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## MEMORANDUM

To: Interested Clients

Date: July 10, 2009

Re: 2009 Legislative Summary

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Last Tuesday, Governor Crist signed Senate Bill 2080, the final bill on our firm's legislative tracking list for the 2009 Legislative Session. For your convenience, we have highlighted the key points from the notable real estate/growth management bills enacted by the Florida Legislature in 2009. If you have any questions or would like more information about any bill in particular, please feel free to contact us.

1. **SB360 (Chapter 2009-96, Laws of Florida)** – Amends the definition of Urban Service Area found in Section 163.3164(29), Florida Statutes, and creates a definition for Dense Urban Land Area ("DULA") under Section 163.3164(34), Florida Statutes.

Automatically exempts from the Development of Regional Impact ("DRI") review process and transportation concurrency requirements developments located in: 1) municipalities that qualify as a DULA; 2) areas that are designated in the local comprehensive plan as an Urban Service Area and are located within a county that qualifies as a DULA; and 3) counties, including the municipalities located within, which have a population of at least 900,000 and qualify as a DULA but do not have an urban service area (not defined by statute) in its comprehensive plan.

Allows counties and municipalities that do not qualify for the automatic exemptions to designate in their comprehensive plan certain urban areas, which are defined in Chapter 163, Florida Statutes, as exempt from the DRI review process and transportation concurrency requirements.

Provides a two year extension for local government development orders and permits and build-out dates, as well as certain Department of Environmental Protection ("DEP") and

Water Management District ("WMD") permits which are set to expire between September 1, 2008 and January 1, 2012. The applicant must provide written notice to applicable agencies by December 31, 2009.

Extends the compliance date for local governments to submit their capital improvement elements to the Department of Community Affairs ("DCA") from December 1, 2008, to December 1, 2011.

The affordable housing section contains provisions which lessen the tax burden on certain affordable housing units, particularly those held in Community Land Trusts, expand state and local government affordable housing programs, expand the affordable housing *ad valorem* tax exemption and allow surtaxes on infrastructure to be spent on affordable housing. This section also creates a floor on density changes to protect housing affordability, which is being interpreted by DCA as creating a density freeze on any zoning change in unincorporated areas.

On July 8, 2009, several local governments filed a lawsuit challenging the constitutionality of the bill. The first count of the complaint argues that the bill violates the single subject rule because it includes matters related to both growth management and affordable housing. The second count argues that the bill creates an unfunded mandate because of the added cost to local governments in interpreting and implementing its provisions. We will track the status of this litigation and update you as noteworthy events occur.

2. **HB227 (Chapter 2009-49, Laws of Florida)** – Shifts burden of proof to the government to prove the validity of impact fees by a preponderance of evidence and prohibits courts from giving deference to government in impact fee challenges.
3. **HB1021 (Chapter 2009-85, Laws of Florida)** – Requires comprehensive plans to address compatibility of lands adjacent to airports no later than June 30, 2012, and extends deadline for military installation compatibility to same date. Provides that facilities determined by the DCA and local government to be "port-related industrial" or commercial projects located within 3 miles of or in a port master plan area which rely upon the use of port and intermodal transportation facilities shall not be a DRI if such expansions, projects, or facilities are consistent with certain deepwater port comprehensive master plans. Permits Transportation Concurrency Backlog Authorities to issue debt obligations and permits the debt for a maximum of 40 years after the debt is incurred as long as the financing and construction schedule provides for elimination of all transportation concurrency backlogs within 10 years after adoption of the transportation concurrency backlog plan.

*The provisions also include a change to the formula for the calculation of proportionate share payments for DRI transportation mitigation.* This same formula is also used for proportionate share calculations for transportation concurrency under Section 163.3180(16),

Florida Statutes. The bill modified Sections 163.3180(12)(b) and (16)(i), Florida Statutes, as follows:

"As used in this subsection, the term 'backlog' means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review."

This addition can be interpreted in a number of ways, the most aggressive of which would allow the proportionate share of an applicant to exclude any impacts to roads that are already failing as of the date of the application submission. A more measured approach will be a methodology that allows the applicant to exclude from the calculation the interim level of improvement that brings the impacted facility up to the level of service and then takes into consideration the project's share of needed capacity. It is difficult to measure the impact of this formula change outside of a case-by-case analysis. Further, the application will be administered through the DRI process which will include input from the Department of Transportation. In the past, they have been resistant to implementation of meaningful relief, even when mandated by the legislature.

Reviews of new DRIs in the context of this formula change will provide guidance as to this provision and the savings that might be realized. It is hard to assess how this might apply to modifications to existing DRIs since there is usually growth in background traffic from the rates stated in the original application. Opening up the DRI proportionate share calculation under the new formula would likely require that one also include updated traffic information for the overall project, thus making the outcome of any such analysis a case-by-case result of gain or loss. We suggest that you consult with your traffic planners or engineers to evaluate potential benefits from this legislative change.

