
Question #1: The structure of the CEPD and determination of CEPD’s authority to implement sea level rise infrastructure and resilience projects

- a. Part II of Chapter 161, F.S. (Sections 161.25-45, F.S.) create the statutory framework for beach and shore preservation districts. Pertinent sections that help frame the operating scope of these districts include the following provisions:
- Section 161.28, F.S.: This program may incorporate all or part of the recommendations of the United States Army Corps of Engineers concerning beach and shore restoration and erosion control, if there be any, and may additionally provide to an appropriate extent for the other aspects of beach and shore preservation.
 - Section 161.29, F.S.: Upon adoption of a reasonably final **“plan of improvement for the beach and shore preservation program”** for the entire county, the board of county commissioners shall conduct, through the use of personnel competent and qualified in this field, an economic analysis of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating these benefits to their proper recipients by categories or zones of comparable benefits, and place in the same zone areas of equal benefit, or follow such other method as may be deemed suitable for the purposes of this section.
 - Section 161.31, F.S.: ...Board of county commissioners shall serve as the governing body for all districts created under this authority and shall proceed as expeditiously as possible to determine and implement policy and program for each such district in accordance with the overall county program, except that the board of county commissioners may receive guidance in these matters for each district from an advisory group, consisting of not less than three nor more than five persons, which the board of county commissioners may appoint from any or each such district. Members of such advisory group shall have no definite term of office but shall serve at the pleasure of the board of county commissioners.
 - Section 161.32, F.S.: This part shall not be construed to impair the existence, powers or functions of any existing erosion prevention, beach or shore preservation districts created by special or local act; provided, however, that any such existing district may re-create and reestablish itself under the

provisions of this act as if originally created and established hereunder in all respects, by resolution of its governing body adopting the provisions of chapter 161, in their entirety and thereafter shall function as a beach and shore preservation district created and established under the provisions of this part.

- Section 161.33, F.S.: ...each and shore preservation districts within the county, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of, federal, state and other local governments and political entities, or any agencies or representative thereof, for the purpose of improving, furthering and expediting the beach and shore preservation program.

(2) The board of county commissioners and the department, for and on behalf of each or any district created in accordance with parts I and II of this chapter, are authorized to receive and accept from any federal agency, grants for or in aid of any beach and shore preservation program contemplated by this part, and to receive and accept aid or contributions from any source, of money, property and other things of value.

- Section 161.34, F.S.: ...shall coordinate the work and activity of all districts established hereunder within the county and, to further ensure harmony and consistency with the overall county beach and shore preservation plan, shall establish working liaison with each municipality and other agencies and groups involved in beach and shore preservation activity within the county

- Section 161.35, F.S.: With the consent of the department and of any municipality or other political authority involved, the board of county commissioners **may regulate and supervise all physical work or activity along the county shoreline which is likely to have a material physical effect on existing coastal conditions or natural shore processes. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, jetties, moles, breakwaters, seawalls, revetments, and other coastal construction as defined herein.** For this purpose, the board of county commissioners, with assistance as required from its professional personnel, **may develop standards and criteria, issue permits and conduct inspections.**

(2) All regulations and requirements prescribed by the board of county commissioners pursuant to this part may be enforced by mandatory injunction or other appropriate action in any court of competent jurisdiction.

- Section 161.36, F.S.:

(1) To make contracts and enter into agreements;

(2) To sue and be sued;

(3) To **acquire and hold lands and property by any lawful means;**

(4) To **exercise the power of eminent domain;**

- (5) To enter upon private property for purposes of making surveys, soundings, drillings and examinations, and such entry shall not be deemed a trespass;
 - (6) To **construct, acquire, operate and maintain works and facilities**;
 - (7) To **make rules and regulations**¹; and
 - (8) To do any and all other things specified or implied in this part.
- Section 161.37, F.S.: (1) may levy upon all taxable property within each district an ad valorem benefits tax in any amount necessary to meet the requirements of the program but not exceeding the reasonable ability of the district to pay.
 - (2) ... tax shall be levied upon each taxable property in proportion to benefits said property will receive as determined by the most recent economic analysis of the program as provided for under s. 161.29. General benefits shall be uniformly applied on an ad valorem basis to the entire assessed valuation of each district, while special benefits shall be assigned to groups of specific properties which shall constitute zones because of the equal or comparable benefits each included property will receive
 - Section 161.38, F.S.: ... is authorized to provide from time to time for the issuance of bonds to obtain funds to meet the costs of the beach and shore preservation program

