

April 2011

Florida's Forgotten Ports: Will the Small Ports of Florida Survive the Rise of the Condo?

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Novak, Susan N. (2011) "Florida's Forgotten Ports: Will the Small Ports of Florida Survive the Rise of the Condo?," *Florida Journal of International Law*. Vol. 23: Iss. 1, Article 4.

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NOTE

FLORIDA'S FORGOTTEN PORTS: WILL THE SMALL PORTS OF FLORIDA SURVIVE THE RISE OF THE CONDO?

*Susan N. Novak**

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I. INTRODUCTION

When people think of Florida, they think of white sandy beaches. They picture clear, sunny skies and the shade of palm trees. There is no

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denying that Florida has a thriving tourism industry and, notwithstanding the current economy, the real estate sector is historically just as prosperous. Few realize that Florida's economy was actually built on its maritime industry.

Florida's maritime history dates back hundreds, if not thousands, of years, certainly pre-dating Juan Ponce de Leon's arrival in 1513.¹ When Florida became a U.S. Territory in 1821, its ports quickly developed significance on the national and international level for shipping and navigation.² Following Florida's statehood in 1845, Florida's economy developed from the shipping industry with massive quantities of citrus, cotton, lumber, and other products being moved to the other states, the Caribbean, and Europe.³ It was not long before the federal government interceded and began constructing coastal ports to enhance national security, and dredging and deepening channels and harbors to better control navigation.⁴ These improvements, combined with twentieth-century technological advances in navigation and shipbuilding brought Florida into the global playing field.⁵ There can be no doubt that Florida made ample use of its coasts and waters in developing its economy.

However, it is important to realize that Florida was not built on one port. In addition to the massive commercial ports commonly found in Florida, there are just as many smaller, commercial ports, often "forgotten" by the average resident, that play a major role in developing Florida's economy. Although overlooked by the masses, these ports are hardly "forgotten" by the citizens still living there; many local economies subsist entirely on the local maritime industry, whether it be fishing, shrimping, or cargo. It is these ports, the ones that are not written about in books in libraries across the state or even on the Internet, that are in the most danger of being "forgotten."

Waterfront property does more than attract commerce; it attracts people. The rise of the condominium or the dockominium, threatens to overtake these smaller ports and eradicate their maritime facilities entirely. While there is legislation in place designed to protect some of these ports, many have no protection at all, relying instead on the local population to compete with the local government and developers. Moreover, even instances where there is legislation in place, such measures have proven largely inadequate in protecting these ports. This Policy Paper (Paper) will consider those ports; the unprotected, "forgotten" ports that are at risk of being eradicated from Florida's

1. National Park Service, *Brief Maritime History of Florida*, <http://www.nps.gov/history/nr/travel/flshipwrecks/maritimehistory.htm> (last visited Jan. 27, 2011).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

maritime industry.

Part II of this Note will discuss in-depth the background and legal history of many of Florida's ports, including legislation currently in place. It begins with general background information on how Florida's ports operate in the state legislative scheme and at the local government level. This Part will discuss Florida's major statutory ports generally. It will also discuss the background of Florida's commonly "forgotten" non-major statutory ports in great detail, noting the differences in maritime revenue between the two categories. Finally, this Part will detail the background of several of Florida's non-statutory ports, the truly "forgotten" ports of Florida. Part III analyzes whether each port is in danger of being overtaken by the private sector, and Part IV provides some concluding remarks.

II. THE PORTS OF FLORIDA

In a state that was built on its maritime industry, Florida has numerous ports. However, the Florida statutes list fourteen specific ports as the public, deepwater ports of Florida.⁶ These ports are given numerous legislative protections. For example, each port is a member of the Florida Seaport Transportation and Economic Development Council (FSTED), which helps plan and carry out developmental projects for each of the ports.⁷ These ports have access to countless resources, including Florida's Department of Community Affairs, Department of Transportation, the Office of Tourism, Trade, and Economic Development, and the Florida Ports Council, which was created with the intention of assisting FSTED in administrative tasks.⁸ To fund projects, these ports have access to the State Transportation Trust Fund on a 50-50 matching basis, with even lower matching requirements if the project involves dredging or deepening of channels, turning basis, or harbors, or the rehabilitation of wharves, docks, or other similar structures.⁹ This legislation is intended to protect the maritime facilities at each port, and funds used pursuant to the 50-50 matching plan and income derived from projects completed with the use of program funds may only be used to further "port capital improvements consistent with maritime purposes and no other purpose. Use of such income for nonmaritime purposes is prohibited."¹⁰

6. FLA. STAT. § 311.09(1) (2010).

7. *Id.* § 311.09(3)-(12).

8. *See id.*; *see also* Florida Ports Council, <http://www.flaports.org/> (last visited Jan. 29, 2011).

9. FLA. STAT. § 320.20(3) (2010); *see also* FLA. STAT. § 320.20(4)(C) (2010).

10. FLA. STAT. § 320.20(3) (2010).

Despite Florida's statutory protections and restrictions, there are significant differences in the commercial usage for each of the statutory ports. Therefore, for purposes of this Note the statutory ports are broken into two categories: major statutory ports and non-major statutory ports. Major statutory ports refer to Florida's large-scale commercial trade or cruise ports that generate significant income for the local and state government. Non-major statutory ports refer to Florida's smaller scale ports, many generating minimal or even no commercial income.

