



TECHNICAL COMMUNICATION

Florida Coastal Management Moves to Local Government¹

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ABSTRACT

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A new generation of regulation is about to appear in Florida as a product of the state comprehensive planning process mandated by the Legislature in 1985. All local governments must develop comprehensive plans. Each coastal county and municipality must have a coastal management element in its plan and must adopt development regulations implementing the various policies of the plan. Those governments have the option of developing their own coastal regulations or incorporating by reference existing state or federal regulations on coastal resources. Most have chosen to develop their own regulations and permitting programs. The net result is that there will be further fragmentation and layering of the existing scheme of regulation of coastal activities, the focus of which is currently at the state level. This comes at a time when local governments have less money than ever to spend on government programs and at a time when there has been a growing awareness of the need to manage many of our resources on a regional basis through a regional entity. This paper delineates the coastal policy areas which the State comprehensive plan requires local governments to address, examples of local policies which have been delineated in those areas, and the implications for coming local regulations with regard to the efficient and effective allocation of uses of coastal resources.

ADDITIONAL INDEX WORDS: *Coastal policy areas, coastal regulations, coastal resources, town planning.*

INTRODUCTION

The effort to identify a coastal zone in Florida and to establish comprehensive planning for the protection, development and zoning of the coastal zone goes back nearly 20 years to the creation by the Florida Legislature in 1970 of the Coastal Coordinating Council [Chapter 70-259 (Laws of Florida)]. The efforts of the Council to develop comprehensive policies tied to resource based zones designated as "vital, conservation, and development" met with significant resistance. The Council was abolished in

1975 and its powers, duties, and functions were transferred to the Division of Resource Management in the Department of Natural Resources [Chapter 75-22 (Laws of Florida)]. The program was again transferred in 1977 to the Department of Environmental Regulation [Chapter 77-306 (Laws of Florida)].

In 1978, the Legislature enacted the Florida Coastal Management Act [Chapter 78-287 (Laws of Florida)]. That Act was passed in an effort to obtain federal approval of a state coastal zone management program under the federal Coastal Zone Management Act of 1972. However, the Legislature directed that the State program be a compilation of existing state statutes and regulations, which included an extensive array of policies and regulations on

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submerged lands, dredging and filling, and water quality. No additional statutory authority was provided by the Act. In fact, the draft of a coastal management program submitted to the Legislature by DER in March of 1978 and the previously prepared Coastal Zone Atlases were expressly rejected as the state's coastal management program. Furthermore, the Legislature directed the Department not to divide areas of the state into "vital, conservation, and development areas" [Section 10, Chapter 78-287 (Laws of Florida), F.S. §380.25]. The legislation gained unofficial identification as the "No New Nothing" bill. Coastal management was a state and federal government matter. Local governments had no particular role in the management of coastal resources.

LOCAL PLANNING ACT

With respect to comprehensive planning in the coastal zone, matters proceeded along under the 1978 mandate until 1985 when the Legislature passed four pieces of legislation affecting planning in the coastal zone. The first was the Local Government Comprehensive Planning and Land Development Regulation Act ("Planning Act"); [Chapter 85-55 (Laws of Florida), F.S. §163.3161-.3243]. That Act is administered by the state Department of Community Affairs and requires each county and municipality to adopt a local government comprehensive plan with certain required elements [F.S. §163.3177]. By December 1, 1990, all of the hundred-plus municipalities in coastal counties as well as the coastal counties themselves in Florida will have gone through various stages of plan development, review by the Department of Community Affairs, and plan adoption [Chapter 9J-12, F.A.C.]. The Planning Act requires that all development undertaken by government and all actions taken by those agencies in regard to approvals for private development, in other words, building permits, rezonings, variances, special exceptions, etc., involving land covered by a comprehensive plan or element thereof must be consistent with such plan or element [F.S. §163.3194]. This consistency requirement, along with concurrency, is the key to implementation of the plans. "Concurrency" is the requirement that the infrastructure needed to support a particular development, or phase of development, must be in

place concurrent with that development, or phase, being completed.

The Planning Act also requires that within one year after the adoption of a comprehensive plan, each local government is required to adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan [F.S. §163.3202]. The Department of Community Affairs has adopted a rule, 9J-24, which sets forth the procedures and criteria for the review of local government land development regulations [Chapter 9J-24, F.A.C.]. That rule will be discussed in more detail later.