Analysis: *Based only the prevailing statutory authority for the creation of beach and shore preservation districts pursuant to Chapter 161, F.S., the CEPD (as a general beach and shore preservation district) has the following powers:*

1. *It may regulate and supervise all physical work or activity along the county shoreline which is likely to have a material physical effect on existing coastal conditions or natural shore processes. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, jetties, moles, breakwaters, seawalls, revetments, and other coastal construction² as defined herein. Coastal construction is defined broadly.*
2. *It may develop standards and criteria, issue permits and conduct inspections. The statute does not make any limitation on that to a certain type of property, for example public or private.*
3. *It can construct, acquire, operate and maintain works and facilities and make rules and regulations to carry out its purposes. There is no limitation on the regulations related to private property.*
4. *It can also bond and assess for project costs.*

¹ A review of the CEPD website does not reveal if any rules, regulations or permit criteria have been adopted. Requested from Aptim 7/14/22.

² Section 161.021(6), F.S. "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

Just under the statute, to the extent that an infrastructure and resilience project is located along the county shoreline and it is likely to have a material physical effect on existing coastal conditions or natural shore processes, it is within the CEPD's authority to implement. Because the statutory authority for the districts is broad, and predated many policy discussions surrounding resilience as it is linked to sea level rise, if the resilience project is addressing an impact created by sea level rise such as coastal flooding or erosion, the cause of it such as sea level rise is likely of little consequence or distinction.

A further breakdown on statutory guidance related to the location and scope of such infrastructure and resilience projects follows with an analysis of key definitions.

b. Definitions:

Section 161.021(2), F.S. "Beach and shore preservation," "erosion control, beach preservation and hurricane protection," "beach erosion control" and "erosion control" includes, but is not limited to, erosion control, hurricane protection, **coastal flood control**, shoreline and offshore rehabilitation, and regulation of work and **activities likely to affect the physical condition of the beach or shore.**

Section 161.54(3), F.S. "Beach" means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. **"Beach" is alternatively termed "shore."**

Section 161.54(6)(d), F.S. (in construing 161.52-161.58, F.S.): "Coastal or shore protection structure" means shore-hardening structures, such as seawalls, bulkheads, revetments, rubble mound structures, groins, breakwaters, and aggregates of materials other than beach sand used for shoreline protection; beach and dune restoration; and other structures which are intended to prevent erosion or protect other structures from wave and hydrodynamic forces.

Section 177.27(1), F.S. (1) "Apparent shoreline" means the line drawn on a map or chart in lieu of the mean high-water line or mean low-water line in areas where either or both may be obscured by marsh or mangrove, cypress, or other types of marine vegetation. This line represents the intersection of the mean high-water datum with the outer limits of vegetation and appears to the navigator as the shoreline.

Analysis: *Definitions in Chapter 161, F.S. are helpful to provide some guidance on the types of activities that beach and shore preservation districts are authorized to undertake and where they can undertake them. Essentially, what types of projects can be implemented and how far upland of the shoreline can an infrastructure or resilience project be located? In terms of project scope, the list is broad and includes but is not limited to the following: erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation, and regulation of work and activities likely to affect the physical condition of the beach or shore. It is likely all of these activities can be linked to the effects of sea level rise. Further the definitions identify coastal or shoreline protection structures such as seawalls, bulkheads, revetments, rubble mound structures, groins, breakwaters, and aggregates of materials other than beach sand used for shoreline protection; beach and dune restoration; and other structures which are intended to prevent erosion or protect other structures from wave and hydrodynamic forces. All of these*

types of structure projects can be used to address sea level rise. But the scope includes other structures which are intended to prevent erosion or protect other structures from wave and hydrodynamic forces, so this list is by example.

