BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

ENVIRONMENTAL ISSUES

Berger Singerman assists clients throughout the full range of environmental issues associated with the operation of businesses and the financing, development, cleanup or sale of real property. Our attorney team members who practice in environmental law afford our clients the benefit of their experience and favorable relationships in working with local, state and federal environmental agencies, including local pollution control agencies, water management districts, and Florida and federal regulatory agencies, in a variety of capacities, including negotiation and litigation in the areas of permitting, use, enforcement and rulemaking. We also assist clients in a variety of environmental due diligence and risk assessment activities, clean energy and utility services associated with the transfer and development of businesses and real property.

We assist clients with environmental issues including:

- Air and Water Pollution
- Brownfield Development
- CERCLA (Superfund)
- Clean Energy
- Climate Change Issues (greenhouse gas assessments, carbon trading, LEEDS certification)
- Coastal Construction
- Domestic and Industrial Wastewater Regulation
- Dry Cleaning Regulation
- Endangered Species
- Environmental Assessments under the National Environmental Policy Act or Florida Law
- Environment Attributes
- Environmental Due Diligence and Risk Assessment
- Environmental Insurance
- Indoor Air Quality
- Marina and Dock Permitting
- Mining
- Mitigation Banking
- Mold and Biological Contaminants
- Noise Contours and Pollution
- Petroleum Tank Regulation
- Soil and Groundwater Assessment and Remediation
- Solid and hazardous waste management regulation and site remediation
- Sovereign lands regulation and leasing

- Stormwater management
- Utility Services
- Water Rights
- Wetland Regulation

Representative Matters

ADVANCED COASTAL TECHNOLOGIES

Berger Singerman worked in conjunction with a lobbying group that introduced them to Advanced Coastal Technologies, Inc. (ACT) to draft legislation in the 2007 session which achieved 2 major breakthroughs for ACT. First, the new legislation allows property owners to use the ACT systems proactively to protect their property before it begins falling into the water. Second, the legislation precludes the Florida Fish and Wildlife Commission ("FWCC") from unnecessarily requiring permit applicants to have an Incidental Take Permit ("ITP"), and thus a Habitat Conservation Plan ("HCP"), in every instance where an ACT system will be installed. Rather, there are specific criteria in the new legislation that provide safeguards for endangered species, including sea turtles, and FWCC must now evaluate whether, in light of these safeguards, an ITP is still needed to comply with the Endangered Species Act. The new legislation, which took effect July 1, 2007, also required DEP to draft rules consistent with the new legislation. Berger Singerman is representing ACT as it progresses through the rulemaking process before the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission. The results of these various rulemaking processes will have a substantial impact on property owners across Florida who have permits pending for ACT systems, including those with permits in litigation, as well as new and existing coastal development across Florida. Continued success in the administrative realm will provide property owners across Florida a method of protecting their homes and investments, as well as the future of Florida's beaches.

BLUE VIEW DORAL

Berger Singerman represented a developer of the parcel of land adjacent to the "Blue Monster" fairway at Doral. The developer encountered significant arsenic contamination in the soil and groundwater, as well as ammonia-nitrogen contamination which threatened the project from the outset. Berger Singerman assembled a technical team, and devised a cutting-edge technique to divide the site into grids, thereby allowing us to "average" the contamination levels in a manner that was most advantageous for the client, and thereby get DERM's No Further Action determination for the property. This novel approach to a potentially devastating condition resulted in the complete assessment and rehabilitation of the site, and the development of the site as planned, within budget and on schedule.

DOCKOMINIUM FOR MEGA-YACHTS IN AVENTURA

Berger Singerman has been retained by Aventura Land and Development Corporation to develop an 18 slip dockominium for boats up to 80 feet in length in the City of Aventura. The site of the project is in the Biscayne Bay Aquatic Preserve and will require permits from Miami-Dade County, the Florida Department of Environmental Protection, and the U. S. Army Corps of Engineers. Because of concern for manatees and sea grasses, obtaining the necessary permits to construct boat slips is extremely difficult today. In addition to the environmental agency approvals, this project requires city site plan approval and may also require a change in zoning from the City of Aventura. Berger Singerman has worked with environmental scientists and engineers to design a marina that minimizes the environmental impacts to the surrounding waters and marine life. No fuel will be sold at the project and each slip will have sewage pump out facilities. The slips have been designed to have no impact on mangroves and seagrasses located on the property. The necessary permits for this project are currently pending.