With respect to the Coastal Zone Protection Element, the Planning Act sets forth 10 objectives for which policies are to be established by local governments in the Element. Those objectives are:

(1) Accelerate public acquisition of coastal and beachfront land where necessary to protect coastal and marine resources or to meet projected public demand.

(2) Ensure the public's right to reasonable access to beaches.

(3) Avoid the expenditure of state funds that subsidize development in high-hazard coastal areas.

(4) Protect coastal resources, marine resources, and dune systems from the adverse effects of development.

(5) Develop and implement a comprehensive system of coordinated planning, management, and land acquisition to ensure the integrity and continued attractive image of coastal areas.

(6) Encourage land and water uses which are compatible with the protection of sensitive coastal resources.

(7) Protect and restore long-term productivity of marine fisheries habitat and other aquatic resources.

(8) Avoid the exploration and development of mineral resources which threaten marine, aquatic, and estuarine resources.

(9) Prohibit development and other activities which disturb coastal dune systems, and ensure and promote the restoration of coastal dune systems that are damaged, and finally,

(10) Give priority in marine development to water-dependent uses over other uses [F.S. 163.3177(6) (g)].

These objectives are comprehensive and substantively complex.

COASTAL MANAGEMENT

The Coastal Zone Protection Element must also meet the requirements of the second key piece of legislation enacted in 1985. That was a special set of provisions on coastal management [§7, Chapter 85-55 (Laws of Florida), F.S. §163.3178]. In addition to the ten policy objectives set forth above, the law requires that the Coastal Management Element address the following subjects:

- (1) the impacts of development and redevelopment on natural and historical resources and the plans and principles to be used to control development and redevelopment to eliminate or mitigate adverse impacts on coastal resources;
- (2) the impacts of point source and non-point source pollution and plans to maintain or upgrade water quality;
- (3) hazard mitigation and protection against natural disasters;
- (4) protection of existing beach and dune systems from man-induced erosion and restoration of altered beach and dune systems;
- (5) a plan to eliminate inappropriate and unsafe redevelopment;
- (6) public access to beach and shoreline areas;
- (7) water-dependent and water-related facilities;
- (8) principles for providing that financial assurances are made that required public facilities will be in place to meet the demand of development, completed development, or redevelopment;
- (9) regulatory and management techniques to be used to mitigate the threat to human life and to control proposed development and redevelopment to protect the coastal environment and give consideration to cumulative impacts; and
- (10) a master plan for deepwater ports in those communities having such facilities [F.S. 163.3178].

Clearly, these legislative requirements cover a broad set of complex issues from beach access, water quality, and dune restoration to fisheries, expenditure of public monies, and land use compatibility and priority. Those first two sets of legislatively established criteria for coastal elements are elaborated on in Rule 9J-5 which was adopted by the Department of Community Affairs [§9J-5.012(3), F.A.C.].

COASTAL INFRASTRUCTURE POLICY

The third important piece of legislation enacted in 1985 was the Coastal Infrastructure Policy [§38, Chapter 85-55 (Laws of Florida), F.S. §380.27]. That policy provides that no state funds which are unobligated at the time a local government coastal management element has been approved shall be expended for the purpose of planning, designing, excavating for, preparing foundations for, or constructing projects which increase the capacity of infrastructure unless such expenditure is consistent with the approved coastal management element.

STATE COMPREHENSIVE PLAN

The fourth key piece of legislation enacted by the 1985 Legislature was the State Comprehensive Plan [Chapter 85-87 (Laws of Florida)]. The state plan sets forth policies in 26 policy areas. Policy Group 9 addresses coastal and marine resources. The state plan sets forth policies which promote:

- (1) public acquisition of coastal and beach-front land,
- (2) public access to beaches,
- (3) protection of coastal and marine resources,
- (4) land and water uses which are compatible with the protection of coastal resources,
- (5) protection and restoration of long-term productivity of marine fisheries habitat,
- (6) restoration of coastal dune systems,
- (7) priority in marine development to water-dependent uses over other uses [F.S. §187.201(9)].

Within 18 months of the adoption by the Legislature of the state comprehensive plan, each regional planning council was required to submit a comprehensive regional policy plan to the Governor's Office [F.S. 186.508]. Those regional policy plans were required to be consistent with, further, and implement the goals and policies of the state comprehensive plan [F.S. §186.507]. Consequently, each of them establishes coastal policies with a regional perspective.