*Such projects can be implemented on beaches **and** shores. There is no definition for shore or shoreline in Chapter 161, F.S., but the definition of “apparent shoreline” in Chapter 177, related to Land Boundaries for Coastal Mapping is useful indicating a shoreline is broadly the intersection of the mean high-water datum with the outer limits of vegetation. Beach and shore are two distinct types of areas, but in some instances are perceived to be interchangeable.*

Based only the statutory authority, it appears CEPD can to implement sea level rise infrastructure and resilience projects on beaches and shores.

An analysis of the enabling legislation for the CEPD follows.

c. Chapter 71-730, 76-403, 81-413 and 88-449 LOF

- Chapter 71-730, LOF: Validated the creation of the CEPD. It covered the validation of the district, appointed the BOCC and declared public purpose. It authorized the issuance of bonds.
- Chapter 76-403, LOF: It further codified the structure of the terms of the members of the BOCC of the CEPD. Declared validation of the District.
- Chapter 81-413, LOF: Recreated and re-established district as a beach and shore preservation authority under the provisions of Chapter 161, Florida Statutes; providing for public purpose; providing definitions; defining the boundaries of the district; providing for the election of the district governing board; providing for general powers and authority, including the power to develop and execute plans for beach and shore preservation, to construct, reconstruct, and improve erosion prevention projects, to levy and collect ad valorem taxes on all taxable property within the district; to levy assessments against land specially benefited within the district for such benefits and to issue assessment and general obligation bonds, with referendum approval; repealing Chapter 71-730 and Chapter 76-403, Laws of Florida; providing an effective date. **Important to note the boundaries: The territorial boundaries of the District shall be all of Captiva Island.**³

³ Commence at the corner common to sections 2, 3, 10 & 11, T. 46 S., R. 21 E., Lee Co., Florida; thence run Easterly along the South line of said sec. 2 to its intersection of the centerline of Blind Pass and the Northerly limits of the City of Sanibel, said intersection is the P.O.B. of the parcel or tract herein described, From said P.O.B. run southwesterly along said centerline of **Blind Pass and Northerly limits of the City of Sanibel to a point in the Gulf of Mexico which lies 300' from the M.H.T. line of Captiva Island;** thence run **Northwesterly along the Meanders of a line in the Gulf of Mexico that lies 300' from and parallel to said M.H.T. line of Captiva Island to its intersection with the centerline of Redfish Pass;** thence run **Easterly along said centerline of Redfish Pass to a point 300' from the M.H.T. line of the Easterly shore of Captiva Island in the waters of Pine Island Sound;** thence run **Southeasterly along the meanders of a line in the waters of Pine Island Sound that lies 300' from and parallel to the M.H.T. line of Captiva Island to its intersection with the centerline of Roosevelt Channel;** thence run **Southerly along the Meanders of said centerline of Roosevelt Channel to its intersection with aforementioned**

- Chapter 88-449, LOF: Set assessments at 20-year period.
- Chapter 97-255, LOF: Related to structure elements and operations of special districts broadly.
- Chapter 2000-399, LOF⁴: Essentially updated the basic law codifying the CEPD. Validated the CEPD and provided more specificity on powers and duties. Added two key definitions: (4) “Erosion Prevention Projects” or “Project” shall mean and shall include any seawalls, groins, breakwaters, bulkheads, fills, and other works, structures, equipment or other facilities used for beach renourishment or erosion control as defined by s. 161.021(3), Florida Statutes, and in each case necessary or useful in the protection of the lands, including beaches, within the District from tidal action and other causes of beach and coastal erosion. (8) “Gulf front Lands” shall mean real property contiguous to or abutting the waters or beaches of the Gulf of Mexico in the County, publicly or privately owned, upon fair and equitable principles, which is specifically benefitted by the construction, maintenance or operation of any Erosion Prevention Project or restoration of eroded beaches. **Boundaries still include all of Captiva Island, FL.**⁵ Other notable provisions:
 - Included powers of the district, Section 4:
 - 6) Develop and execute a logical and suitable program for comprehensive beach and shore preservation as defined by section 161.021(2), Florida Statutes, relating to the use and maintenance of the beaches and sand dunes which may be important to their preservation and enjoyment.
 - (7) Construct, reconstruct, or improve Erosion Prevention Projects in and for the District.
 - 10) Exercise jurisdiction, control, and supervision over the construction of **any** Erosion Prevention Project, constructed or to be **constructed by any person, firm, or corporation, public or private, within the District** and **to make and enforce such rules**

centerline of Blind Pass and the Northerly limits of the City of Sanibel; thence run **Southwesterly along said centerline of Blind Pass and Northerly limits of the City of Sanibel to the P.O.B.**

⁴ [399 \(frules.org\)](http://frules.org). Repealed: Chapters 71-730, 76-403, 81-413, and 88-449, Laws of Florida.