EVERGLADES PHOSPHORUS RULE CHALLENGE

From 2002 to the present, Berger Singerman attorneys have represented Florida's agricultural industry on various matters relating to the setting of nutrient water quality standards in the Everglades. In December 2001, the State of Florida first undertook rulemaking to create a new Everglades water quality standard. Berger

Singerman was engaged by the Florida Sugar Cane League (FSCL) to represent them before Florida's Environmental Regulation Commission (ERC). Separately, Florida Crystals Corporation the Firm to represent it before the ERC. Berger Singerman worked cooperatively with the dozens of other stakeholders involved over the course of 18 months of ERC rulemaking hearings, in what became the ERC's longest-ever rulemaking process. A final proposed regulation was promulgated by the ERC in June 2003. This led to a series of formal rule challenges, which are decided following a full trial by an independent Administrative Law Judge. Challenges were filed by several environmental groups, including the Sierra Club and Florida Audubon Society, the Miccosukee Tribe of Indians, and by our clients New Hope Sugar Company and Okeelanta Corporation. As the case proceeded through discovery a set of settlements were worked out whereby the issues with New Hope and Okeelanta and the environmental groups were resolved. This led to the contemporaneous withdrawal of the rule challenges by the Sierra Club, Florida Audubon and other related groups, as well as those brought by New Hope and Okeelanta. The Miccosukee Tribe and one other group, Friends of the Everglades, did not settle and the case proceeded to trial. New Hope and Okeelanta intervened to defend the regulation, with Gabriel Nieto representing them in those proceedings. Separately, we represented United States Sugar Corporation (a member of the FSCL) in intervening to defend defense of the rule. Following a multi-day trial and the filing of detailed proposed orders, our clients won on all counts. This was later appealed to the First District Court of Appeal, where we again won on all points. Following all of this in 2005, the Tribe and Friends of the Everglades filed a series of federal actions challenging the regulation and its enabling legislation. New Hope and Okeelanta intervened and have won several early key rulings.

KENDALL PROPERTIES WEST MIAMI-DADE FRESHWATER RESERVOIR

Berger Singerman represents Kendall Properties and Investments of Florida (KPI), owner of the quarry that produces high-quality limestone rock for construction projects all over Florida, in a matter that involves working with geologists, engineers, and scientist to determine the feasibility of transforming a 3.5 square mile limestone quarry into a reservoir that will hold water during the wet season and release it in the dry season to restore health to Biscayne and Everglades National Parks. Drainage of the historic Everglades for suburban and agricultural development has dramatically reduced the flows of clean fresh water to Biscayne Bay and parts of Everglades National Park. The present efforts to restore health to the remaining Everglades are having some success, but there is not enough water left in the dry winter and spring months to meet the needs of Biscayne Bay, Barnes Sound and Florida Bay to serve as the broad mixing zone between fresh and salt water that is foundation of the life cycle of estuaries. The KPI quarry is in a strategic location where preliminary studies show that if the sides of the quarry can be sealed, the lake can become a giant bathtub storing enough surplus water in the wet season to provide through an existing canal network more than a year's freshwater flows to Biscayne Bay and the Everglades. Berger Singerman's role in this matter is to coordinate the engineering, science and water modeling analysis by KPI's consultants to convince the scientist and engineers for Biscayne & Everglades National Parks that the reservoir should be designed and built as part of the federal and state efforts to restore the Everglades Biscayne Bay ecosystem. If the government scientists and engineer's agree that the reservoir should be built, Berger Singerman will lead the efforts to secure the funding to purchase the KPI property and to construct the elements of the project to store and deliver water to the environment as needed.