In seven years the Legislature had come from a position where they were unwilling to enact any legislation creating new policies or authority with respect to coastal zone management to

a position where several major pieces of legislation were enacted establishing numerous and significant policies affecting the coastal zone. In addition, those policies are directed to the regional and local levels of government as well as to the state level. This addition of regional and local government into the coastal management scene was not accompanied by a decrease in state or federal involvement.

RULE 9J-24

Within a year of the adoption of its local comprehensive plan, a local government must adopt development regulations which are consistent with and implement their adopted comprehensive plan [F.S. §163.3202]. The Department of Community Affairs has adopted a rule, Chapter 9J-24, which sets forth procedures and criteria for the review of local government land development regulations. Among the regulations which must be adopted are those that provide ". . . specific programs, activities, standards, actions or prohibitions which regulate or govern . . ." among other things the protection of environmentally sensitive lands from development impacts, the protection of shorelines, fisheries, vegetative communities, wildlife, flood hazard areas, non-point source pollution, appropriate densities and intensities, compatible adjacent land uses, open spaces, and the provision of infrastructure concurrent with the impacts of development [§9J-24.003, F.A.C.].

The rule provides that a local government may determine that an existing regulatory program of a federal, state, regional, or other local agency is sufficient to meet the requirements for development regulations and it may incorporate those existing programs by specific reference in whole or in part into their land development code [§9J-24.003(3), F.A.C.]. In reviewing a number of coastal county comprehensive plans, it is significant to note that they all appear to have chosen to develop their own set of policies, standards, and criteria for the various coastal subject areas [Local Comprehensive Plans, Coastal Elements, of Brevard, Broward, Dade, Duval, Escambia, Hillsborough, Lee, Monroe, Palm Beach and Sarasota Counties, Florida].

Chapter 9J-24 also provides procedures for determining compliance of land development regulations with the rule, for the initiation of

action against local governments for failure to have all of the necessary regulations, and procedures for substantially affected persons to challenge a land development regulation on the basis that it is inconsistent with the comprehensive plan. Such a person must file any challenge to land development regulations within 12 months after the final adoption of the particular regulation to be challenged. A condition precedent to the filing of a petition to challenge such a regulation is the requirement that the challenging party first submit a petition to the local government setting forth the basis of the challenge and a statement of fact sufficient to show that they are a substantially affected person. The local government then has 30 days to provide a written response to the petitioner. Only after the challenging party has received a response from local government or the 30-day period has expired with no response can the challenging party then file a petition with the Department of Community Affairs. If the Department determines that the challenge is valid, then the Department will request that a hearing officer from the Division of Administrative Hearings be assigned to the case and conduct a hearing [§9J-24.007, F.A.C.].

If the regulation is found to be inconsistent with the local plan, then the order of the hearing officer, which shall be final, is submitted to the Governor and Cabinet sitting as the Administration Commission for determination of sanctions [§9J-24.007, F.A.C.]. Those sanctions may include: withholding of state funds for roads, bridges, water and sewer; precluding eligibility for certain development block grants, recreation assistance grants, revenue sharing, and beach erosion control, renourishment, and hurricane protection; and giving consideration to said inconsistency when reviewing requests to lease or sell sovereignty submerged lands and to construct coastal structures. If the Department of Community Affairs determines that the local government has completely failed to adopt one or more of the required land development regulations, it may institute an action in Circuit Court to require the adoption of such regulations [§9J-24.006, F.A.C.].

COASTAL MANAGEMENT ELEMENTS

There is considerable similarity among the coastal elements of the various coastal counties

driven largely by the coastal element requirements of the Planning Act and Rule 9J-5. In spite of that driving force, it is apparent that local governments are taking a number of coastal issues seriously and with what seems to be an interest independent of the requirements of 9J-5.

Water quality impacts receive a great deal of attention in the coastal elements of local government comprehensive plans. Spill containment, turbidity control, and general water quality monitoring for various parameters are matters of general concern. Particular emphasis is placed on stormwater discharges to coastal waters from existing and new sources. It appears that there will be a serious effort to address existing discharges which would require the retrofitting of those sources. That, of course, is a matter which has been the subject of much discussion by the state and federal governments over the past several years, given the apparent significance of stormwater impacts and the physical and economic difficulties of retrofitting existing development. At the state level, that resulted in the passage in 1987 of the Surface Water Improvement and Management Act (SWIM) [Chapter 87-97 (Laws of Florida), F.S. §373.451]. Nevertheless, it appears that many local governments will attempt to undertake or force on the private sector the necessary retrofitting. That will require some imaginative technical and political solutions.