⁵ Commence at the corner common to sections 2,3, 10 & 11, T. 46 S., R. 21 E., Lee Co., Florida; thence run Easterly along the South line of said sec. 2 to its intersection of the centerline of Blind Pass and the Northerly limits of the City of Sanibel, said intersection is the P.O.B. of the parcel or tract herein described. From said P.O.B. run Southwesterly along said centerline of Blind Pass and Northerly limits of the City of Sanibel to a point in the Gulf of Mexico which **lies 300’ from the M.H.T. line of Captiva Island**; thence run Northwesterly along the Meanders of a line in the Gulf of Mexico that **lies 300’ from and parallel to said M.H.T. line of Captiva Island to its intersection with the centerline of Redfish Pass**; thence run Easterly along said **centerline of Redfish Pass to a point 300’ from the M.H.T. line of the Easterly shore of Captiva Island in the waters of Pine Island Sound**; thence run **Southeasterly along the meanders of a line in the waters of Pine Island Sound that lies 300’ from and parallel to the M.H.T. line of Captiva Island to its intersection with the centerline of Roosevelt Channel**; thence run Southerly along the Meanders of said centerline of Roosevelt Channel to its intersection with aforementioned **centerline of Blind Pass and the Northerly limits of the City of Sanibel**; thence run Southwesterly along said centerline of Blind Pass and **Northerly limits of the City of Sanibel to the P.O.B.**

and regulations for the maintenance and operation of any such Projects as may in the judgment of the District Board be necessary or desirable for the efficient operation of such Project and for accomplishing the purposes of this act.

- 11) Restrain, enjoin, or otherwise prevent **any person, firm, or corporation, public or private, from establishing or constructing any Erosion Prevention Project within the District without the prior written approval of the District Board.** Application for such approval shall be made in writing to the District Board in accordance with rules and regulations promulgated by the District Board for that purpose.
- (12) **Restrain, enjoin, or otherwise prevent the violation of any provision of this act or of any resolution, rule, or regulation adopted pursuant to the powers granted by this act.**
- (15) Receive and accept from any source, including, but not limited to the United States of America, the State of Florida, counties, municipalities, and other political subdivisions, grants for or in aid of the construction, maintenance, or operation of any Erosion Prevention Project or part thereof and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purposes for which such grants or contributions may be made and to carry out the purposes of this act.

- Section 6. Comprehensive Beach and Shore Preservation Program.—The
- District shall **develop and adopt a “comprehensive beach and shore preservation program” for the area within its jurisdiction.**⁶ This program may incorporate all or part of recommendations of the United States Army Corps of Engineers and the state Department of Environmental Protection **concerning beach and shore restoration and erosion control and may additionally provide to an appropriate extent for other aspects of beach and shore preservation.** In conducting its studies and making its plan for beach and shore preservation, the District Board shall hold sufficient public hearings to ascertain the views and feelings of affected property owners in the various parts of the District regarding the needs to be served and the manner in which they shall best be served. The Board shall give proper and reasonable consideration to all evidence received in the planning of the beach and shore preservation program.
- Section 7. Benefit Categories or Zones.—Upon adoption of a reasonably final plan of improvement for beach and shore preservation within the District, the Board shall conduct, through the use of personnel competent

⁶ A review of the CEPD website does not reveal if this plan has been completed. Requested from Aptim 7/14/22.

and qualified in this field, **an economic analysis⁷ of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating those benefits to their proper recipients by categories or zones of comparable benefits,** or follow such other method as may be deemed suitable for the purpose of this act. The District Board shall conduct in the same or similar manner a new economic analysis from time to time to better determine and allocate actual or expected benefits.

