

**TAX INCREMENT FINANCING FOR RURAL HERITAGE DISTRICTS
and
CROSS CREEK CASE STUDY**

A REPORT TO ALACHUA COUNTY

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UNIVERSITY OF FLORIDA CONSERVATION CLINIC

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EXECUTIVE SUMMARY AND CONCLUSIONS

The University of Florida Conservation Clinic is an interdisciplinary legal clinic housed in the Center for Governmental Responsibility at the University of Florida Levin College of Law. Under the supervision of its Director, the clinic provides value-added, applied educational opportunities to graduate and law students at the University of Florida by offering its services to governmental and non-governmental organizations and individuals pursuing conservation objectives. As one of its recent projects, the Clinic has provided assistance to the Alachua County Attorney's Office by researching Alachua County's authority to use tax increment financing for the funding of rural conservation and development projects. The Clinic also applied the concept to an unincorporated area in Alachua County - Cross Creek - to test the value of the increment over time.

OVERVIEW OF TAX INCREMENT FINANCING

Tax increment financing uses the increase in tax revenue in a designated geographic area to fund designated activities. Historically this has been used for the redevelopment of a slum or blighted area, usually in urban downtowns. Use of tax increment financing requires that a local government designate an area from which the increment will be taken, known as the tax increment district. The tax increment district is normally the area in which the increment revenue is expected to be invested. After the municipality or county has selected the tax increment district it then establishes a base year, which is normally the year in which the district is established. The

municipality or county then determines the aggregate tax value of all of the property in the district, this is sometimes referred to as the frozen tax base. As the tax revenues increase over this established aggregate value, the amount by which the tax revenue exceeds the established aggregate value is the tax increment. The tax increment is put in a special trust fund to be used only for designated purposes. It is no longer available for general revenue purposes.

Although Florida currently has no law specifically addressing rural conservation and development through tax increment financing, several tools exist for local governments to revitalize, rehabilitate and conserve rural communities. Moreover, there is increasing state and local interest in the preservation of economically viable rural landscapes in Florida. Three potential sources of a county's authority to use tax increment financing to promote rural conservation and development using the tax increment are briefly described below. These include the existing Florida Community Redevelopment Act, a local ordinance pursuant to county home rule authority, and new legislation.

I. COMMUNITY REDEVELOPMENT ACT

1. THE FLORIDA COMMUNITY REDEVELOPMENT ACT PROVIDES A STRICT PROCEDURAL FRAMEWORK FOR TAX INCREMENT FINANCING FOR COMMUNITY REDEVELOPMENT.

ALTHOUGH USUALLY USED TO FINANCE DOWNTOWN "REVITALIZATION" PROJECTS IN MUNICIPALITIES, COUNTIES ARE EXPRESSLY AUTHORIZED BY THE CRA TO FINANCE REDEVELOPMENT PROJECTS

2. THE LANGUAGE OF THE ACT IS SUFFICIENTLY BROAD TO AUTHORIZE TAX INCREMENT FINANCING FOR THE FUNDING OF RURAL CONSERVATION AND DEVELOPMENT PROJECTS;
3. HOWEVER, THE USE OF THE CRA FOR THIS PURPOSE IS CONSTRAINED BY THE STATUTORY REQUIREMENT THAT A COUNTY OR MUNICIPALITY MAKE A "FINDING OF NECESSITY."
4. THE FINDING OF NECESSITY REQUIRES THAT THE AREA TO BE REDEVELOPED BE CONSIDERED "SLUM AND BLIGHTED."
5. ALTHOUGH THE STATUTORY DEFINITIONS OF SLUM AND BLIGHT DIFFER FROM THE ORDINARY MEANING OF THE TERM, SUCH A FINDING MAY LIMIT THE APPLICABILITY OF THE CRA IN SOME RURAL AREAS.

II. HOME RULE AUTHORITY

AS A CHARTER COUNTY ALACHUA COUNTY HAS “LOCAL HOME RULE”
AUTHORITY

LOCAL HOME RULE AUTHORITY ALLOWS MUNICIPALITIES AND CHARTER
COUNTIES TO ENACT ORDINANCES NOT INCONSISTENT WITH GENERAL OR
SPECIAL LAW

1. ALACHUA COUNTY HAS THE AUTHORITY TO LEVY AD VALOREM TAXES ON REAL ESTATE WITHIN THE COUNTY’S BOUNDARIES. ALACHUA COUNTY’S ONLY RESTRAINT IS THE IMPOSITION OF AD VALOREM MILLAGE REQUIREMENTS BY THE STATE.

2. A COUNTY’S ALLOCATION OF AD VALOREM TAX INCREMENT FOR THE BENEFIT OF A RURAL HERITAGE DISTRICT WOULD PROBABLY NOT CONFLICT WITH GENERAL LAW. AN UNCONSTITUTIONAL CONFLICT ARISES WHEN A LOCAL ORDINANCE AND STATE LEGISLATION CANNOT CO-EXIST OR WHEN THERE IS A CLEAR STATE PROHIBITION.
 - A. THE FLORIDA LEGISLATURE HAS EXPRESSLY GRANTED COUNTIES THE HOME RULE AUTHORITY TO ESTABLISH COMMUNITY REDEVELOPMENT AND CONSERVATION PROGRAMS WITHIN THE COUNTY IN CHAPTER 125 OF THE FLORIDA STATUTES.

 - B. AN ORDINANCE AUTHORIZING TAX INCREMENT FINANCING COULD CO-EXIST WITH THE ACT SINCE USE OF TAX INCREMENT FINANCING FOR RURAL CONSERVATION WOULD NOT PRECLUDE COUNTY USE OF THE TAX INCREMENT FINANCING FOR COMMUNITY REDEVELOPMENT.

 - C. PASSAGE OF AN ALACHUA COUNTY ORDINANCE PROVIDING FOR USE OF AD VALOREM TAXES FOR TAX INCREMENT FINANCING IS NOT EXPRESSLY PROHIBITED BY THE COMMUNITY REDEVELOPMENT ACT OR ANY OTHER STATE LEGISLATION.

3. IN CONCLUSION, IT WOULD APPEAR THAT ALACHUA COUNTY HAS LOCAL HOME RULE AUTHORITY TO USE TAX INCREMENT FINANCING AS A TOOL TO PROMOTE RURAL CONSERVATION AND DEVELOPMENT.

4. EVEN SO, ALACHUA COUNTY’S USE OF ITS HOME RULE AUTHORITY TO ENACT AN ORDINANCE PERMITTING TAX INCREMENT FINANCING TO ESTABLISH RURAL HERITAGE DISTRICTS REMAINS SUBJECT TO CHALLENGE.

