

Amendment 1 Litigation Update: The Beach Program's Statutory Funding Source

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We won!

History of Land Acquisition Trust Fund (“LATF”)

- LATF, a state conservation land funding program, originally added to the Florida statutes as part of the Outdoor Recreation and Conservation Act of 1963. Ch. 63-36, § 1, Laws of Fla.
- LATF was then made a part of the 1885 Florida Constitution by amendment in 1965. See Art. IX, § 17, Fla. Const. (1965)
- Amendment, by its own terms, lasted only 50 years
- The 2014 amendment, which became Article X, section 28, of the Florida Constitution, intended to replace the expired version

In 2014, Florida

Voters Approve Amendment 1

- Article X, section 28 of the Florida Constitution provides:
- SECTION 28. Land Acquisition Trust Fund.
- (a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, **the Land Acquisition Trust Fund shall receive** no less than 33 percent of net revenues derived from the existing **excise tax on documents**, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.
- (b) **Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:**
- (1) **As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands** including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); **beaches and shores**; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; **together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.**

Important to FSBPA

“Beaches and shores” are specifically listed in Article X, section 28 of the Florida Constitution as one of the enumerated types of conservation lands to which the provisions apply

Trial court's ruling

- Trial court concluded that the “clear intent was to create a trust fund to purchase **new** conservation lands and take care of them.”
- Conservation lands the State already owned were to be taken care of from non-trust money
- Thus, the trial court held that Article X, section 28:
 - 1. creates a fund for the acquisition of conservation lands and property interests the State did not own **prior to the effective date of the amendment** and for the improvement, management, restoration, and enhancement of those newly acquired lands;
 - 2. forbids LATF revenue to be used on land acquired before the effective date of the amendment;
 - 3. prohibits commingling of LATF revenue with general revenue.
- Trial court declared some 100 appropriations unconstitutional

The Appeal to the First District

- The Legislature appealed the trial court's order to the First District Court of appeal
- 15 amici briefs were filed, 3 supporting the Legislature
- FSBPA filed an amici brief supporting the Legislature
- FSBPA focus was to show the effect of the trial court's construction of Amendment 1 on beaches and shores, which were specifically listed in Amendment 1

FSBPA amicus brief

- “However, these beaches have not been “newly acquired with funds appropriated from Article X, Section 28” as would be required by the lower court’s order. Although “beaches and shores” are specifically mentioned in the amendment itself and in the ballot summary, beaches that are nourished in Florida are already owned by the State of Florida and not “newly acquired” in the sense that they have been, or could be, purchased subsequent to the effective date of Amendment 1.”
- “The beaches and shores of this state are already owned by the state seaward of the mean high water line by virtue of its sovereignty so there is no reason for LATF funds to be spent on the acquisition of these lands. Of course, LATF funds may be used to purchase property that is located landward of mean high water. To give full effect to the specific mention of beaches and shores in both the ballot summary and the language of the amendment itself, the only logical expenditures from the LATF for beaches and shores are for restoration, improvement, management and enhancement of public access or recreational enjoyment. Those listed activities are directly carried out through the beach nourishment projects funded by the Legislature from the LATF.”

Oral argument

- Oral argument on the briefs held in July 2019
- Judges repeatedly asked how the lower court ruling would affect Everglades restoration, springs protection and beach renourishment.
- "All of that would be frustrated," said attorney James Uthmeier, who was representing Gov. Ron DeSantis and executive agencies. "And the Legislature would have to find some other way to raise revenues to cover those costs."
- Highlight and value of the FSBPA brief: Judge Bilbrey asked appellee's counsel specifically about the fact that beaches and shores that are nourished in Florida are already owned by the State of Florida and not "newly acquired"

First District's Decision September 9, 2019

Court's appreciation of the FSBPA amici brief

- “The amici in support of Appellants, in general, expressed concern that if the final judgment were not reversed, millions of dollars in current appropriations (and potentially billions of dollars in future appropriations) **for restoration** of the Everglades, **beaches**, springs, lakes, rivers, and estuaries would be at risk since most of those resources are already owned by the State.”
- “The amici in support of FWF and FDE, in general, countered that the LATF should only be used for acquiring and maintaining new lands not already owned by the State and that funds from general revenue should be appropriated for the maintenance or improvement of existing environmental projects.”
- **“We appreciate the input of all amici”**

Appellate Court reverses

- “Plain meaning” of the constitutional text does not plainly restrict the use of LATF revenue to improvement, management, restoration, or enhancement of lands only acquired after 2015
 - Text specifically authorizes **refinancing**: suggests that property for which the State already owns title is within the purview of permissible LATF activities
 - Text authorizes LATF revenue to **finance** the improvement of land, water areas, easements, and the like. There is no explicit limitation in the text that restoration activities must be on State owned lands. Indeed, the text indicates that restoration can occur on “working farms and ranches,” which presumably would not be owned by the State
 - Text does not plainly limit the improvement of property to those properties only recently acquired. Instead, the plain words of the subsection, as well as the placement of the only colon in subsection (b), indicate that **acquisition and improvement are separate but coequal activities for LATF revenue**
 - As for the phrase “**together with** management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands” at the end of the subsection, it would be grammatically incorrect to assume, as the trial court did, that this phrase modifies all which comes before it in subsection (b)
 - The plain words “**management,**” “**restoration,**” and “**enhancement**” authorize expenditure of LATF funds on activities not expressly concerned with acquisition or improvement per se. Thus, management of an existing natural resource, which is already owned by the State and which is not in immediate need of improvement, is apparently authorized by subsection (b)

What was decided?

- “We hold only that LATF revenue is not restricted to use on land purchased by the State after 2015.”
- Because appellate court overturned trial court’s reading of Article X, section 28, it also:
 - reversed trial court’s declaration that multiple appropriations are unconstitutional
 - reversed trial court’s order that agencies must provide an accounting of its use of LATF revenue

What was not decided?

“By our ruling we do not speak to the legality of the appropriations since enactment of Article X, section 28, a question which remains pending.”

The Fight Continues.....

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TALLAHASSEE — Environmentalists said Monday they will continue to fight the Legislature over conservation spending after an appeals court ruled in favor of lawmakers.

Some of the groups that sued the Legislature said the reversal doesn't resolve some of the major issues with the Land Acquisition Trust Fund, or LATF.

Plaintiffs attorney David Guest, who represents the Florida Wildlife Federation, the Sierra Club, the St. Johns Riverkeeper and Environmental Confederation of Southwest Florida, said the groups haven't decided whether to appeal.

"But we are fully prepared to take the case to trial and expect to show the legislature has been wrongfully using this as an environmental slush fund," Guest told POLITICO.

Florida Defenders of the Environment, which filed a separate lawsuit that was combined with the other groups' challenge, also is weighing whether to appeal, said the group's lawyer, Joseph Little.

"The decision seems to leave no restriction on the power of the legislature to spend LATF monies virtually as it sees fit," Little told POLITICO.

Some environmentalists said the appeals court ruling will allow the Legislature to continue providing little to no funding for land acquisition.

"By punting the case back to Judge Dodson, the appeals court today let the Legislature continue to ignore the will of Florida voters," said Frank Jackalone, Sierra Club Florida chapter director, in a news release.

"As the issue now moves back to the trial court, it is our intent to show that Constitutional amendments are directives, not simply requests the Legislature may ignore," Florida Wildlife Federation President Preston Robertson said.

- Rehearing motion due 9/25
- Possible appeal to the Florida Supreme Court?

Thanks for the opportunity to represent the FSBPA!

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