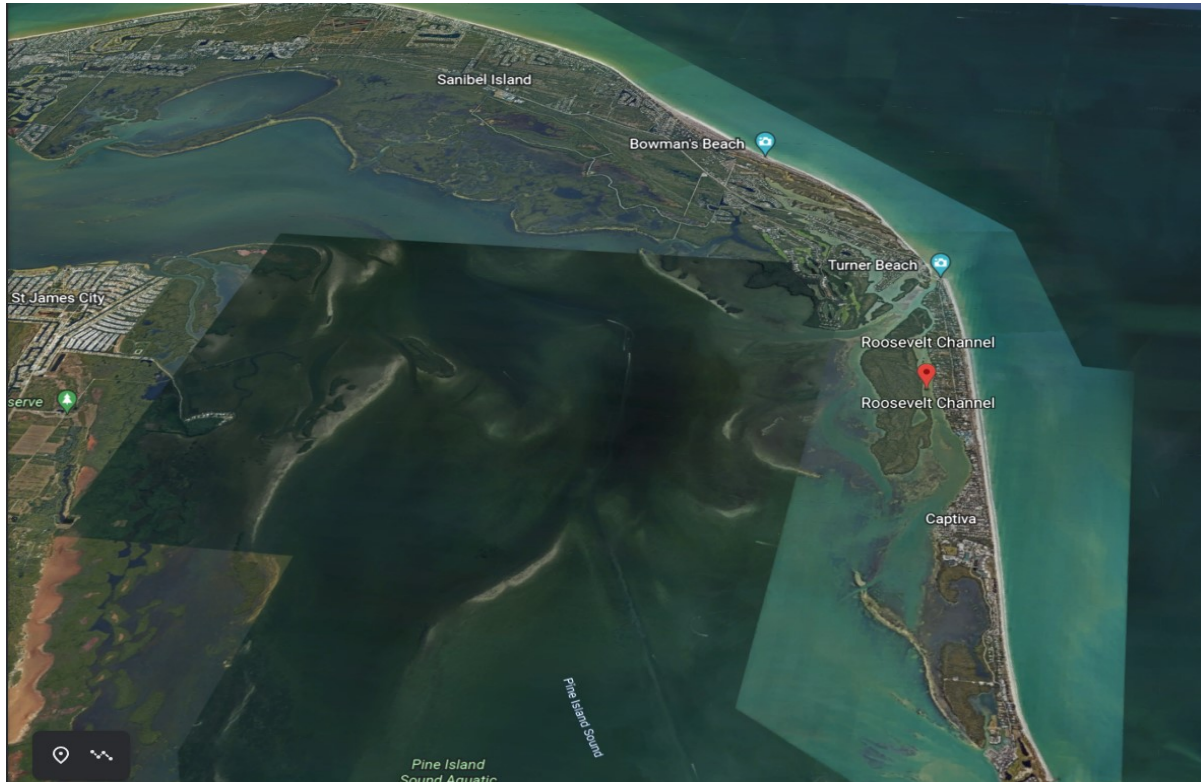
- Section 10. Special Assessments.— (1) The District may provide for the construction or reconstruction of an Erosion Prevention Project or Projects and for the levying of special assessments upon benefitted property. (2) The District Board shall divide the District’s lands into major categories and zones to appropriately determine the **benefit to lands from the construction, maintenance and operation of Erosion Prevention Projects and beach restoration.** The Legislature finds and determines that **all Gulf front Lands in the District are directly and specially benefitted by the construction, operation, and maintenance of Erosion Prevention Projects in the category and zone in which such Gulf front Lands are situated.** The **District may also determine that categories or zones that do not constitute Gulf front Lands may be benefitted by the construction, maintenance, and operation of Erosion Prevention Projects.**

(15) Each school district and other political subdivision wholly or partly within the District and each public agency or instrumentality owning specially benefitted lands within the District shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of the county, district, political subdivision, or public agency or instrumentality which private owners of such lands possess or are subject to hereunder, and such real estate shall be subject to liens for said assessments in all cases where the same property would be subject had it at the time the lien attached been owned by a private owner.