WE ARE AWARE OF NO LOCAL GOVERNMENTS THAT HAVE APPLIED THIS FINANCING VEHICLE UNDER THEIR HOME RULE POWERS

III. NEW LEGISLATION

1. NEW LEGISLATION COULD RETAIN THE BENEFITS OF TAX INCREMENT FINANCING AND CREATE A CONSISTENT PROCEDURE FOR USING TAX INCREMENT FINANCING TO FUND RURAL CONSERVATION AND DEVELOPMENT THROUGH RURAL HERITAGE DISTRICTS.
 - A. NEW LEGISLATION COULD ADDRESS THE SUBSTANTIVE NEEDS OF RURAL CONSERVATION AND DEVELOPMENT WHILE ELIMINATING IRRELEVANT ASPECTS OF THE CRA SUCH AS THE SLUM AND BLIGHT FINDING REQUIREMENT
 - B. IN FLORIDA THERE ARE THREE TYPES OF LEGISLATION: GENERAL LEGISLATION, GENERAL LEGISLATION OF LOCAL APPLICABILITY AND SPECIAL LEGISLATION
2. SPECIAL LAWS ARE DESIGNED TO ACT ON KNOWN AND SPECIFIC PERSONS OR THINGS WITHIN THE STATE OF FLORIDA. THESE ARE SOMETIMES USED BY INDIVIDUAL LOCAL GOVERNMENTS TO GAIN LEGISLATIVE SANCTION FOR SPECIFIC LOCAL PROGRAMS, ESPECIALLY WHERE THERE IS A QUESTION OF THE LOCAL GOVERNMENT'S AUTHORITY TO ACT UNILATERALLY.
 - A. THE *FLORIDA CONSTITUTION* PROHIBITS THE ENACTMENT OF A SPECIAL LAW PERTAINING TO THE "ASSESSMENT OR COLLECTION OF TAXES FOR STATE OR COUNTY PURPOSES."
 - B. A SPECIAL LAW GRANTING ALACHUA COUNTY THE AUTHORITY TO USE TAX INCREMENT FINANCING TO FUND RURAL HERITAGE PRESERVATION WOULD PROBABLY NOT BE UNCONSTITUTIONAL BECAUSE IT WOULD REALLOCATE REVENUE FROM A TAX THAT ALACHUA COUNTY ALREADY HAS THE AUTHORITY TO LEVY.
 1. HOWEVER, THE FLORIDA SUPREME COURT HAS HELD UNCONSTITUTIONAL SPECIAL LAWS WHICH REALLOCATE SALES TAX REVENUES. WHILE ALACHUA COUNTY COULD DISTINGUISH SPECIAL LEGISLATION PERTAINING TO TAX INCREMENT FINANCING FROM THE EXISTING BODY OF CASE LAW, SPECIAL LEGISLATION CREATED TO GRANT ALACHUA

COUNTY THE AUTHORITY TO USE TAX INCREMENT FINANCING MAY BE SUBJECT TO CHALLENGE.

3. A GENERAL LAW OF LOCAL APPLICATION IS DESIGNED TO OPERATE ONLY IN A SPECIFIC PART OF THE STATE OR CLASSIFIED TERRITORY. THE *FLORIDA CONSTITUTION* ALSO PROHIBITS THE ENACTMENT OF A GENERAL LAW OF LOCAL APPLICATION PERTAINING TO THE “ASSESSMENT OR COLLECTION OF TAXES FOR STATE OR COUNTY PURPOSES.”
 - A. FOR THIS REASON, LIKE A SPECIAL LAW, A GENERAL LAW OF LOCAL APPLICATION GRANTING ALACHUA COUNTY THE AUTHORITY TO USE TAX INCREMENT FINANCING TO FUND RURAL HERITAGE PRESERVATION COULD ALSO BE SUBJECT TO CHALLENGE AND WOULD BE CLOSELY SCRUTINIZED BY THE COURTS.
4. A GENERAL LAW OPERATES UNIVERSALLY AND UNIFORMLY ON SUBJECTS THROUGHOUT THE STATE (FOR EXAMPLE, THE CRA). A GENERAL LAW MAY INCLUDE CRITERIA THAT LIMIT ITS APPLICATIONS SIGNIFICANTLY, AS LONG AS THE CLASS OF PERSONS TO WHICH IT APPLIES REMAINS OPEN.
 - A. A GENERAL LAW GRANTING COUNTIES THE AUTHORITY TO USE TAX INCREMENT FINANCING TO FUND RURAL LANDS CONSERVATION AND DEVELOPMENT WOULD NOT BE SUBJECT TO THE SAME CHALLENGES AS A SPECIAL LAW OR A GENERAL LAW OF LOCAL APPLICATION BECAUSE THERE IS NO CONSTITUTIONAL PROHIBITION ON THE LEVYING OF TAXES AT THE COUNTY LEVEL BY GENERAL LAW.
 - B. THE CREATION OF A NEW GENERAL LAW WOULD PROBABLY BE THE STRONGEST SOURCE OF AUTHORITY FOR ALACHUA COUNTY TO USE TO USE TAX INCREMENT FINANCING TO FUND RURAL LANDS CONSERVATION AND DEVELOPMENT. HOWEVER, THE PROCESS OF CREATING AND PASSING NEW LEGISLATION MAY SIGNIFICANTLY SLOW THE PROCESS.
5. NEW GENERAL LEGISLATION GRATING ALACHUA COUNTY THE AUTHORITY TO USE TAX INCREMENT FINANCING TO FUND RURAL HERITAGE PRESERVATION CAN BE CREATED IN TWO FORMS.
 - A. GENERAL LEGISLATION THAT GRANTED ALL COUNTIES AND MUNICIPALITIES THE AUTHORITY TO USE TAX INCREMENT FINANCING TO FUND RURAL LANDS CONSERVATION AND

DEVELOPMENT COULD BE CREATED.

- B. ALTERNATIVELY, GENERAL LEGISLATION THAT APPLIES ONLY TO COUNTIES IN A SPECIFIC CLASSIFICATION COULD BE CREATED. FOR EXAMPLE, GENERAL LEGISLATION WITH SUCH A CLASSIFICATION MAY SUCCESSFULLY TARGET RURAL COUNTIES AND MUNICIPALITIES.

IV. CALCULATING THE INCREMENT: A CASE STUDY

IN ORDER TO DETERMINE THE EFFICACY OF TAX INCREMENT FINANCING IN RURAL ALACHUA COUNTY A CASE STUDY WAS PREPARED USING A FORMULA ACCEPTED BY PLANNING PROFESSIONALS.

UNINCORPORATED CROSS CREEK WAS SELECTED AS A HYPOTHETICAL RURAL HERITAGE DISTRICT.

CROSS CREEK IS KNOWN FOR ITS RURAL HERITAGE, THE SELF IDENTIFICATION OF ITS RESIDENTS WITH AN AREA, AND IT HAS A MIX OF LAND USES

PROPERTY TAX RECORDS FROM THE PROPERTY APPRAISER'S OFFICE WERE COLLECTED FROM 1996 TO 1999 TO ESTABLISH A BASE INCREMENT OF 4.2%.

THIS HISTORIC INCREMENT WAS THEN EXTRAPOLATED THROUGH TO 2032.

THE TAX REVENUE ASSIGNED TO THE SCHOOL DISTRICT (40%) WAS DISCOUNTED.

THE INCREMENT WAS DETERMINED TO BE APPROXIMATELY 4.5 MILLION DOLLARS OVER THE LIFE OF THE ANALYSIS AND ROUGHLY 150 THOUSAND DOLLARS PER YEAR.

THIS FIGURE DOES NOT INCLUDE ANY INCREASES IN REVENUE THAT MAY BE ATTRIBUTABLE TO INCREASED PROPERTY VALUES RESULTING FROM THE RURAL IMPROVEMENTS.

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I. INTRODUCTION

The state of Florida has a rich tradition of rural and cultural heritage embodied in its rural communities. Yet the preservation of Florida's rural heritage resources is threatened by development pressures and the natural forces of time. This article addresses the financial vehicle known as "tax increment financing" as a means to fund rural heritage.

The state of Florida and local governments are interested in preserving their rural heritage; recognizing the need to conserve "ruralness" in Florida, in 2000 the Florida Legislature enacted the Florida Rural Lands Stewardship Act, but did not fund the preservation of rural heritage. Although Florida currently has no law specifically addressing preservation of these communities, several tools exist for local governments to revitalize, rehabilitate, and conserve rural heritage communities. The first tool available to local governments in Florida is the Community Redevelopment Act (Act).¹ The Act gives counties, like Alachua county, the legal authority to implement tax increment financing in rural unincorporated areas. This report will explore Alachua county's existing legal authority under the Act to implement tax increment financing, the procedural requirements of the Act, and resulting burdens on and benefits to the county and redevelopment community.