Each of Florida's statutory ports has a governing body responsible for operating the port.¹¹ Oftentimes the port operates as a department of the county or city of which it is comprised.¹² However, in many cases, the ports are operated by entities known as "special districts."¹³ A special district functions similar to a municipality or county; special districts "(1) have a governing board with policy-making powers, (2) operate within a limited geographical area, and (3) are created by general law, a special act of the Florida legislature, a local ordinance, or a rule of the Governor and Cabinet."¹⁴ While special districts are granted limited powers in their enabling legislation, they can be given a broad array of authority, ranging anywhere from serving only as the governing authority of its defined region, to ad valorem taxing authority on the local citizenry.¹⁵ There are two types of special districts: dependent and independent.¹⁶ A dependent special district must have one of the following characteristics:

- (1) its governing board is the same as the one for a single county or a single municipality, (2) its governing board members are appointed by the governing board of a single county or a single municipality, (3) during unexpired terms, its governing board members are subject to removal at will by the governing board of a single county or a single municipality, (4) its budget requires approval through an affirmative vote of the governing board of a single county or single municipality [or] (5) its budget can be vetoed by the governing board of a single county or a single

11. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, FIVE YEAR PLAN TO ACHIEVE THE MISSION OF FLA.'S SEAPORTS: 2009/2010-2013-2014, B1-B39 (2010), available at [http://www.flaports.org/userfiles/smpcontents2009_rev4110\(1\).pdf](http://www.flaports.org/userfiles/smpcontents2009_rev4110(1).pdf).

12. See, e.g., *infra* notes 36, 71, 86, 100, & 123 and accompanying discussion.

13. *Id.*

14. Fla. Dep't of Community Aff., Div. of Housing and Community Dev., *Special District Information Program: Frequently Asked Questions*, <http://www.floridacommunitydevelopment.org/sdip/FAQ.cfm> (last visited Jan. 27, 2011).

15. *Id.*

16. *Id.*

municipality[.]¹⁷

In contrast, independent special districts can only be created by a special act of the Florida Legislature, and have none of the characteristics listed above.¹⁸ In the context of ports, special districts are known as “port authorities.”¹⁹ Port authorities are usually tasked with the responsibility of operating, maintaining, protecting and ultimately improving the port’s maritime facilities, whether they be trade, recreation, or cruise revenue.²⁰

In addition to these statutory ports, Florida has numerous small, commercial ports that operate at the local level. These ports are afforded none of the protections that the statutory ports receive. A few are operated by special districts; some even have taxing authority.²¹ However, very little information is available on these ports due to their size and operational capacity. Regardless, several of these ports will be discussed in the third section of this Part.

A. Major Statutory Ports

This Note focuses on Florida’s smaller, less protected ports. However, in order to fully understand the issues presented in this Note, an overview of Florida’s larger commercial ports is necessary. For purposes of this Note, the statutory ports of Florida have been classified as “major statutory ports” if, in the 2008-2009 fiscal year, either (1) more than one million tons of cargo moved through the port; or, (2) the port generated more than one million dollars in cruising revenue. A port is a “non-major statutory port” if the port’s cargo or cruise revenue fell below one million. Although these numbers may seem arbitrary, when comparing the cargo and cruise revenue of the eight major statutory ports and the six non-major statutory ports, the differences are substantial, as the non-major statutory ports rarely come close to one million in either category.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See, e.g., infra* notes 36, 71, 86, 100, & 123 and accompanying discussion.

21. *Id.*

Table 1: Florida's Major Ports²²

Port	Governing Body	Relationship to City	Cargo (tons)	Cruise revenue	Proprietary Authority	Taxing Authority
Port Canaveral	Canaveral Port District	Independent Special District	2.6 million	3.3 million	Yes	Yes
Port Everglades	Broward County Board of County Commissioners	n/a	21.2 million	3.1 million	n/a	n/a
Port of Jacksonville	Board of Directors and Jacksonville Port Authority	Dependent Special District	23.4 million	185,434	Yes	No
Port Manatee	Manatee County Port Authority (run by county commissioners)	Dependent Special District	8.3 million	None	Yes	No
Port of Miami	Miami-Dade County Mayor and Board of County Commissioners	n/a	6.8 million	4.1 million	n/a	n/a
Port of Palm Beach	Port of Palm Beach District	Independent Special District	2.3 million	349,800	Yes	Yes
Port of Panama City	Panama City Port Authority	Dependent Special District	1.3 million	None	Yes	No
Port of Tampa	Tampa Port Authority	Independent Special District	37.8 million	802,937	Yes	No

It is interesting to note that historically, both Port Everglades and Port of Miami did have a special district port authority. Port Everglades had the Broward County Port Authority from 1927 until 1965, when it was renamed the Port Everglades Authority.²³ Port Everglades Authority controlled until 1994, when Port Everglades Authority was dissolved and the Port became a department of Broward County.²⁴ Similarly, the Port of Miami's Port Authority was first established in the early 1920s, and later absorbed by Miami-Dade County in 1960.²⁵

22. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, *supra* note 11, at 24, 31, B1-B39.

