, and 403.90. The text of § 380.085 is attached as **Appendix F**. Monroe County is neither an “agency” for purposes of § 380.085(1)(a), nor is it subject to Chapter 120.

Subsections 1(a) and (2) read, in material part, as follows.

(1) (a) “Agency” means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other *unit or entity of state government*.”

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<sup>18</sup> FINAL REPORT OF THE GOVERNOR’S PROPERTY RIGHTS STUDY COMMISSION, Robert M. Rhodes, Executive Director, March 17, 1975 (16 pp).

<sup>19</sup> Robert M. Rhodes, *Compensating Police Power Takings: Chapter 78-85, Laws of Florida*, 52 FLA. BAR. J. 741-45 (Nov. 1978).

<sup>20</sup> *Id.*, at 742 and 745 n. 24.

(2) Any person substantially affected by a *final action of any agency* with respect to a permit *may seek review* within 90 days of the rendering of such decision.... Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

Subsection (1)(a) states the law limits “agencies” to entities that are a “unit or entity of state government,” which excludes counties. Subsection (2) states that review of the correctness of the alleged confiscatory “final agency action” is to be “in accordance with chapter 120.” Counties are not subject to chapter 120. In *Hill v. Monroe County*, yet another regulatory taking case, the Third DCA held:<sup>21</sup>

Chapter 120, Florida Statutes (1989), also known as the “Administrative Procedure Act,” only applies where a challenge is made to a State agency action. *Chapter 120 does not apply to the regulations enacted by a County Commission, unless the county is expressly made subject to Chapter 120 by general or special law.. .... Monroe County was not made subject to Chapter 120.* [Emphasis added.]

The Fifth DCA reached the same conclusion in *Florida Water Services Corp. v. Robinson*, citing *Hill v. Monroe County*, among others, as follows.<sup>22</sup>

*Historically, the APA has never applied to the actions of county commissions. Hill v. Monroe County ... ; Bd. of County Commissioners of Hillsborough County v. Casa Development, Ltd., 332 So. 2d 651 (Fla. 2d DCA 1976) (board of county commissioners is not an agency covered by the APA); Sweetwater Utility Corp. v. Hillsborough County, 314 So. 2d 194 (Fla. 2d DCA 1975) (board of county commissioners is not an agency subject to judicial review under APA). Nor do we find anything in the revisions of the definition of “agency” to indicate the Legislature has changed the scope of the APA’s applications to counties.* [Emphasis added.]

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<sup>21</sup> *Hill v. Monroe County*, 581 So. 2d 225, 226-27 (Fla. 3d DCA 1991).

<sup>22</sup> *Florida Water Services Corp. v. Robinson*, 856 So. 2d 1035 (Fla. 5<sup>th</sup> DCA 2003).

In *Young v. Dept. of Community Affairs*,<sup>23</sup> involving a § 380.07 appeal of a permit denial, Justice Barkett’s concurring opinion reaches the same conclusion.

Although section 380.07(3) clearly provides that review of local government development orders in areas of critical state concern shall be pursuant to chapter 120, *nothing in section 380.07 or in the relevant area of critical state concern statutes specifically makes a local government an agency for chapter 120 purposes*. Nor has my research uncovered any judicial decision making local governments issuing development orders in areas of critical state concern “agencies” for chapter 120 purposes. [Emphasis added.]

**(4) *Appellee raises a point that needs to be explored, and that is the infamous, but erroneous, footnote 5 in Monroe County v. Ambrose.***<sup>24</sup>

This Court, in what was probably intended as helpful dictum, made the following remark near the end of its opinion in *Ambrose*.

To the extent that these regulations render any of the Landowners’ property practically useless, the Landowners are entitled to compensation. Section 380.08, Florida Statutes (1997), provides that the government cannot adopt a rule or regulation that constitutes a taking without providing full compensation.<sup>5</sup> See *Joint Ventures v. Dep’t of Transp.*, 563 So. 2d 622 (Fla. 1990) (state must pay when it regulates private property in such a manner that the regulation deprives the owner of the economically viable use of that property).

<sup>5</sup>Section 380.085, Florida Statutes (1997), enables a person substantially affected by the denial of a permit to build, to initiate an action in circuit court on the grounds that an area of critical state concern development order effects a taking without compensation.

In preparation for this brief, undersigned counsel reviewed the joint brief of appellants in *Ambrose*,<sup>25</sup> to understand how this Court could have concluded that

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<sup>23</sup> *Young v. Dept. of Community Affairs*, 625 So. 2d 831, 837 (Fla. 1993).

<sup>24</sup> *Monroe County v. Ambrose*, 866 So. 2d 707 (Fla. 3d DCA 2003), *rev. denied*, 880 So. 2d 1209 (Fla. 2004).

§ 380.085 was applicable to zoning regulations adopted by a county. The principal statute relied on by the *Ambrose* appellants – § 380.08 – was not part of Ch. 78-85, but was part of the 1972 ACSC legislation. Section 380.08 “prohibits,” *but does not provide a remedy for failing to prohibit*, confiscatory land use regulations (such as in this case). There is no connection between § 380.08, enacted in 1972, and the more aggressive, stand-alone § 380.085 remedy.