The second tool available to Alachua county is its home rule authority. By enacting an ordinance under its home rule authority, Alachua county may be able to achieve the benefits of the Act without following all of its procedural requirements. This report will discuss whether tax increment financing for the purpose of preserving rural heritage falls within the scope of Alachua county's home rule authority. In addition, this report will address whether a county's home rule authority to implement tax increment financing has been preempted by the existing Act or is in conflict with existing legislation.

The creation of new legislation is the third tool available to Alachua county. The purpose of creating new legislation is the same as proceeding under home rule authority: the county may be able to retain the benefits of tax increment financing while eliminating the Act's procedural requirements. This report will examine the types of legislation available for this purpose and the procedural requirements of creating new legislation.

Each of the tools discussed above utilizes tax increment financing as the central component to rural heritage preservation. Deciding which one of those tools to use in

¹ FLA. STAT. ANN. CH. 163, Pt III (2001).

furtherance of rural heritage preservation is the first step in the process. The next step is determining the efficacy of tax increment financing in rural areas. While the tools may be available to Alachua county for tax increment financing, if the tax revenue generated by a rural area is minimal, then there will be inadequate funding to realize the goal of rural heritage preservation in that area. The final purpose of this report is to develop a case study in the historically important rural unincorporated area of Cross Creek, located in Alachua County.

II. BACKGROUND

Tax increment financing uses the increase in tax revenue in a designated geographic area to fund designated activities, historically this has been used for the redevelopment of a slum or blighted area. Use of tax increment financing requires that a local government designate an area from which the increment will be taken, known as the tax increment district. The tax increment district is normally the area in which the increment revenue is expected to be invested. After the municipality has selected the tax increment district it then establishes a base year, which is normally the year in which the district is established.² The municipality then determines the aggregate tax value of all of the property in the district, this is sometimes referred to as the frozen tax base. As the tax revenues increase over this established aggregate value, the amount by which the tax revenue exceeds the established aggregate value is the tax increment. The tax increment is put in a special trust fund to be used only for designated purposes. Here in Florida, tax monies are collected by the tax collector, remitted to the local government, and then allocated by the local government. The appropriation to the tax increment district may be made from any source available to the local government, but it must not be less than the amount of the tax increment.³ There is generally a time limit on the duration of a tax increment. Most often this time limit is twenty to thirty years.⁴

Tax increment financing was introduced in California almost forty years ago as a mechanism for raising the local funds needed to obtain federal funding for urban renewal. Since that time tax increment financing has been used as a source of funding for redevelopment projects at the state and local level throughout the United States.⁵ Many states have redevelopment statutes that allow the use of tax increment financing where there is a finding of slum or blight. Additionally, some states have enacted legislation allowing the use of tax increment financing for purposes other than redevelopment. For instance, Minnesota state statutes use tax increment

² Sam Casella, *What is TIF in Tax Increment Financing*, 5 (Planning Advisory Service Report No. 389, American Planning Association 1984). To maximize tax increment by establishing the lowest possible aggregate value, the municipality should establish the base year as soon as possible.

³ See Harold Bucholtz & David Cardwell, *Tax-Exempt Redevelopment Financing in Florida*, Stetson L. Rev. 668-699 (1991).

⁴ Casella *supra* at 9.

⁵ Bucholtz and Cardwell *supra* at 668.

financing to fund rural development.⁶

A county or combination of counties may by resolution establish a rural development financing authority managed by a board of directors elected by the establish county board(s).⁷ The rural development financing authority has a broad statement of purpose that includes: acquisition, constructions, improvement, and equipment of projects useful for producing products of agriculture⁸, investigation, improvement, and development of methods for operating and financing projects useful in producing products of agriculture, to provide for the efficient and economical operation and maintenance of each product by a qualified person or firm.⁹ Rural development financing authorities are also intended to promote agricultural, industrial and scientific research in cooperation with other entities and, to cooperate with government agencies and private entities to promote the creation of new jobs in the agricultural industry. The rural development financing authority may also enter into contracts for financial and scientific management and consulting services need to promote the purposes of the authority and operate and maintain projects of the authority.¹⁰

A rural development financing authority may also apply to the state of Minnesota for an agricultural resource loan guaranty for its projects.¹¹ If the authority has a conditional commitment for a loan guaranty it may also enter into a resolution with the county so that the project is a tax increment financing project, as defined by Minn. Stat. §469.174 to 469.179, for as long as is provided in the loan guaranty. If the project is a tax increment financing project, the tax increment will be placed in a loan guaranty fund of the state until such time as the loan obligation has been satisfied or the amount in the account equals the guaranteed portion of the outstanding principal and interest.¹² The commissioner of iron range resources and rehabilitation may use all of the powers of a rural development financing authority, including tax increment financing, to develop communities with a very high concentration of unmined iron ore.¹³

⁶ See MINN. STAT. §469.142 *et seq.* (2000).

⁷ MINN. STAT. § 469.144 subd. 2 (2000).

⁸ MINN STAT. § 469.142-.143 (2000). These projects may be comprised of real or personal property inside or outside of the state of Minnesota and may include the assembly, mixing, manufacturing, storing, warehousing, distributing, or selling of products of agriculture, but does not include the acquisition of agricultural land.

⁹ MINN. STAT. § 469.143 (2000). Agriculture includes forestry and timber production.

¹⁰ MINN. STAT. § 469.142 (2000).

¹¹ MINN STAT. § 469.148 (2000). The authority must comply with all of the requirements of a borrower set out in Minn Stat. § 41A.01-.06 and the project to be guaranteed must further the purpose of the agricultural resource loan guaranty program as outlined in that statute.

¹² MINN. STAT. § 469.149 (2000).

¹³ MINN. STAT. § 273.134 (2000).

In Oklahoma tax increment financing is used to fund Rural Housing Incentive Districts.¹⁴ Rural Housing Incentive Districts may be identified by a municipality after a finding of a shortage of quality housing as defined by statute. These districts encourage the development and renovation of housing in rural municipalities by municipal financing of public improvements.¹⁵ A similar rural housing incentive district act is in place in Kansas.¹⁶

Tax Increment Financing in Florida: The Community Redevelopment Act

In Florida, tax increment financing has been used to fund community redevelopment in slum and blighted areas of counties and municipalities.¹⁷ The Community Redevelopment Act, adopted by the Florida Legislature in 1969, enables counties and municipalities to draw revenue from specified community redevelopment areas in the local tax base through tax increment financing. Under the Community Redevelopment Act, the revenue stream generated from the tax increment in redevelopment areas does not go to the general revenue fund; rather, it is redirected into a special fund and can be used only for purposes consistent with a Community Redevelopment Plan. Tax increment financing under the Community Redevelopment Act has provided the mechanism for successful funding of downtown revitalization, historic preservation, and general enhancement of many communities in Florida.

The Florida Rural Lands Stewardship Act

In 2001, the Florida legislature introduced the Florida Rural Land Stewardship Act. This act amends FLA STAT. CH. 163.3177(11) (2001) to allow up to five local governments to designate land as a “rural land stewardship area.”¹⁸ These rural land stewardship areas will be areas that have an agricultural, rural, open, or open-rural or substantively similar land use designation and must be located outside of municipalities and urban growth boundaries.¹⁹ Within these areas planning and economic incentives will be applied to encourage the implementation of planning and development strategies and creative land use planning. The Rural Land Stewardship

¹⁴ OKLA. STAT. TIT. 62 § 873, 877 (2001). The Oklahoma Rural Housing Incentive District Act allows the governing body of a municipality to designate rural housing incentive districts within their jurisdiction. The establishment of these districts requires a finding of a shortage of quality housing that is expected to persist as a deterrent to the economic growth of the municipality despite the best efforts of public and private entities. The municipality may issue bonds to finance the implementation of its plans to improve conditions within the rural housing incentive district. The municipality may allocate the tax increment from a designated area to pay these bonds.

¹⁵ OKLA. STAT. TIT. 62 §873 (2001).

¹⁶ KAN. STAT. ANN. § 12-5241 *et seq.* (2001). The Kansas rural housing incentive program works very similarly to the Oklahoma Act.