23. Port Everglades, *History*, <http://www.porteverglades.org/history.php> (last visited Jan. 27, 2011).

24. *Id.*

25. MIAMI-DADE PORT MASTER PLAN 2013, *History* (on file with author).

B. Non-Major Statutory Ports

1. Port of Fernandina

Table 2: Non-Major Statutory Ports²⁶

Port	Governing Body	Relationship to City	Cargo (tons)	Crude capacity	Proprietary Authority	Taxing Authority
Port of Fernandina	Ocean, Highway, and Port Authority	Independent Special District	.507 million	None	Yes	No
Port of Fort Pierce	St. Lucie County	n/a	.358 million	None	n/a	n/a
Port of Key West	City of Key West	n/a	None	864 million	n/a	n/a
Port of Pensacola	City of Pensacola	n/a	.248 million	None	n/a	n/a
Port of St. Joe	Port of St. Joe Port Authority	Independent Special District	None	None	Yes	No
Port of St. Petersburg	City of St. Petersburg	n/a	None	None	n/a	n/a

The Port of Fernandina has a long and colorful history dating back to the American Revolution, when Florida remained loyal to Britain.²⁷ The value of Fernandina's natural harbor was apparent and utilized even before Florida became a state in 1845.²⁸ Over time, the outbreak of war and the development of national railroads throughout the nineteenth and twentieth centuries only increased activity in the Port, with the Port of Fernandina serving as a major base for shipping military supplies.²⁹ In 1941, a special act of the Florida Legislature formally established the Fernandina Port Authority as a body politic and corporation.³⁰ In 1961, the name was changed to Ocean Highway and Port Authority (OHPA).³¹ However, the development of the Port of Jacksonville, with its ideal access to the Florida East Coast Railroad, led to a major decline in the usage of the Port of Fernandina, causing the seaport to fall to

26. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, *supra* note 11, at 24, 31, B1-B39.

27. Port of Fernandina, *Port History*, <http://www.portoffernandina.org/history.html> (last visited Jan. 27, 2011).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

ruins.³²

The principal purpose of OHPA is to encourage economic development in Nassau County.³³ In so doing, OHPA conducts the necessary research and analysis of “the impacts upon and relationships with surrounding communities, the economic goals of the State and region, and the regulatory requirements of numerous governmental agencies.”³⁴ The success of OHPA is demonstrated by the major changes it facilitated in December 1985; following the U.S. Navy’s construction of a deeper entrance channel, OHPA issued bonds to finance the construction of a modern seaport terminal, bringing the Port back to life with deepwater port facilities that meet the maritime shipping needs of the region.³⁵

Currently, OHPA functions as an independent special district with many of the powers of a local governmental unit including policy-making, budgeting, and general oversight responsibilities for all of the Port’s activities.³⁶ It is governed by five elected commissioners representing the five voting districts of Nassau County, each serving staggered four-year terms.³⁷ OHPA employs a private port operating company to manage and administer the Port.³⁸ Functioning without the authority to tax, OHPA relies on the financial viability of each project to pay for its operational costs.³⁹ Pursuant to its charter, OHPA has full proprietary authority over its lands and may acquire property or property interests through negotiation or condemnation; set tariffs; enter into secure agreements with government entities; incur debt; plan, develop, and lease properties; and regulate land use and buildings on Port land.⁴⁰

2. Port of Fort Pierce

The Port of Ft. Pierce has a fairly modern history, coming into existence in the early twentieth century when the Ft. Pierce Inlet, a manmade opening, was cut through the land barrier between the Atlantic Ocean and the Indian River Lagoon.⁴¹ In 1918, a special act of

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. 2005 Fla. Laws 293.

37. Port of Fernandina, *supra* note 27.

38. *Id.*

39. *Id.*

40. *Id.*

41. St. Lucie County, *Fort Pierce Port Plan: Background on the Port*, <http://www.stlucieco.gov/port/Background.htm> (last visited May 13, 2010) [hereinafter St. Lucie County].

the Florida Legislature named St. Lucie County as the Port Authority.⁴² At the same time, another special act of the Florida Legislature established the Ft. Pierce Inlet District, and empowered it with taxing authority and the authority to issue bonds to finance the project.⁴³ In 1947, the Ft. Pierce Inlet District was dissolved and replaced with the Ft. Pierce Port Authority; the Port Authority was granted the same taxing and revenue-raising authority, but also full proprietary and land-use authority.⁴⁴ In 1961, a special act of the Florida Legislature replaced the Ft. Pierce Port Authority with the Ft. Pierce Port and Airport Authority, both run by St. Lucie County.⁴⁵ In 1989, the name of the Authority was changed to the St. Lucie County Port and Airport Authority.⁴⁶ In 1998, the Legislature dissolved the St. Lucie County Port and Airport Authority and transferred its assets, liabilities, and responsibilities to the Board of County Commissioners of St. Lucie County.⁴⁷ Thus, although the Port of Ft. Pierce is physically within the city limits of the City of Ft. Pierce, it is the responsibility of St. Lucie County and is managed by the five county commissioners.⁴⁸

3. Port of Key West

The Port of Key West is structured very differently from Florida's other ports. The Port of Key West consists of three docking facilities.⁴⁹ The first is known as the Navy Mole; owned by the City of Key West, the Port has been operated by the Navy since the early 1800s.⁵⁰ Maritime shipping in the area is non-existent.⁵¹ In 1969, Key West first served as a destination for a cruise ship, and the cruise industry has increased ever since.⁵² The second docking facility is known as Mallory Square, and is operated by the City of Key West.⁵³ In 1984, the city commissioners authorized major renovations on the pier to fully accommodate cruise ships.⁵⁴ Mallory Square is a major source of

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Port of Call Guide, *Port of Key West*, <http://port.of.key.west.portofcallguide.com/> (last visited Jan. 27, 2011) [hereinafter Port of Call Guide].