LAKE OKEECHOBEE BACKPUMPING

Berger Singerman has been involved in another very significant matter in the Southern District, Friends of the Everglades v. South Florida Water Management District. In this case three environmental groups and the Miccosukee Tribe of Indians sued the South Florida Water Management District for operating certain pump structures on the southern rim of Lake Okeechobee, called the S-2, S-3 and S-4 pump structures, without NPDES permits under the Clean Water Act. The pumps are used only occasionally to "backpump" canal water in the Everglades Agricultural Area south of the Lake back into the Lake when flooding occurs in the EAA, thereby protecting municipalities and agricultural crops located in the EAA. This case and a companion one, Miccosukee Tribe v. South Florida Water Management District, involving the S-9 pump structure, are both premised on the proposition that pumping water from one water body of the United States back to another requires such a permit, though NPDES permitting requirements, with a couple of exceptions, have never been applied in this manner. (Historically, permits have been required for discharges to water bodies, not water

transfers between water bodies.) The Miccosukee Tribe case has already been reviewed by the Supreme Court, and the law remains unsettled in this area. The firm has been representing the United States Sugar Corporation in this litigation as a intervening defendant. US Sugar owns over 100,000 acres of sugar cane fields adjacent to the southern rim of Lake Okeechobee, and relies upon the pump structures to irrigate its crops and protect its crops from being destroyed by floods, and thus has an important stake in the outcome of the litigation. After a hearing beginning on January 9, 2006, and ending on April 19, 2006, involving over 20 witnesses and 165 exhibits, the court ruled on December 11, 2006, that the pumping operations required NPDES permits. Plaintiffs then sought additional relief from the court in the way of imposing restrictions on how the SFWMD could operate its pumps, but the court declined to order any supplemental relief beyond the requirement that the SFWMD obtain permits. Both sides have appealed the ruling to the 11th Circuit Court of Appeals.

RESPONSE TO NOTICE OF VIOLATION FROM THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Berger Singerman represented a developer its response to Notice of Violation from the South Florida Water Management District (SFWMD). In the process of subdividing a 94-acre citrus grove in Martin County, Florida, the client unknowingly violated a SFWMD permit regarding stormwater management for the properties. The SFWMD issued a Notice of Violation for certain clearing and other development activities. The client submitted a permit modification to comply with regulatory requirements. Compliance with the permit was complicated by the fact that the client had sold several of the lots and had limited control over the properties being developed for residences by the purchasers. Berger Singerman worked with the client and SFWMD to prepare an engineering solution to stormwater management that was acceptable to the SFWMD. Additionally, Berger Singerman prepared amendments to the original homeowner association documents consistent with the authority of the client to amend the documents and secure approval of the changes by the requisite percent of lot owners.

SOUTHERN FACILITIES DEVELOPMENT, LLC

Berger Singerman is engaged in representing Southern Facilities Development, LLC, v. Broward County Property Appraiser. In 1999, Southern leased two properties from the City of Fort Lauderdale for 50 years. The leases require the properties to be developed for industrial use. Southern has attempted to develop the properties since 2000, but has not been able to because of environmental contamination on the properties. In assessing the properties, the Property Appraiser was required to consider the condition of the properties, among several other factors. Upon information and belief, the Property Appraiser has failed to consider the environmental contamination of the properties in determining their value. The outcome of this case is currently pending.

TINDALL HAMMOCK

Berger Singerman filed a mandamus action against the Florida Department of Environmental Protection (“DEP”) in case of Tindall Hammock Irrigation and Soil Conservation District v. Florida Department of Environmental Protection, for DEP’s failure to issue the District a domestic wastewater permit in a timely manner. The matter at issue involves complex issues associated with whether or not the District’s activities require a NPDES permit under the Clean Water Act and whether the DEP’s failure to act on the permit in a timely manner entitles the District to issuance of a permit by default. DEP has finally issued a draft permit in response to the lawsuit.