¹⁷ FLA. STAT. ANN. CH. 163, Pt III (2001).

¹⁸ 2001 FLA. LAWS CH. 279.

¹⁹ *Id.*

Act is intended to further “rural sustainability, restoration and maintenance of the economic value of rural land, control of urban sprawl, identification and protection of ecosystems, habitats, and resources, ... promotion of Florida’s agricultural economy; and protection of the character of the rural areas of Florida.”²⁰

The Act allows rural land use credits to be created for land placed in the rural land stewardship area based on a twenty-five year population projection. The credits given for land placed in the trust may only be used on lands designated as receiving lands for the implementation of creative land use planning and development strategies that have been adopted by the local government.²¹ The receiving areas will be connected to the rest of the rural land stewardship area by rural design and rural road corridors, but separated from these areas through limitations on the extension of services.²² The lands placed in a rural stewardship area may be removed only by an amendment to the comprehensive plan and if the land is removed from the rural land stewardship area the rural land use credits cease to exist.²³ The statute also states that owners of land within rural land stewardship areas should be given incentives to enter into rural land stewardship agreements with state agencies, water management districts, and local governments in order to achieve conservation objectives. One of the incentives suggested by the statute is to give the land owner the option to sell the land to the government, as a fee or an easement, when the conservation objectives have been achieved. The statute provides annual reporting to the legislature on the results of the five rural land stewardship areas so that the Legislature may evaluate the success of the rural land stewardship areas before the program is implemented statewide.²⁴ While the statute provides a fairly detailed procedure for the selection of rural land stewardship areas and the use and operation of the areas once established, it makes no provision for the funding of rural land stewardship on a state or local level.²⁵

20 Id.

21 Id.

22 Id.

23 Id.

24 Id.

25 Id.

III. LEGAL AUTHORITY UNDER THE COMMUNITY REDEVELOPMENT ACT

Acknowledging the need of Florida communities to revitalize their economically distressed areas in order to improve public welfare and increase the local tax base, the Florida Legislature adopted the Community Redevelopment Act (Act) in 1969.²⁶ Since its enactment, over forty Florida Communities have established a Community Redevelopment Agency (Agency) to revitalize their downtowns, preserve their historic structures, and otherwise enhance their communities.²⁷

The Act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.²⁸ Areas eligible for redevelopment can be in either a county or municipality; however, redevelopment is limited to areas found by the governing body to be “slum” or “blighted.”²⁹ The finding of “slum” or “blight” is necessary to invoke the powers of the Act and sufficiently broad to apply to both rural and urban areas in a county or municipality. While residents may be hesitant to classify parts of their communities as “slum” or “blighted,” the statutory definitions of these terms is much different from our common understanding of their meanings. For instance, under the Act, “blight” may refer to an area that has an inadequate street layout or inadequate parking facilities.³⁰ “Slum” may refer to areas that have inadequate provisions for light or open spaces.³¹

The redevelopment process includes activities or projects undertaken by a county or municipality through a redevelopment agency for the purpose of eliminating and preventing the development or spread of slums and blight.³² The Act allows community redevelopment areas to be rehabilitated, revitalized, and conserved.³³

²⁶ FLA. STAT. ANN. CH. 163, PART III (2000).

²⁷ Florida Redevelopment Association, 1997-1998 Membership Directory (1999).

²⁸ FLA. STAT. ANN. §163.353 (2000).

²⁹ FLA. STAT. ANN. §163.355 (2000). The governing body of the county or municipality must make the required finding of “slum” or “blight” before redevelopment under the Act may commence.

³⁰ FLA. STAT. ANN. §163.340 (2000).

³¹ Id.

³² Id.

³³ Id.

To accomplish these goals, the Act allows a county or municipality to retain tax increment revenues from taxing districts established under the Act's procedures.³⁴ To obtain the tax increment revenue, a local government must create a community redevelopment agency (Agency), designate an area or areas to be a Community Redevelopment Area (CRA), create a community redevelopment plan (Plan), and establish a trust fund (Fund).³⁵ The revenue equals 95 percent of the difference between (1) the amount of ad valorem taxes levied each year on taxable real property within the CRA and (2) the amount of ad valorem taxes which would have been produced by the taxes on such properties at the most recent assessment prior to the effective date of the ordinance providing for the funding of the fund.³⁶ Through the fund, the tax increment revenues from the CRA will accrue to the local government to be used for the conservation, rehabilitation, or redevelopment of the CRA.³⁷

Establishing a community redevelopment agency is similar to chartering a municipality under Florida law. Just as when a new municipality is created by charter, the community redevelopment agency must be established by ordinance or resolution under appropriate statutory guidelines. It must have clearly delineated powers and responsibilities.³⁸ The Agency is subject to the restrictions and privileges of the local government that creates it.³⁹ Since it is acting as a land developer when implementing the CRA, the Agency is subject to those rules and regulations that govern private development, including zoning, development of regional impact, and federal, state, and local environmental laws.⁴⁰

While a governing body only needs approval from within its own taxing authority to create a CRA, the CRA may be subject to legal challenges from other affected taxing authorities, such as Water Management Districts and other specialized taxing districts. Thus, it is imperative to implement the CRA exactly as the Act dictated and to maintain a detailed record of the entire process undertaken in creating the CRA.

³⁴ FLA. STAT. ANN. §163.387(1) (2000). ("The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part.")

³⁵ FLA. STAT. ANN. CH. 163 (2000)

³⁶ FLA. STAT. ANN. §163.387(1) (2000).

³⁷ Id. The allocation of county funds to a community redevelopment agency, via tax increment financing under the Community Redevelopment Act, does not violate the Florida Constitution. See Kelson v. City of Pensacola, 483 So.2d 77, (1st DCA 1986).

³⁸ FLA. STAT. ANN §163.356 (2000).

³⁹ See Dubbin, Murray H., *Urban Land Use Regulations*, Florida Environmental and Law Use Law at 25-3. (January 1994).

⁴⁰ See Dubbin at 25-3.

IV. LOCAL HOME RULE AUTHORITY TO UNDERTAKE TAX INCREMENT FINANCING

A. THE FLORIDA CONSTITUTION

Under the 1885 *Florida Constitution*, the authority of local governments in Florida counties was constrained by Dillon’s Rule, which bound them to operate in accord with the powers expressly granted by the legislature.⁴¹ In 1968, revisions to the Florida Constitution provided local governments with “governmental, corporate and proprietary powers unless provided otherwise by law.”⁴² Thus, the revisions granted home rule authority to counties and municipalities within the state of Florida.⁴³

⁴¹ See *City of Boca Raton v. State of Florida*, 595 So. 2d 25, 27 (Fla. 1992).

⁴² See *id.*

⁴³ See FLA. CONST. Art. VIII, § 1 (g), § 1(f), and § (2)(b).

Art. VII, Section 1(g) provides:

Counties operating under *county charters* shall have all the powers of local self-government ***not inconsistent with general law, or with special law*** approved by the electors. The governing body of a county operating under a charter may enact county ordinances ***not inconsistent with general law***. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.
(Emphasis added.)

Art. VIII, § (1)(f) provides:

Counties not operating under county charters shall have such power of self-government as is provided by **general or special law**. The board the board of county commissioners of a county no operating under a charter may enact, in a manner prescribed by general law, county ordinances ***not inconsistent with general or special law***, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
(Emphasis added.)

Art. VIII, § 2(b) provides:

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes ***except as otherwise provided by law***.
(Emphasis added.)