50. Globalsecurity.org, *Military: Key West*, http://www.globalsecurity.org/military/facility/key_west.htm (last visited Jan. 27, 2011).

51. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, *supra* note 11, at B18.

52. Port of Call Guide, *supra* note 49.

53. *Id.*

54. *Id.*

income for the city of Key West.⁵⁵ The third docking facility is Westin Marina, and it is privately owned by the Westin Hotel.⁵⁶

4. Port of Pensacola

The Pensacola Port Authority was first established in 1943 by the Florida Legislature, with the goal of revitalizing a seaport that was prosperous until World War I.⁵⁷ The Port Authority first made progress in the mid 1950s when numerous railroads deeded local docks and service facilities to the Port Authority.⁵⁸ In 1957, the Port Authority successfully enacted a program that completely revitalized its maritime facilities, resulting in new cargo and revenue for the Port.⁵⁹ The revitalized seaport was destroyed by fire less than two years later. However, following the fire, the business community cooperated with the City Council and the Authority to redevelop the Port facilities.⁶⁰ Despite additional problems with fires, the Port was able to complete new terminal construction by 1970.⁶¹ In 1976, the Port Authority was dissolved, and the Port of Pensacola was made a department of the City of Pensacola.⁶² Since then, there has been much effort toward cargo diversification to ensure the vitality of the Port.⁶³ However, its success is questionable, given that, as Table 2 demonstrates, the Port moved less than 250,000 tons of cargo over the last year.

5. Port of St. Joe

Port St. Joe is another example of a port that has played a major role in Florida's history. The City of Port St. Joe was originally known as St. Joseph.⁶⁴ The proximity of the city to the Gulf of Mexico and the construction of railroad service to the region in 1835, played a significant role in its growth.⁶⁵ By 1839, St. Joseph had become the

55. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, *supra* note 11, at B18; Port of Call Guide, *supra* note 49.

56. See Key West Hotels: The Westin Key West Resort & Marina—Overview, <http://www.westinkeywestresort.com/> (last visited Jan. 27, 2011).

57. Port of Pensacola, *History*, <http://www.portofpensacola.com/live/?pid=2807> (last visited Jan. 27, 2011).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* Examples of methods the Port has employed to diversify its cargo include improving its warehouse and storage facilities. *Id.*

64. TEC INC. ET AL., PORT ST. JOE: PORT MASTER PLAN 32 (July 2008) (on file with author).

65. *Id.*

largest city in Florida, and its port was comparable in importance to those of Mobile and New Orleans.⁶⁶ However, in 1840, a major hurricane devastated the city, the effects of which affected the Port for nearly 75 years.⁶⁷ It was not until 1914, when a Port Channel was constructed, and 1937, when it was deepened, that a dredging operation was undertaken to build a major dock.⁶⁸ Prior to World War II, a portion of the Port was set aside to store military supplies and petroleum.⁶⁹ Throughout the years, ownership of the petroleum storage area has included numerous oil companies.⁷⁰ In 1955, a special act of the Florida Legislature created the St. Joe Port Authority.⁷¹ Dredging of the Port's channel and harbor was completed in 1962, and maintenance of the dredging took place in 1973, 1980, and 1985; neither has been dredged since 1985.⁷² The domination of the Port St. Joe economy for more than 60 years by the St. Joe Paper Company and the paper and pulp industry seemingly rendered the Port irrelevant.⁷³ However, the St. Joe Paper Company was sold in the late 1990s, and the paper mill ceased operations in August 1998, devastating the local economy.⁷⁴

Since 1996, the St. Joe Port Authority has made significant attempts to redevelop the Port and revitalize the Port of St. Joe's economy, mending the damage done by the closure of the paper mill. The Port's natural harbor, protected by the St. Joseph Peninsula barrier island, and quick access to open water, make it an ideal port for revitalization.⁷⁵ In 2006, to facilitate its revitalization efforts, the Port of St. Joe entered into a working relationship with the Port of Panama City with the hope that the support of a larger, economically viable Port would enhance its efforts.⁷⁶

6. Port of St. Petersburg

The City of St. Petersburg is certainly one of the most beautiful cities in Florida. Few that have visited the city can deny that the surrounding nature, the beaches, and the architecture of the area leave little to be desired. Yet just as few realize that located in the downtown waterfront area is one of Florida's statutory ports.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. 1955 Fla. Laws 30787.

72. *TEC INC. ET AL.*, *supra* note 64, at 32.

73. *Id.*

74. *Id.*

75. *Id.* at 33.