4. **HB521 (Chapter 2009-121, Laws of Florida)** – Provides that a Property Appraiser's assessed value will be presumed correct if the Property Appraiser proves by a preponderance of the evidence that such value was arrived at by complying with the statutory factors set forth in Section 193.011, Florida Statutes, and other applicable statutory requirements relating to classified use values or assessment caps. The Property Appraiser must also show that an assessed value has been determined to be in compliance with professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If a taxpayer challenges the assessed value of his/her property, then the taxpayer has the burden of proving by a preponderance of the evidence that the assessed value: 1) does not represent the just value of the property; or 2) is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the Property Appraiser to comparable property

within the same county. If the taxpayer satisfies either of these requirements, then the Property Appraiser's presumption of correctness is lost and the Value Adjustment Board or Circuit Court shall determine the assessed value, provided the taxpayer provides competent, substantial evidence of the value of the property which meets the criteria set forth in Section 193.011, Florida Statutes, and professionally accepted appraisal practices. The most significant change to this statute is that taxpayers are no longer required to prove up their cases by the clear and convincing evidence standard.

5. **SB2430 (Chapter 2009-131, Laws of Florida)** – Closes the documentary stamp tax loophole that allowed an entity ("Grantor") to avoid paying document stamp taxes by conveying property into a "conduit entity" and then transferring Grantor's ownership interest in the conduit entity to another party. However, under the new law, if the Grantor holds the conduit entity for three or more years after conveying the land into the entity, then no documentary stamp taxes are owed.
6. **HB1213 (Chapter 2009-111, Laws of Florida) (a/k/a, the "Outer Beltway Bill")** – Amends Section 334.30, Florida Statutes, by exempting certain public-private partnership transportation facilities from specified taxes and special assessments. Specifically, the bill makes public-private partnerships exempt from certain 1) *ad valorem* taxes, 2) intangible taxes, 3) special assessments, and 4) documentary stamp taxes. However, they are not exempt from certain corporate taxes, unemployment compensation taxes, and sales and use taxes.
7. **HB73 (Chapter 2009-134, Laws of Florida)** – Requires DEP and WMDs to adopt an expedited permitting process for "economic development projects" that have been identified by a local government as meeting the definition of "target industry businesses" under Section 288.106, Florida Statutes. "Target industry business" means a corporate headquarters business or any business that is engaged in certain target industries identified by the Florida Office of Tourism, Trade and Economic Development ("OTTED") and Enterprise Florida, Inc. (in accordance with certain criteria outlined in Section 288.106, Florida Statutes).
8. **HB7053 (Chapter 2009-154, Laws of Florida)** – Legislative goal is to preserve, protect, and promote the viability and diversification of agriculture and agriculturally based communities and economies. Creates and defines "rural agricultural industrial centers" ("RAIC") as a developed parcel of land (located within, or within 10 miles of, a rural area of critical economic concern) in an unincorporated area where an operating industrial facility exists that employs at least 200 full-time employees and processes/prepares for transport farm products or biomass material that could be used for the production of fuel, renewable energy, bioenergy, or alternative fuel. Authorizes landowners within RAICs to apply for a comprehensive plan amendment for the purpose of designating and expanding the existing agricultural industrial uses of facilities located within the RAIC or expanding the existing center to include industrial uses or facilities that are not dependent upon but are compatible with agriculture and the existing uses and facilities. The amendment must meet certain

criteria (ex., propose a project that would, upon completion, create at least 50 new full-time jobs). Requires certain actions, timelines to be met by local government and DCA upon receiving such amendment application from a landowner within a RAIC.

9. **HB7157 (Chapter 2009-157, Laws of Florida)** – Exempts land from *ad valorem* taxation that is dedicated in perpetuity for conservation purposes and used exclusively for conservation purposes. Partially exempts land that is dedicated in perpetuity for conservation purposes and is used for allowed commercial uses (i.e., "commercial uses that are allowed by the conservation easement encumbering the land"). However, land that comprises less than 40 contiguous acres does not qualify for the exemption unless certain conditions are met. Provides that certain improvements on exempt lands must be assessed separately. Requires fee simple owner of exempt lands to file an application for assessment with the Property Appraiser.
  
10. **SB2080 (Chapter 2009-243, Laws of Florida)** – Changes the process in which permits are handled and approved by the WMDs. The WMD governing boards must delegate their authority to approve permits to the executive director. The executive director may designate other WMD staff to approve permits. Permit applications that are recommended for denial would continue to be considered by the governing boards. Prohibits homeowners' associations from prohibiting "Florida Friendly" landscaping.