The revised Florida Constitution places charter counties and municipalities in the same category for self-government purposes.⁴⁴ Furthermore, the constitutional powers granted to municipalities automatically vest in charter counties.⁴⁵

Chapter 125 of the Florida Statutes was enacted by the Florida Legislature to continue to expand and reinforce the home rule powers of counties.⁴⁶ Florida Statute §125.01 grants the governing body of a county the power to carry on county government. Under the statute, a county's home rule authority includes the power to establish and administer programs of, *inter alia*, community redevelopment and conservation, to the extent that the programs are consistent with general and special laws.⁴⁷ Florida Statute § 125.01(1) provides the county governing board with the full authority to act unless the Legislature has pre-empted a particular subject relating to county government by either general or special law.⁴⁸ Additionally, the statute provides that the county's home rule powers should be "liberally construed" to carry out the intent of the statute and "secure for the counties the broad exercise of home rule powers authorized by the State Constitution."⁴⁹ The legislation also states the enumerated powers "shall not be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated."⁵⁰

Consequently, a charter county's governing body has full authority under the *Florida Constitution* and Chapter 125 to exercise home rule power unless the legislature preempts a particular subject relating to county government under general or special law.⁵¹ The absence of general or special legislation enables a county governing board to proceed in accordance with the county's home rule power to accomplish a county purpose.⁵²

*Volusia County v. Dickinson*⁵³ illustrates the broad powers counties possess under the home rule authority. In that case, the Florida Supreme Court evaluated a charter county's ability

⁴⁴ See *Volusia County v. Dickinson*, 269 So. 2d 9, 10 (Fla. 1972).

⁴⁵ See *State v. Broward County*, 468 So. 2d 965, 969 (Fla. 1985).

⁴⁶ See *Speer v. Olson*, 367 So. 2d 207, 210 (Fla. 1979); *Jones v. Chiles*, 654 So. 2d 1281, 1284 (1st DCA 1995).

⁴⁷ FLA. STAT. Ch. 125 § 125.01(1) (2000).

⁴⁸ See *id.*

⁴⁹ See FLA. STAT. § 125.01(3).

⁵⁰ See *id.*

⁵¹ See *Rowe v. St. Johns County*, 668 So. 2d 196, 198 (Fla. 1996); *Speer*, 367 So. 2d at 211; *Jones v. Chiles*, 654 So. 2d at 1284.

⁵² See *Speer* at 211.

⁵³ See *Volusia County*, 269 So. 2d at 11.

to levy an excise tax on cigarettes in unincorporated areas of the county pursuant to the home rule authority.⁵⁴ Interpreting Art. VII, § (9)(a) together with Art. VIII, § (1)(g) of the *Florida Constitution*, the Court found that the inclusive language indicated that unless counties are precluded by general or special law, the governing body of a charter county may enact local ordinances.⁵⁵ The Court upheld the Volusia County’s excise tax finding the tax within the County’s permissible tax jurisdiction, and finding that there was no general or special legislation that prohibited the county’s levy of the excise tax.⁵⁶

Like Volusia County, Alachua County is a charter county⁵⁷ in Florida and maintains home rule authority under the Florida Constitution and Chapter 125 of the Florida Statutes. The Alachua County Commission, as the governing body of Alachua County, has full authority to enact ordinances in areas not inconsistent with state legislation. Furthermore, areas that the legislature or *Florida Constitution* has not preempted or prohibited fall within the home rule power of the Alachua County Commission.

A County’s authority to impose an ordinance relating to ad valorem taxation depends upon the county’s jurisdiction over ad valorem taxation and upon the proposed ordinances’ inconsistency with existing state legislation. If Alachua County proposes a local ordinance that is not inconsistent with existing state legislation, then the local ordinance will not violate Article VII or Article VIII and should be upheld by the courts. If ad valorem taxation qualifies as a tax within the area of Alachua County’s jurisdiction, then arguably Alachua County should have home rule authority to impose an ordinance relating to ad valorem taxes.⁵⁸

B. CHARTER COUNTY FINANCE AND TAXATION

The *Florida Constitution* designates specific types of financing the state and local government may utilize to generate government revenue.⁵⁹ Local governments are clearly reserved the authority to levy ad valorem taxes.⁶⁰ Additionally, local governments have the

⁵⁴ See id.

⁵⁵ See id.

⁵⁶ See id.

⁵⁷ Alachua County’s charter sets forth the county’s home rule power in Art I, §1.1, which states “Alachua County shall be a home rule charter county, and , except as may be limited by this home rule charter shall have all county and municipal powers of self-government granted now or in the future by the constitution an the laws of Florida.”

⁵⁸ See Volusia County, 269 So. 2d at 11.

⁵⁹ See FLA. CONST. Art. VII, § 1, 9.

⁶⁰ See id. at § 9. Art. VII, § (9)(a) states: (a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes for their respective purposes, except ad valorem on intangible personal property and taxes prohibited by this constitution.

authority to levy other taxes when authorized by general law.⁶¹ With the exception of ad valorem taxes and local government taxes authorized by general law, authorization for all other forms of taxation are reserved by the state.⁶²

Local government's reservation of ad valorem revenue is constitutionally shielded from state preemption. The court in *Mallard v. Tele-Trip Company* held that the legislature does not have the power pursuant to Art. VII, § (1)(a) of the *Florida Constitution* to revoke in part or in full a county's ability to levy ad valorem taxes.⁶³ The Court further stated that an attempt by the legislature to "preempt" a county's ability to levy ad valorem taxes would be unconstitutional.⁶⁴ Despite this holding, the state is constitutionally permitted to establish millage rates based upon the assessed value of real estate, even in home rule counties and cities.⁶⁵

Pursuant to the *Florida Constitution*, Alachua County clearly has the exclusive authority to use ad valorem financing within the county's boundaries. Under *Mallard*, the Florida Legislature is not permitted to revoke or restrict Alachua County's ability to levy ad valorem taxes. Therefore, it seems that Alachua County's only restraint relates to the imposition of ad valorem millage requirements.

Given the *Florida Constitution's* protection of county home rule authority and exclusive local government use of ad valorem taxation, Alachua County should not violate the constitution by appropriating portions of the county's ad valorem revenue for tax increment financing. However, the constitutionality of Alachua County's authority to allocate ad valorem revenue depends upon an absence of inconsistency with state legislation. Alachua County will not violate the Florida's constitutional requirements by allocating ad valorem taxes, as long as the county's allocation is not inconsistent with the state of Florida's existing legislation.

C. INCONSISTENCY WITH GENERAL LAW AND LEGISLATIVE PREEMPTION

⁶¹ See *id.*; see also *Collier County v. State of Florida*, 733 So. 2d 1012, 1014 (Fla. 1999).

⁶² See Art. VII, § (1) (a): "(a) No taxes shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

⁶³ See *Mallard v. Tele-Trip Company*, 398 So. 2d 969, 973 (Fla. 1st DCA, 1981); rev. denied, *Tele-trip Co. v. Mallard*, 411 So. 2d 384 (Fla. 1981).

⁶⁴ See *id.*

⁶⁵ See FLA. CONST. Art. VII, § 9(b). § 9 (b) states: "(b) Ad valorem taxes . . . shall not be levied in excess of the following millages upon the assess valued of real estate and tangible personal property: for all county purposes, ten mills. . . A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes."; see also *Dade County v. Dickinson*, 230 So. 2d 130, 135 (Fla. 1969). See also *Collier County*, 733 So. 2d at 1014.

A government ordinance may be inconsistent with state law in two ways.⁶⁶ First, in areas where both local and state governments have authority to legislate, the local government ordinance must not specifically conflict with the state statute.⁶⁷ Second, a local ordinance may be found inconsistent with state law if the Legislature preempted a particular subject area.⁶⁸ This section reviews whether a local ordinance promoting rural heritage through tax increment financing may be found inconsistent under these judicial tests.