76. *Id.*

For a Port that has no mentionable cargo transports or cruise revenue, and projects none over the next five years, the Port of St. Petersburg describes itself as “strategically located near Tampa International Airport, the St. Petersburg–Clearwater Airport, and Albert Whitted Municipal Airport [i]deal for all travel needs. The Port also has an excellent[] uncongested road network and public transportation system, which connects its cruise passenger terminal and other facilities to nearby markets, tourist destinations[,] and airports.”⁷⁷

There is little to say about the Port of St. Petersburg’s background; it has always operated as a department of the City of St. Petersburg, having never had a Port Authority.⁷⁸ It appears that the Port is not mentioned in either the City’s charter or municipal code, and the City’s Comprehensive Plan primarily addresses citizen concerns regarding the local environmental and residential areas.⁷⁹ The focus of Port of St. Petersburg’s revenue raising is that of mega-yachts, with its anticipated major capital improvements being wharf renovations, improving shore-side facilities and upgrades to accommodate mega yachts, paving, parking, and potentially building a second 900-foot berth, and constructing new Port-related facilities to enhance the waterfront area.⁸⁰ Thus, the Port of St. Petersburg focuses on a much smaller class of revenue rather than traditional maritime facilities.

77. Fla. Dep’t of Community Aff., Div. of Housing and Community Dev., *supra* note 14; Carrabelle Waterfronts Partnership, Charting the Course for the Carrabelle Waterfront: Vision and Implementation Plan 13 (Aug. 2008), available at <http://mycarrabelle.com/documents/Carrabelle%20Waterfronts%20Partnership/Final%20Carrabelle%20Vision%20Plan.PDSF> [hereinafter CarrabelleWaterfronts Partnership].

78. ST. PETERSBURG, FLA. MUNICIPAL CHARTER (2009); ST. PETERSBURG, FLA. CITY CODE (2010); CITY OF ST. PETERSBURG, COMPREHENSIVE PLAN (Sept. 16, 2010).

79. FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT COUNCIL, *supra* note 11, at B35.

80. ST. PETERSBURG, FLA. MUNICIPAL CHARTER (2009); ST. PETERSBURG, FLA. CITY CODE (2010); CITY OF ST. PETERSBURG, COMPREHENSIVE PLAN (Sept. 16, 2010).

81. FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT COUNCIL, *supra* note 11, at B35.

C. Non-Statutory Ports

Table 3: Several of Florida's Non-Statutory Ports⁸¹

Port	Governing Body	Relationship to City	Source of Revenue	Proprietary Authority	Taxing Authority
Carrabelle	Franklin County/Carrabelle Port and Airport Authority	n/a	Seafood Industry	n/a	n/a
Hernando Beach	Hernando County Port Authority	Dependent special district; serves as advisory board to City	Shrimping industry	No	No
Ponce de Leon Inlet	Ponce de Leon Inlet and Port District	Dependent special district; serves as advisory board to city	"Sport port" – recreational facilities	No	Yes
San Carlos Island	Lee County	n/a	Fishing village	n/a	n/a
St. Augustine	St. Augustine Port, Waterway, and Beach District	Independent Special District	Fully functional commercial	Yes	No

1. Carrabelle

Carrabelle is located on St. James Island, in Franklin County, Florida. Both fresh and salt waters surround Carrabelle's historic waterfront municipality, which was incorporated in 1893.⁸² "Water has been, and continues to be, the lifeblood of this long-lived community."⁸³ Historically, Carrabelle was an important point for shipping oil; using Carrabelle's small deepwater port, the oil was shipped from Texas, through the Intercoastal Waterway to Carrabelle and then to Jacksonville.⁸⁴ In modern times, it is Carrabelle's seafood industry that will suffer as the real estate sector takes over.⁸⁵

In 1986, a special act of the Florida Legislature established the

81. Fla. Dep't of Community Aff., Div. of Housing and Community Dev., *supra* note 14.

82. CARRABELLE WATERFRONTS PARTNERSHIP, CHARTING THE COURSE FOR THE CARRABELLE WATERFRONT: VISION AND IMPLEMENTATION PLAN 13 (Aug. 2008), *available at* <http://mycarrabelle.com/documents/Carrabelle%20Waterfronts%20Partnership/Final%20Carrabelle%20Vision%20Plan.PDF> [hereinafter CARRABELLE WATERFRONTS PARTNERSHIP].

83. *Id.*

84. Carrabelle Area Chamber of Commerce, *History*, <http://www.carrabelle.org/the-area/history> (last visited Jan. 29, 2011).

85. *See supra* note 77 and accompanying text.

Carrabelle Port and Airport Authority as a dependent special district for development purposes.⁸⁶ Among other enumerated powers, the Act conferred upon the Port and Airport Authority the authority to issue bonds.⁸⁷ Florida's Department of Community Affairs still lists Carrabelle Port Authority as an active special district,⁸⁸ although a telephone call to Carrabelle's Chamber of Commerce suggests otherwise.⁸⁹ "A plan for an industrial seafood park to serve [Carrabelle's extensive] commercial fishing industry was initiated but never implemented."⁹⁰ On the west end of Carrabelle near Timber Island is a dockminium ownership and rental facility, and the developing area includes a mix of high density, luxury residential, and commercial properties.⁹¹ With the downturn of the economy, most of the residential structures remain unfinished, although the permits have been granted, water and sewer taps paid, and infrastructure installed.⁹² Timber Island accounts for nearly half of the Carrabelle waterfront.⁹³

2. Hernando Beach

Although shrimping boats first realized the vitality of Hernando Beach in the 1950s, the small port did not develop until the early 1960s.⁹⁴ As a result, in 1965, the Hernando County Port Authority was established by special act of the Florida legislature as a dependent special district with the authority to issue bonds.⁹⁵ Until 1993, the port authority was funded by the state; however, in 1993 the port authority was merged into the Hernando County Department of Parks and Recreation.⁹⁶ Currently, the port at Hernando Beach provides 70% of the shrimp bait for the state of Florida.⁹⁷ However, the residential sector is growing quickly; currently, there are only approximately eight remaining undeveloped lots with the potential for commercial

86. 1986 Fla. Laws 464.