A post-*First English* decision, *Flo-Sun, Inc. v. Kirk*,<sup>26</sup> rejects Appellee’s Topsy Coachman argument by holding that Ch. 78-85, stating “*The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law,*” means what it says. In *Flo-Sun*, the supreme court held:

First, the language of section 403.191, the cumulative remedies/savings clause, could not be more clear. *The remedies included within chapter 403 are intended to be “additional and cumulative” to the remedies currently available* (i.e., public nuisance suit under chapter 823). *It would be less than intellectually credible to conclude that section 403.191 does not mean what its words plainly express.*

In *Aramark v. Easton*, 894 So. 2d 20, 25-26 (Fla. 2004), the supreme court held:

Section 376.313(1) provides that “*the remedies in ss. 376.30-376.319 shall be deemed to be cumulative and not exclusive.*” This language evidences an intent in section 376.313(3) to create an *entirely new cause of action cumulative to the common law*. [Citations omitted.] cf. *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1036 (Fla. 2001) (concluding that interpreting a cumulative remedies clause in section 403.191, Florida Statutes (1995), to foreclose other remedies “would be less than intellectually credible”).

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<sup>25</sup> There is no doubt that the circuitous reasoning of appellants in *Ambrose* led this court to its *Ambrose* footnote 5.

<sup>26</sup> *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1035 (Fla. 2001).

**(5) Chapter 78-85 states that its remedy is not exclusive**

Section 6 retains the remedy of a common law, inverse condemnation action under Art. X, § 6(a), Fla. Const. It reads: “*The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.*”

**(6) Judicial Interpretation of Chapter 78-85**

In *Dade County v. National Bulk Carriers*,<sup>27</sup> the county denied National Bulk Carriers’ unusual use permit to excavate a lake on its property, and fill the rest of its land to the 100-year flood level. Aside from the taking issue, the Third DCA’s decision included an erroneous interpretation of Chapter 78-85. The supreme court held that *local land use decisions are not subject to the process created in Ch 78-85.*<sup>28</sup> It did so by citing Rhodes’ 1978 article,<sup>29</sup> holding:

The [circuit] court noted that its opinion should not be construed as a denial of National Bulk Carriers’ right to raise the taking issue in a separate action. ... *the Third District Court of Appeal ... remanded the cause for further proceedings pursuant to section 373.617, Florida Statutes ....*

*We ... hold that the district court’s application of section 373.617 to the facts of this case was erroneous.*

Section 373.617(2) provides a method of judicial review of final action of any agency with respect to a permit. A “permit” is defined to mean “any permit or license required by this chapter.” See §373.617(1)(b). “Agency” is defined to mean “any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.” See §373.617(1)(a). It is obvious that the legislature intended to apply the provisions of chapter 373 to agencies dealing with water resources.

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<sup>27</sup> 450 So. 2d 213 (Fla. 1984).

<sup>28</sup> *National Bulk Carriers*, 450 So. 2d at 216.

<sup>29</sup> *Dade County v. National Bulk Carriers*, 450 So. 2d at 215-16.

The short title of that chapter is “Florida Water Resources Act of 1972.” The limited scope of this legislation was explained in an article appearing in The Florida Bar Journal:

Key operational definitions of “agency” and “permit” limit the court action to state agency decisions involving Chapters 161, 253, 373, 380 and 403, Fla. Stat. Hence, the Department of Natural Resources decisions regarding coastal construction control lines, Trustees of the Internal Improvement Trust Fund decisions regarding dredge and fill permit appeals and sale and lease of state owned lands, Land and Water Adjudicatory Commission and regional water management district decisions regarding water permits, Land and Water Adjudicatory Commission decisions regarding developments of regional impact and areas of critical state concern, and Environmental Regulation Commission decisions regarding pollution control permits are subject to the circuit court action established by the act.

## II. CONCLUSION AND RELIEF SOUGHT

The law is well-settled that, in the Florida Keys, until such time as a beneficial use decision is rendered, a regulatory taking claim has neither accrued nor ripened. The trial court’s dismissal of Landowner’s complaint, based on the erroneous application of the statute of limitation, was erroneous. Appellant prays for an order REVERSING the Final Judgment below, and remanding for further proceedings consistent herewith.



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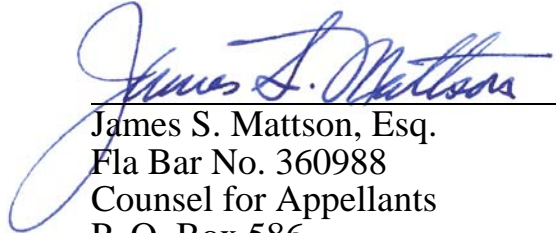
## CERTIFICATE OF SERVICE

I certify I served copies of the foregoing by first class mail, postage prepaid, on **Robert B. Shillinger, Esq.**, and **Derek V. Howard, Esq.**, Assistant Monroe County Attorneys, 1111 12<sup>th</sup> Street, Ste 408, Key West, Florida, 33040, and **Michael T. Burke, Esq.**, Special Counsel for Monroe County, Johnson, Anselmo, et al., 2455 East Sunrise Blvd, Ste 1000, Ft. Lauderdale, FL 33034, this 17<sup>th</sup> day of September 2009.

  
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JAMES S. MATTSON, ESQ.  
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### III. CERTIFICATE OF FONT COMPLIANCE

I certify that the foregoing brief was prepared with Microsoft Word 2003, using 14-point, Times Roman font.

  
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