(1.) SPECIFIC CONFLICT

“Inconsistent with general law” under Article VIII, section (1)(g) of the Florida Constitution has been interpreted by the Florida Supreme Court as meaning contradictory in the sense that local and state legislation cannot coexist.⁶⁹ When local government ordinances can not coexist, local ordinances are considered constitutionally inferior to state law.⁷⁰ In circumstances where the state and local government may have concurrent legislation, state law prevails in the event of conflict.⁷¹ However, when local ordinances *supplement* a statute’s restriction of rights, the local ordinance may co-exist with the statute.⁷² When local ordinances countermand rights provided by statute, the local ordinance must fail.⁷³

In *Charlotte County Board of County Commissioners v. Taylor*, the Second District Court of Appeals reviewed whether Charlotte County’s attempt to amend the county’s charter with a provision that capped the millage rate of ad valorem taxes within the county conflicted with general law.⁷⁴ In reviewing whether the charter amendment conflicted with general law, the Court considered chapters 129 and 200 of the Florida Statutes (1991), which set forth a system for county budgets and county determination and levy of tax millage.⁷⁵ The Court found the County’s charter amendment and the Florida Statutes could not co-exist, since the state legislation

⁶⁶ See generally *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996); *Lowe v. Broward*, 766 So. 2d at 1207.

⁶⁷ See *Tallahassee Memorial*, 681 So. 2d at 831.

⁶⁸ See *id.*; *Lowe*, 766 So. 2d at 1207.

⁶⁹ See *State v. Sarasota County*, 549 So. 2d 659, 660 (Fla. 1989.)

⁷⁰ See *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1070 (Fla. 3d DCA, 1981).

⁷¹ See *id.* at 1070.

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *Charlotte County Board of County Commissioners v. Taylor*, 650 So. 2d 146, 148 (Fla. 2d DCA 1995).

⁷⁵ See *id.* at 149.

provided the exclusive way for counties to set millage rates.⁷⁶ Therefore, the Court held the County's charter amendment was unconstitutional.⁷⁷

In *Collier County v. State of Florida*, the Florida Supreme Court held that a county ordinance that sought to recoup losses in ad valorem taxes conflicted with general legislation that provides for annual property valuation.⁷⁸ The Court considered the ad valorem valuation scheme in Florida Statute § 192.042(1), which requires annual assessment of real property on January 1 and no tax liability for 'substantially completed' improvements until the following fiscal year.⁷⁹ The Court found the general legislation unambiguous in both setting forth the method and timing of valuation of property for ad valorem taxes and prohibiting partial year assessments.⁸⁰ As such, Collier County's ordinance permitting the County to assess ad valorem taxes on the increased value of improvements to property substantially completed after January 1, conflicted with the specific statutory scheme.⁸¹

A County's allocation of ad valorem tax increment financing for the benefit of a Rural Heritage District would probably not conflict with general law. First, the legislature has expressly granted counties the power to establish conservation programs within the county in Chapter 125 of the Florida Statutes.⁸² Thus, passage of an ordinance relating to the allocation of ad valorem revenue to conserve rural heritage areas within Alachua County is consistent with the general legislation in Florida Statute § 125.01. In fact, an Alachua County ordinance allocating ad valorem tax revenue for conservation of a rural heritage district would carry out Florida Statute § 125.01.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See *Collier County v. State*, 733 So. 2d 1019.

⁷⁹ See *id.* at 1015.

⁸⁰ See *id.* at 1019.

⁸¹ See *id.*

⁸² See FLA. STAT. § 125.01(1)(j) (2000).

Florida Statute § 12501.(1)(j) states:

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to

(J) Establish and administer programs of housing, slum clearance, community redevelopment, **conservation**, flood and beach erosion control, air pollution control, and navigation and drainage, and cooperate with governmental agencies and private enterprises in the development and operation of such programs. (Emphasis added.)

Yet Alachua County’s passage of an ordinance relating to ad valorem allocation of revenue for rural heritage promotion might be challenged for conflict with the Community Redevelopment Act (Act).⁸³ However, a local ordinance for rural heritage conservation would not frustrate Alachua County’s ability to utilize the Community Redevelopment Act for community redevelopment purposes; a local ordinance would merely *supplement* the existing Act. Alachua County’s ability to use tax increment financing under the Act is distinct from its use of tax increment financing under its home rule authority.

Arguably, Alachua County’s home rule power to allocate revenue would circumvent the county’s need to use the existing Act to allocate ad valorem revenues for tax increment financing. However, a county’s failure to use existing legislation does not create an unconstitutional conflict. Instead, unconstitutional conflict arises when a local ordinance and state legislation cannot co-exist or when there is a clear state prohibition. An ordinance authorizing tax increment financing could co-exist with the Act since use of tax increment financing for rural conservation would not preclude county use of the tax increment financing for community redevelopment. Additionally, passage of an Alachua County ordinance providing for use of ad valorem taxes for tax increment financing is not contrary to a clear prohibition found in existing state legislation, including the Act.

(2.) PREEMPTION

A. EXPRESSED PREEMPTION

The second way in which an ordinance may be inconsistent with state law is if the legislature has preempted a particular subject area.⁸⁴ Florida recognizes two types of preemption: expressed or implied.⁸⁵ Express preemption occurs when the legislature specifically preempts an area with language explicitly stating “preemption to the state.”⁸⁶ Due to this language requirement, no difficulty exists in ascertaining the intent of the legislature.⁸⁷ The CRA does not contain the requisite statutory language explicitly providing for state preemption over the use of tax increment financing. Consequently, Alachua County’s ability to allocate the ad valorem tax revenue for tax increment financing in a rural heritage district is not expressly preempted by the state.

B. IMPLIED PREEMPTION

⁸³ FLA. STAT. ANN. Ch. 163, Part III (2001).

⁸⁴ *See* *Lowe*, 766 So. 2d at 1207.

⁸⁵ *See* *Lowe*, 766 So.2d at 1207; *Tallahassee Memorial*, 681 So.2d at 831; *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So.2d 587, 590 (Fla. 2d DCA 1992).

⁸⁶ *See* *Lowe*, 766 So.2d at 1207; *Tallahassee Memorial*, 681 So.2d at 831, *Hillsborough County*, 603 So.2d at 590.

⁸⁷ *See* *Lowe*, 766 So.2d at 1207; *Tallahassee Memorial*, 681 So.2d at 831.

In Florida, implied preemption is recognized when a local ordinance attempts to intrude upon a field in which the state legislation is so pervasive that it evidences a legislative intent to preempt the particular area.⁸⁸ Only if there is a danger of conflict with a pervasive regulatory scheme of the senior legislative body, will that actions of the junior legislative body be held to be impliedly preempted.⁸⁹ Imputed legislative intent is limited to the specific area where the Legislature has expressed intent to act as the sole regulator.⁹⁰

One case dealing with the issue of implied preemption is *City of Boca Raton v. State*.⁹¹ In that case, the Florida Supreme Court considered whether a municipality's home rule power to levy a special assessment for the purpose of revitalizing the city's downtown area was preempted by state law.⁹² The Court considered the argument that the state had preempted a municipality's power to impose a special assessment by virtue of legislative enactment of chapter 170, which authorizes municipal authorities to impose a special assessment upon certain conditions.⁹³ The Court rejected the preemption argument stating that the statute provided an alternative, non-exclusive method for the city to levy a special assessment.⁹⁴ Consequently, the Court held that when a county has authority to act "it may choose between adopting an ordinance pursuant to its home rule power or adopting it pursuant to another statutory authority."⁹⁵

Determination of whether Alachua County is impliedly preempted from allocating ad valorem taxation for tax increment financing depends upon interpretation of the intent of the Legislature in the enactment of the Community Redevelopment Act. One of Alachua County's strongest arguments relates to the legislature's adoption of the Act in 1969, subsequent to the 1968 Florida Constitutional revision. Since the enactment of the Act followed the Constitution's integration of broad home rule authority for local governments, the 1969 Florida Legislature knew anything not prohibited by general law would default into the realm of local government authority, yet they remained silent on the applicability of tax increment financing outside of the Act. Further, it can be inferred that the Act was not so pervasive that it occupied the entire tax increment financing field. This inference, coupled with Alachua County's home rule authority, arguably evidences the state's intent not to preclude counties from using tax increment financing for rural heritage conservation. Finally, the use of tax increment financing for urban

⁸⁸ See Hillsborough County, 603 So.2d at 591; Tallahassee Memorial, 681 So.2d at 831; Lowe, 766 So.2d at 1207.