87. *Id.*

88. Fla. Dep't of Community Aff., *Official List of Special Districts Online*, <http://www.floridaspecialdistricts.org/OfficialList/report.cfm> (last visited Jan. 27, 2011) [hereinafter Fla. Dep't of Community Aff.].

89. Telephone interview with Tamara Allen, Carrabelle's Waterfronts Florida Program Manager (May 3, 2010).

90. CARRABELLE WATERFRONTS PARTNERSHIP, *supra* note 82, at 13.

91. *Id.*

92. *Id.*

93. *Id.*

94. Telephone Interview with Chuck Morton, Chairman of Hernando County Port Authority (May 3, 2010) [hereinafter Morton Interview].

95. Fla. Dep't of Community Aff., *supra* note 88.

96. Morton Interview, *supra* note 94.

97. *Id.*

dockage.⁹⁸

3. Ponce De Leon

Ponce de Leon Inlet has an extensive history in the state of Florida.

[The] Inlet is historically a natural passage from the Halifax River and Mosquito Lagoon to the Atlantic Ocean in Volusia County. In 1943, the U.S. Army Corps of Engineers dredged the inlet and adjacent waters to [improve] navigation. Between 1968 and 1972, the [Corps] implemented a federal navigation and inlet stabilization project to include the construction of a 4,018 foot south jetty, a 4,050 foot north jetty with weir section, a dredged impoundment basin, and a 14 foot deep navigation channel.⁹⁹

In 1969, as a result of state and federal government efforts to improve the deepwater access of the inlet, Volusia County voted to establish a port authority as a dependent special district,¹⁰⁰ with the authority to issue bonds and ad valorem taxing authority.¹⁰¹ However, in 1984 the County passed legislation to establish the port authority exclusively as an advisory body.¹⁰² Thus, although the District's enabling legislation grants it taxing authority, it is not able to exercise it. In 1985, a section of the north jetty was closed in order to stabilize the severely eroding shoreline on the north end of the inlet.¹⁰³ Attempts made in the late 1980s and early 1990s to develop commercial fishing in the region were rejected by the local population, citing environmental concerns.¹⁰⁴

Currently, the port at Ponce de Leon Inlet is a division of the Volusia County government, and the Ponce de Leon Inlet and Port District serves as an advisory authority to the Volusia County government.¹⁰⁵ Ponce de Leon inlet is no longer a commercial port, and is instead exclusively a recreational "sport port," a shallow draft inlet with no interior shore-side facilities.¹⁰⁶

98. *Id.*

99. PONCE DE LEON INLET MANAGEMENT PLAN, IMPLEMENTATION STUDY 3 (Mar. 1997), available at <http://bcs.dep.state.fl.us/bchmngmt/p-deleon.pdf> [hereinafter PONCE DE LEON INLET MANAGEMENT PLAN].

100. 1969 Fla. Laws 170; 1970 Fla. Laws 969.

101. Fla. Dep't of Community Aff., *supra* note 88.

102. VOLUSIA COUNTY, FLA., ORDINANCE 84-12 (1984) (on file with author).

103. PONCE DE LEON MANAGEMENT PLAN, *supra* note 99, at 3.

104. Telephone Interview with Joe Nolin, Port Director of Ponce de Leon Inlet (Apr. 23, 2010).

105. *Id.*

106. *Id.*

4. San Carlos Island

San Carlos Island is a small working waterfront tucked under the Matanzas Pass Bridge connecting Fort Myers with Fort Myers Beach. The port at San Carlos Island dates back to the 1860s, when cattle were first shipped out of San Carlos.¹⁰⁷ In the early 1900s, the Army Corps of Engineers began documenting commerce in the area to determine the vitality of a channel in the pass.¹⁰⁸ In 1950, as commercial and industrial water traffic increased, the local government met with the Army Corps to discuss the need to dredge the Matanzas Pass Channel and to determine whether to extend federal funds for a shallow draft port.¹⁰⁹ In 1960, a federal channel was dug to twelve feet with a proposed turning basin to accommodate vessels up to 200 feet in length.¹¹⁰ In the 1970s, the port was designated an extension of the deepwater port of Boca Grande.¹¹¹ Although subsequent maintenance dredging has been done on the federal channels over the past decades, a full maintenance dredge is still needed to keep the channel and turning basin open.¹¹² It does not appear that San Carlos Island has ever had a governing special district, instead relying either on the local airport authority,¹¹³ or Lee County Airport Authority.¹¹⁴

Currently, the half-mile long barrier island thrives on its seafood and shrimping industry, and is comprised of fish houses, commercial fishing docks, an open-air waterfront restaurant and seafood market, and a mix of residential homes.¹¹⁵ A study done by the Florida West Coast Inland Navigation District in 1999 found that the shrimping industry contributes approximately \$55 million annually and over 1500 jobs to the local economy.¹¹⁶ Recognizing the importance of protecting the local fishing fleets and other waterfront related industries, Lee County amended its Comprehensive Plan to include San Carlos Island overlay, with the intention of protecting marinas, marine-related industrial and commercial uses, and marine storage areas such as dry-docks.¹¹⁷ Lee County also modified its Land Development Code to permit marine-

107. Telephone interview with Joanne Semmer, San Carlos Island Waterfronts Florida Program Manager (Apr. 30, 2010).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. Fla. Dep't of Community Aff., *supra* note 88.