16) **Any special assessment bonds or program for the financing of the construction, reconstruction, or maintenance of erosion prevention projects, or any combination of financing for such projects** which includes assessments against property within the district **shall be authorized only with the approval of a majority of the qualified electors residing in the district voting in a referendum election to be called by the district board in accordance with the provisions of general law.**

⁷ A review of the CEPD website does not reveal if this economic analysis has been completed. Requested from Aptim 7/14/22.

Analysis: A key element of the enabling legislation is that it includes boundaries on the west and east side 300' below the mean high water line all the way around Captiva including Roosevelt Channel and Pine Island Sound.



Question #2: CEPD jurisdiction over adaptations by private property on Captiva

Analysis: As a threshold matter, the territorial boundary of the CEPD is the entire island of Captiva from the centerline of Blind Pass to centerline of Redfish Pass and extend 300' into the Gulf of Mexico and Pine Island Sound including Roosevelt Channel. This boundary is without distinction between publicly and privately owned property. Three key provisions of Chapter 2000-399, LOF are important:

1. 10) Exercise jurisdiction, control, and supervision over the construction of any Erosion Prevention Project, constructed or to be constructed by any person, firm, or corporation, public or private, within the District and to make and enforce such rules and regulations for the maintenance and operation of any such Projects as may in the judgment of the District Board be necessary or desirable for the efficient operation of such Project and for accomplishing the purposes of this act.
2. 11) Restrain, enjoin, or otherwise prevent any person, firm, or corporation, public or private, from establishing or constructing any Erosion Prevention Project within the District without the prior written approval of the District Board. Application for such approval shall be made in writing to the District Board in accordance with rules and regulations promulgated by the District Board for that purpose.

3. (12) Restrain, enjoin, or otherwise prevent the violation of any provision of this act or of any resolution, rule, or regulation adopted pursuant to the powers granted by this act.

These provisions are important because as long as the “adaptation” is also considered an Erosion Prevention Project⁸, CEPD has some level of jurisdiction over it. The types of adaptation projects are defined as any Erosion Prevention Projects, but there appears to be an additional threshold related to the projects that they be “... necessary or useful in the protection of the lands, including beaches, within the District, from tidal action and other causes of beach and coastal erosion.” Important to note is that this threshold also applies to any, project, not just those initiated by the CEPD. “The lands” does not distinguish between public and private property and means any land within the CEPD by its plain meaning. The conditions that the project must be necessary or useful in protecting lands from include tidal action and broadly, “other causes of beach and coastal erosion” which would certainly include sea level rise.

CEPD can exercise jurisdiction, control, and supervision over the construction of any Erosion Prevention Project, by CEPD, a public entity or a private one. There are no distinctions between public projects or private ones.

Question #3: Existing enforcement mechanisms

Analysis: CEPD can make and enforce such rules and regulations for the maintenance and operation of any such Projects as may in the judgment of the District Board be necessary or desirable for the efficient operation of such Project. CEPD can restrain, enjoin, or otherwise prevent any person, firm, or corporation, public or private, from establishing or constructing any Erosion Prevention Project within the District without the prior written approval of the District Board. CEPD can restrain, enjoin, or otherwise prevent the violation of any provision of this act or of any resolution, rule, or regulation adopted pursuant to its powers.

Additionally, if the proper process is undertaken to levy assessments, this provides another mechanism for the collection of assessments.⁹ The District Board shall have the power to levy and assess an ad valorem tax not exceeding 10 mills on all taxable property in the District to pay for the maintenance, operation, and other corporate purposes of the District, to pay the principal of an interest on any general obligation bonds of the District, and to provide for any sinking or other funds established in connection with any such bonds.

⁸ ...shall mean and shall include any seawalls, groins, breakwaters, bulkheads, fills, and other works, structures, equipment or other facilities used for beach renourishment or erosion control as defined by s. 161.021(3), Florida Statutes, and in each case necessary or useful in the protection of the lands, including beaches, within the District from tidal action and other causes of beach and coastal erosion.

⁹ This memorandum does not provide an overview of the assessment process, but the collection of ad valorem taxes is a form of enforcement to levy for the implementation of property CEPD projects.