⁸⁹ See Hillsborough County, 603 So.2d at 590.

⁹⁰ See Lowe, 766 So.2d at 1207.

⁹¹ See *City of Boca Raton v. State*, 595 So.2d 25, 26 (Fla. 1992).

⁹² See *id.*

⁹³ See *id.* at 30.

⁹⁴ See *id.*

⁹⁵ See *id.*

redevelopment under the Community Redevelopment Act serves a purpose distinct from rural heritage conservation.

An argument that Alachua County's ability to allocate ad valorem revenue is preempted by the state may be contested by case law. *Mallard v. Tele-Trip Company*,⁹⁶ provides that the state legislature is constitutionally precluded from preempting or overly restricting a county's authority to levy ad valorem taxes. Therefore, if the state legislature enacted legislation prohibiting Alachua County's allocation of ad valorem revenue for rural heritage, such state legislation could be considered too restrictive and in violation of the reservation of local authority set forth in Art. IV, § (1)(a), (9) of the *Florida Constitution*.

⁹⁶ See *Mallard*, 398 So. 2d. at 969.

V. CREATING NEW LEGISLATION

Alachua county clearly has the authority to use tax increment financing to fund rural heritage development under the Community Redevelopment Act provided that the area being chosen meets the statutory requirements of slum and blight.⁹⁷ Further, Alachua county does not appear to be in conflict with or preempted by general law if it chooses to fund rural heritage preservation with tax increment financing under its home rule authority. Nonetheless, a county may elect to seek new legislation granting it the authority to use tax increment financing to fund rural heritage preservation. Creating new legislation would avoid the constraint of the “slum” and “blight” findings in the Community Redevelopment Act while providing the benefits of tax increment financing. Further, new legislation designed to fund rural heritage preservation using tax increment financing would more clearly define the a county’s authority and provide a consistent procedure less likely to be challenged.

In order to determine the feasibility of legislation granting the county authority to use tax increment financing to fund rural heritage preservation, the county must first determine what type of legislation would be appropriate in this situation. The County may choose to seek legislation that would use of tax increment financing to fund rural heritage preservation as a general law, a special law, or a general law of special application. Alachua county may choose to introduce legislation that grants this authority only to Alachua county, this would be a special law. Alternatively, the county may introduce general legislation to grant all counties this authority. Given the diverse nature of counties and municipalities in Florida, a third option, which would create a general law that applies on the basis of the population of the county or municipality, may be inviting. A general law that applies based on population is a general law of local application. The advantages and potential obstacles to using each of these three types of legislation will be discussed in the next section.

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FLA. STAT. ANN. §163 Pt. III (2001).

VI. TYPES OF NEW LEGISLATION

A. SPECIAL LAW

A special law is designed to operate on known and specific persons or things within the state of Florida.⁹⁸ A special law will not be passed unless a notice of intention to seek its enactment has been published in a newspaper of general circulation in the affected area or the law becomes effective only upon approval by referendum vote of the electors in the effected area.⁹⁹ A special law is of limited use in levying taxes, but could probably be used to allocate tax revenue. FLA. CONST. Art. VII § 9(a) states that counties may be authorized by law to levy ad valorem taxes and by general law to levy other taxes, except taxes prohibited by the Florida Constitution. Given that Alachua County has been authorized to levy the property taxes from which the increment will be allocated, new legislation specifying the use of an increment of this tax does not present any constitutional problems. However, FLA. CONST. Art. III § 11(a)(2) prohibits the enactment of a special law of a general law of local application pertaining to the “assessment or collection of taxes for state or county purposes.”

There is no apparent constitutional problem with a special law granting Alachua County the authority to allocate future tax increment to fund rural heritage preservation, since this involves neither the levying or assessment of a tax. Instead it merely redirects revenue from property taxes already assessed by general law.¹⁰⁰ Even so, in a non-ad valorem context, the court in *Adams v. Alachua Co.* held that a special law that amends a general taxing statute is unconstitutional.¹⁰¹ In *Adams*, FLA. STAT. Ch. 94-487, a special law, allowed the County to use revenue from an infrastructure surtax authorized by general statute to fund the maintenance and operation of recreation facilities throughout the County. The court held that the special law was unconstitutional because it attempted to amend a general taxation law to levy a tax for a purpose positively prohibited in all counties.

Arguably, *Adams* would not apply to special legislation allowing tax increment financing for rural heritage preservation. The tax at issue in *Adams* was a sales tax. Art. VII § 9 FLA. CONST. provides that counties may be authorized by law to levy ad valorem taxes and by general law to levy other taxes. The constitutional infirmity addressed by the court in *Adams* arose because the court held that the special law was not amending the general law to direct the revenue of the sales tax, but that the special law was itself levying a tax in violation of Art. VII § 9. In this

⁹⁸ See *Dept. of Bus. Reg. v. Classic Mile, Inc.*, 541 So 2d 1155, 1157 (Fla. 1989) *citing* *State ex rel. Landins v. Harris*, 120 Fla. 555, 562-63, 163 So.237, 240 (1934); *State ex rel. Gray v. Stoutamire*, 131 Fla. 698, 179 So. 630 (1938); *State ex rel. Buford v. Daniel*, 87 Fla. 270, 99 So. 804 (1924).

⁹⁹ FLA. STAT. Ch. 163, Pt. (III) (2001).

¹⁰⁰ *Id.*

¹⁰¹ See *Adams v. Alachua Co.*, 702 So. 2d 1253 (Fla. 1997).

case, special legislation would direct the revenue of an ad valorem tax. Unlike special legislation amending non-ad valorem taxes, special legislation directing the revenue of ad valorem taxes, or even levying ad valorem taxes, would not allow the legislature to undermine tax sources for state support. The state does not receive revenue from ad valorem tax revenue. Accordingly, the policy considerations raised in *Adams* do not apply in the case of special legislation to enable tax increment financing.¹⁰²

Even if a court failed to make a distinction between the non-ad valorem tax in *Adams* and the allocation of ad valorem tax revenue in this case, it is unclear whether this prohibition would apply to special legislation created to use tax increment financing for rural heritage preservation. If the special legislation did not change the purpose of the general legislation that granted the County the authority to levy the tax. The court in *Adams* held that “[a] determination that a special law may allow a county to clearly redirect the tax proceeds in a manner *explicitly contrary* to the general law which authorized the tax in the first place would clearly undercut the purpose of Art. VII Sec. 9(a).”(emphasis added)¹⁰³ However, this holding seems at odds with the courts previous holding that when a special act and a general law conflict, the special act will prevail.¹⁰⁴ According to the language of *Adams*, the court will view any special legislation which amends general legislation granting the authority to tax as the levying of an unconstitutional tax.¹⁰⁵ Accordingly, it would appear that special legislation granting a local government the authority to use tax increment financing to fund rural heritage programs may be feasible. However, the court’s approach in *Adams* dictates caution..

B. GENERAL LAW AND GENERAL LAW OF LOCAL APPLICATION

It seems clear that general legislation authorizing tax increment financing to fund rural heritage programs throughout Florida is least problematic. A general law “operates universally throughout the state, uniformly on subjects as they may exist throughout the state, or uniformly within a permissible classification.”¹⁰⁶ A general law may have criteria that narrow its applications significantly, as long as the class of persons or circumstances to which it applies

¹⁰² Id. at 1254

¹⁰³ *Adams* at 1254.