115. WATERFRONTS FLORIDA P'SHIP PROGRAM, COMMUNITY CASE STUDIES 80 (May 2009).

116. *Id.* at 81.

117. *Id.*

related businesses.¹¹⁸ Despite these protections, a 40-acre parcel is slated for redevelopment into condos, hotels, and a yacht club.¹¹⁹ Although the citizenry of San Carlos Island expressed interest in incorporating to gain autonomy over its zoning and land use, its close proximity to Fort Myers Beach causes San Carlos Island to fall outside the requirements of the Florida Statutes for incorporating as a municipality.¹²⁰

5. St. Augustine

The port at St. Augustine stands as the anomaly of Florida's non-statutory ports. In the late 1930s, the St. Augustine Port, Waterway, and Beach District (District) was established by special act of the Florida Legislature to fulfill the requirement of local sponsor for the Army Corps of Engineers' St. Augustine Inlet project.¹²¹ Five at-large elected commissioners govern the District, each serving four-year terms.¹²² The District has ad valorem taxing authority, and a broad range of authority for building warehouses (thus increasing cargo-storage capacity), wharfs, bridges, and other structures for the commercial development of the Port.¹²³ The District has no full-time staff, but does retain an engineering firm, a law firm, an accounting firm, and a secretarial service.¹²⁴

Currently, the District does not exercise much of the power granted to it.¹²⁵ Until the early 1990s the District was highly inactive, concerned primarily with maintaining the St. Augustine Inlet.¹²⁶ In the 1990s, the District first retained a local engineering firm, establishing a Master Plan in 1993, which was later revised and updated in 2004.¹²⁷ Since the 1990s, the District has become highly active in a number of maritime issues, including funding for the removal of derelict boats, boat ramp feasibility studies, construction of offshore artificial reefs, authoring a navigational guide to St. Augustine waterways, installing and maintaining channel markers in Salt Run, the Management Plan, boat mooring, repair of the St. Augustine lighthouse, and studies identifying

118. *Id.*

119. *Id.*

120. *Id.*

121. St. Augustine Port, Waterway, and Beach District, *Our History*, http://www.staugustineport.com/about_us/about_us.html (last visited Jan. 27, 2011) [hereinafter St. Augustine Port, Waterway, and Beach District].

122. *Id.*

123. *Id.* In 2000, the Florida Legislature greatly expanded the powers of the District. *See* 2000 Fla. Laws 478.

124. St. Augustine Port, Waterway, and Beach District, *supra* note 121.

125. *Id.*

126. *Id.*

127. *Id.*

problems with the Matanzas Bay seawall.¹²⁸

III. THE FATE OF FLORIDA'S "FORGOTTEN" PORTS

The review of the Florida ports discussed above leaves one question: what will happen to Florida's "forgotten" ports? Will they be overtaken by the tourism and real estate industries and turned into exhibits at Florida's museums? And would the creation of a port authority adequately protect Florida's smaller maritime operations? All of these questions will be considered.

At first glance, it would appear that Florida's major ports demonstrate that governance by a special district port authority does not adequately protect a port. As indicated by Table 1, of Florida's eight major statutory ports, only three are operated by an independent special district (Port Canaveral, Port of Palm Beach, and Port of Tampa), and each generates enough income either from trade or cruise revenue for the governing port authority to protect the local maritime facilities from the development of tourism and real estate. Two of Florida's major statutory ports (Port Everglades and Port of Miami) are not operated by a port authority at all, but instead rely upon the local city or county government to protect and enhance the port's maritime facilities.¹²⁹ However, each of these ports generates a fairly substantial amount of income, with Port Everglades moving more than twenty million tons of cargo and Port of Miami earning the most cruise revenue in the state of Florida.¹³⁰ Thus, each local economy relies on these ports for income and has sufficient incentive to protect their maritime facilities without a port authority. This is also true for each port operated by a dependent special district comprised of a port authority and the local county government; each port generates enough income to provide incentive for the district to ensure the continued vitality of the port's maritime operations.

Next, consider Florida's non-major statutory ports. The Port of Fernandina and Port of St. Joe are the only two non-major statutory ports that are operated by special districts. The port authorities at each of these ports have made substantial efforts to improve their maritime

128. *Id.*

129. See generally Port Everglades, *Contact*, <http://www.porteverglades.org/contact.php#Operations> (last visited Jan. 27, 2011). Miami-Dade County: *Port of Miami*, <http://www.miamidade.gov/portofmiami/home.asp> (last visited Jan. 27, 2011).

130. Port Everglades, *What's In a Name?*, <http://www.porteverglades.org/index.php> (last visited Jan. 27, 2011). See Press Release, Miami-Dade County, *New Cruise Season Opens With Record Traffic* (Jan. 24, 2011), available at http://www.miamidade.gov/portofmiami/press_releases/11-01-24_cruise_first_quarter.asp.

facilities. The Port of Fernandina is constantly improving its facilities to better accommodate its trade facilities. It currently moves the most cargo of all of the smaller ports and will continue to develop its facilities so that it can meet its goal of more than doubling its cargo throughputs over the next five years.¹³¹ The Port Authority of St. Joe is currently rejuvenating its Port to revive its maritime operations after decades of complete inactivity, pursuing its requirements for permitting and applying for various state grants to achieve this goal.¹³² The city of Key West is extremely reliant on income from the tourism industry, especially the cruise industry, and certainly has sufficient incentive to maintain its maritime facilities and retain this income.