¹⁰⁴ Id. at 1257 (Overton, J., dissenting), citing *State ex rel. Johnson v. Vizzini*, So.2d 205 (Fla. 1969).

¹⁰⁵ Id. The dissent of Justice Overton in *Adams* provides strong support for the County’s position in *Adams* that the special law did not levy a tax. Justice Overton believes the County’s reading of Article VII of the 1968 Florida Constitution is consistent with the changes that have occurred in that article and that the court’s reasoning is more restrictive than the was legislatively intended of the 1968 constitution. Justice Overton also concludes from *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984) that the court has not read the 1968 Constitution to preclude special laws that expand the allocation and use for revenue from a tax authorized by general law. See generally *Adams v. Alachua Co.*, 702 So. 2d 1253, 1255 (Fla. 1997).

¹⁰⁶ *Dept. of Bus. Reg. v. Classic Mile, Inc.*, 541 So 2d 1155, 1157 (Fla. 1989).

remains open.¹⁰⁷ If the County presented a law that could only ever apply to Alachua County that law would be viewed as a special law and found unconstitutional it was not enacted according to the procedures for enacting special laws.

The County could also present a general law of local application, which is a law “relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within in a classified territory when classification is not permissible or the classification is illegal.”¹⁰⁸ However, like special laws, Fla. Const. Art. III. § 11(a)(2) also prohibits general laws of local application that pertain to the assessment or collection of taxes for state and county purposes. While the use of tax increment financing to fund rural heritage preservation does not actually assess or collect a tax, the county may face challenges based *Adams* just as it would in the case of a special law.¹⁰⁹

Given the potential challenges to special laws and general laws of local application, the local government may wish to consider seeking general legislation to use tax increment financing to fund rural programs. If the reallocation of the revenues from a tax already authorized constitute an amendment to the general law that authorized the tax, then a general law authorizing the reallocation of the tax revenues is appropriate. Under FLA. CONST. Art. VII §9(a) counties may be authorized to by law to levy ad valorem taxes not prohibited by the Constitution. Therefore, the new legislation that would be introduced by the County, if viewed as levying as tax, does not levy a tax that is unconstitutional. If viewed only as allocating revenue from a tax already authorized, this legislation would also not be in violation of the constitution.

If a local government’s legislative delegation chooses to create new general legislation, it may do so in two ways. First, the county may introduce legislation that grants all counties and municipalities the authority to use tax increment financing to promote rural heritage preservation. Such legislation may bear many similarities to the Community Redevelopment Act.¹¹⁰ Legislation of this nature would have the advantage of creating a tool for use by all counties and uniform approach to be used. General legislation granting municipalities the authority to use tax increment financing to promote rural heritage preservation would also seem to promote the broad purpose of the new Florida Rural Land Stewardship Act.¹¹¹ The Rural Land Stewardship Act has as one of its goals the preservation of the character of Florida’s rural areas. While the Rural Land Stewardship Act is currently designed to operate in only five municipalities, new legislation would further at least one the goals of the Act without requiring the larger scale projects and oversight

¹⁰⁷ See *Ocala Breeders’ Sales Co., Inc. v. Fla. Gaming Centers, Inc.*, 731 So. 2d 21, 25 (Fla. 1st DCA 1999) *aff’d* 2001 WL 920280 (Fla.) *citing* *Biscayne Kennel Club, Inc. v. Fla. St. Racing, Comm’n*, 165 So. 2d 762 (Fla.1964); *Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879 (Fla. 1983); *Summersport Enterprises, Ltd. v. Pari-Mutuel Comm’n*, 493 So.2d 1085 (Fla. 1st DCA 1986).

¹⁰⁸ Classic Mile at 1157.

¹⁰⁹ See *Adams v. Alachua Co.*, 702 So. 2d 1253 (Fla. 1997).

¹¹⁰ FLA. STAT. Ch. 163, Pt. (III) (2001).

¹¹¹ 2001 FLA. LAWS CH. 279.

required by the Act. However, because legislation of this nature would vest all counties in the state with this authority, it may face greater opposition in the legislature because of the diverse nature of the counties in this state and their varying needs.

Alternatively, Alachua county could present a general law that applies within a permissible classification. This classification scheme must bear a reasonable relationship to the purpose of the statute and not be arbitrary.¹¹² Further, any classification must operate such that any person or entity brought into the same set of circumstances provided for in the statute will be equally and fairly affected by the general law.¹¹³ In this instance, a classification that somehow targets counties with rural heritage that may still be preserved would have a relationship to the legislation. An arbitrary classification of counties based on total population may not bear a truly reasonable relationship to the statute. If the county chooses to present a general law with a classification, it should be careful that the classification under which the law operates is truly an open one. The court in *Classic Mile* clearly stated that a special law cannot be made into a general law merely by being enacted as such.¹¹⁴ Should a court view the general law of local application as a special law, then the court will require that the notice requirement have been satisfied. Further, if a court viewed this legislation as a special law and also chose to view it as levying a tax, as did the court in *Adams*, then the law would also violate Fla. Const. Art. III. § 11(a)(2).¹¹⁵

¹¹² *Classic Mile* at 157 *citing* Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983); Shelton v. Reeder, 121 So.2d 145 (Fla. 1960); FLA. CONST. Art. III § 11(b).

¹¹³ Dept. of Natural Resources v. Leavins, 599 So.2d 1326, 1336 (Fla. 1st DCA 1992).

¹¹⁴ Id.

¹¹⁵ *See Adams v. Alachua Co.*, 702 So. 2d 1253 (Fla. 1997).

VII. CONCLUSION

Alachua County may implement tax increment financing through Community Redevelopment Act, the County's home rule authority, or the enactment of new legislation. Each method of implementing tax increment financing is viable; however, each method may subject the county to challenges of its authority to use tax increment financing for rural heritage preservation.

The Community Redevelopment Act provides a strict procedural framework for tax increment financing for community redevelopment. While the CRA has been a successful tool for the revitalization of downtown and historic areas, it has not been used for the preservation of rural heritage. The language of the Act is sufficiently broad to authorize tax increment financing for the funding of rural heritage preservation; however, the use of the CRA for this purpose may be subject to several challenges. Residents may be opposed to the designation of parts of their communities as slum or blight. Taxing authorities that are impacted by the reallocation of a portion of their future revenue base may also challenge a county's authority to use the CRA for rural heritage preservation.

A county's home rule authority may be another method for Alachua County to utilize tax increment financing for rural heritage preservation. Both the *Florida Constitution* and current case law support a local government's authority to allocate the ad valorem revenue. Other than the Community Redevelopment Act, there does not appear to be any other countervailing law on tax increment financing in Florida. Because tax increment financing for rural heritage preservation is not in conflict or inconsistent with the CRA, Alachua County should be able to use its home rule authority and pass an ordinance relating to the allocation of ad valorem tax revenues for rural heritage. Yet, the allocation of ad valorem taxes may be successfully challenged because the county's taxing authority is subject to close scrutiny by the courts.

If a county derives the authority to use tax increment financing to fund rural heritage preservation in a new special law of a new general law of special application, it may be successfully challenged as an unconstitutional assessment of taxes. General legislation that provides for the use of tax increment financing in rural heritage districts would permit all Florida counties to use this financing mechanism and would not be subject to the same challenge. Further, if the allocation scheme set forth under a general law permitting tax increment financing for a rural heritage district was challenged, it would likely be considered analogous to the CRA, and therefore upheld.

The case study of Cross Creek indicates a significant source of revenue available in rural areas of Alachua County from ad valorem taxes. Based upon this case study, the revenue available through tax increment financing in rural areas will be adequate to fund rural heritage preservation goals. Given the increasing desire to preserve rural heritage in Florida and the potential efficacy of tax increment financing to fund these goals, the risk of a challenge to a

county's authority to use tax increment financing to fund rural heritage preservation is outweighed by the benefits of using tax increment financing to fund rural heritage preservation.