The Ports of Fort Pierce and Pensacola appear to be in similar situations. Both play integral roles in Florida's maritime history, yet neither has a special district in place to protect and enhance the port's maritime facilities. Because the revenue earned by each port is fairly insubstantial, there is minimal incentive for the city to devote the time and effort that an independent port authority could devote. Thus, despite the legislation in place to protect them, both ports are at high risk for overdevelopment by the tourism and real estate sectors.

The Port of St. Petersburg is a prime example of a port with its maritime facilities in jeopardy. The Port has never had an independent governing body, and, despite Florida's legislative mandates and protections of its statutory ports, the Port focuses its commercial revenue-raising attempts at a very small class of the wealthy elite, attempting to draw in business from mega-yachts. Although operating as a yacht marina is a perfectly suitable source of income, the facts indicate that the Port of St. Petersburg rarely breaks even, consistently operating at a loss.¹³³

However, it is Florida's non-statutory ports that face the most danger. Without protection from the state or local government, it will not be long before the maritime facilities at many of these ports are rendered simply a part of Florida's history. The Ports of Carrabelle and San Carlos Island are prime examples of two of Florida's "forgotten" ports that are in real danger. Both of these areas have commercial port facilities with deep roots in Florida's maritime history, and both areas remain highly dependent on those industries. The downturn of the economy has halted the growth of the local real estate and tourism industries, but this delay is only temporary.¹³⁴ Despite attempts at

131. FLA. SEAPORT TRANSP. AND ECON. DEV. COUNCIL, *supra* note 11, at B1-B39.

132. Telephone Interview with Tommy Pitts, Director of Port Authority of St. Joe (Apr. 16, 2010).

133. Telephone Interview with Mark Wynn, City Counsel for St. Petersburg (Apr. 27, 2010).

134. *See supra* note 77.

forming a port authority to protect its facilities, Carrabelle has dockminium units in place just waiting to be developed. Lacking formal protection, it appears that San Carlos Island is fighting a daily battle against yachts, condos, and hotels. One can be certain that as soon as the economy picks up even slightly, both sectors will continue to grow and inevitably overtake the maritime facilities at each location.

The port at Hernando Beach is an example of a non-statutory port that, through its port authority, has greatly developed its commercial shrimping industry, making it a leader in the state.¹³⁵ However, despite the protection of a port authority, the real estate sector remains an ongoing threat to the Port's development. In contrast, the port at Ponce de Leon Inlet is a non-statutory port that, despite a long history in the commercial industry and the protection of a port authority, conceded to the closure of any commercial maritime facilities that may have developed, but through its Port District, has vigorously protected and developed its "sport port" recreational facilities.¹³⁶ St. Augustine, of course, is the exception and stands as a true anomaly; with the creation of an independent special district, the local government has demonstrated its intent to develop its maritime facilities to the fullest extent possible, and has currently surpassed many of Florida's statutory ports.

IV. CONCLUSION

Florida was built on its seaports, and the maritime industry will always be an integral part of its economy, history, and culture. Simply too many local economies rely entirely on the maritime industry for Florida to allow its ports to be "forgotten," devastating entire regions. Thus, the first proposed step is a comprehensive statewide inventory of all of Florida's ports, regardless of size, to identify at-risk ports.

After identifying at-risk ports, the State must determine what is necessary to bring these ports back to stability. A review of Florida's thriving ports in comparison with ports in danger of becoming obsolete reveals two key elements to adequately protecting a port. First is legislation designed to protect Florida's ports. This is commonly accomplished by the creation of a special district, a port authority either dependent or independent of the local government that can diligently research and operate the port's maritime facilities. Ensuring that the port is a department of the local city or county can prove just as effective provided that the local government is proactive about maintaining and improving its maritime industry instead of simply privatizing more

135. *See supra* note 94.

136. *See supra* note 132.

waterfront property.

However, as demonstrated by several of Florida's smaller ports, a diligent governing body alone is not sufficient to keep a port from falling apart. Specific legislation strictly protecting the smaller ports and restricting the sale, resale, and use of these facilities is also necessary. Perhaps legislation limiting the use of any government funds (as well as income derived from government funds) for these areas should be limited to protecting and enhancing the port's maritime facilities, similar to the legislation Florida enforces against the matching program for its fourteen ports.¹³⁷

Finally, a crucial factor in protecting Florida's forgotten ports is an active local population. No legislation or port authority will compensate for a local population that is indifferent to tourism and real estate overtaking the area.

The fate of Florida's "forgotten" ports remains uncertain. Inevitably, several of these ports will dissolve as the tourism and real estate industries take over. However, it is not too late to protect many of them. The downturn of the U.S. economy just a few years ago provided a short reprieve for these smaller ports. It will take several years before the real estate and tourism industries fully recover, and this is the time to take advantage of that break. Unless Florida's smaller ports receive adequate protection and assistance in the immediate future, they will certainly be "forgotten" in the rise of the condo.

137. FLA. STAT. § 320.20 (2010).