The desire to maintain and enhance fisheries is a logical and key goal of coastal management. However, stated efforts to understand and manage fishery habitats and yields at the local government level suggest a lack of appreciation for the complexity of that subject. There is a great diversity in the dynamics of particular fish species, and tremendous differences in the amounts of knowledge available about those species. Few species have conveniently limited their life cycle activities to the discreet political boundaries of a particular local government.

Beach, shore, and dune management policies focus on increasing public access to beaches, regulating vehicles on beaches, maintaining shoreline vegetation, hurricane evacuation, and post-disaster redevelopment. The increased beach access goal appears to move to the local level the pitting of the private upland property owner against the general public by attempting to force beachfront property owners to find

means of providing increased access to the general public in exchange for beach renourishment. The counterpart of that is that without such increased access, there will not be, as a practical matter, renourishment. However, not renourishing beaches harms the general public as much as the private owner. Increased beach access areas with associated parking or transit is not likely to be feasible in many instances or even desirable from a dune protection point of view. Continuing to starve the beach system because of the infeasibility of increased access points does not seem to make good resource sense, given the fact that the sand put into the system at one point benefits not just that point but many other points downdrift of the area of renourishment.

Another interesting topic which appears in some coastal elements is the matter of the possible rise in sea level. It is suggested that a long-term plan to deal with that problem should be developed. What that implies in a practical sense is not clear. This is a response to the view in some quarters of state government that the private occupation of the shore should be discouraged, frustrated, and phased out. Short of the state buying up the shore, it seems doubtful that the allure of living on the ocean for those who can afford it will be overcome by local regulation or state purchase. If sea level rises appreciably, it will become apparent and new investment will be curtailed by the market place in the areas of projected impact.

The protection of threatened and endangered species such as manatees, sea turtles, and scrub jays, is a matter of attention common to the coastal elements. However, recent experiences with various state and federal agencies involved in the protection of such species suggest that it is not a matter in which there is a consensus of approach with respect to individual species. There is frequently a lack of useful information to use in determining whether a threat to such a species exists and what management approaches such as relocation, protection zones, or passive development would be feasible. Also, many of these species need to be dealt with at a minimum on a regional basis.

Marinas are another topic receiving a great deal of attention in coastal elements. The effort to balance the demand for access to the water by boaters against natural resource issues and the desires of some persons to frustrate boating

is a difficult objective. The navigable waters are public highways to which people have as much right to access as they do to paved roadways. Conflicts are inherent in resource protection objectives and typical siting criteria. For example, most criteria call for siting marinas in areas with good flushing for water quality purposes. Typically, well-flushed areas are found near tidal inlets. That tidal influence which provides good flushing also tends to induce the presence of seagrasses in Florida's shallow coastal waters. Most of the policies on marina siting would prohibit marinas in areas of seagrasses without providing an opportunity to consider that potential adverse impact in the context of other benefits and mitigation which may be achieved by locating the marina in an area where grasses may exist. Such an approach may force the location of marinas in areas more distant from inlets and the actual areas of boater use requiring boaters to traverse greater distances with increased potential adverse impacts on manatees and grassbeds.

Another component of the coastal elements is the protection of wetland vegetation. Most plans call for conservation and enhancement of wetlands through restrictions on development based upon potential adverse impacts and on mitigation. This, of course, is an area in which the federal, state and regional agencies have been involved extensively for a number of years. It is also an area prone to very subjective analyses and differences of expert opinion.

MANAGEMENT IMPLICATIONS

Most of the subject areas discussed above require the employment of agency personnel with substantial technical knowledge. Surface water management requires engineering expertise. Aquaculture and marine resources require a knowledge of marine biology. Water quality criteria require persons with knowledge of water chemistry, sampling, and analyses. Policies which attempt to maintain and increase fishery production require persons with a knowledge of fish species, reproduction rates, yields, predation, habitat, and other natural and man-made influences on fishery resources.

Marina siting requires a combination of persons with water quality, hydrographic, marine resources, spill containment, and engineering expertise. Dune protection requires persons

with expertise in dune vegetation, sand transport, erosion, and accretion. Hurricane evacuation and post-disaster redevelopment require expertise in emergency management and structural engineering. Policies on the protection of threatened and endangered species require personnel with knowledge of those species and their management. All of these subject areas require adequate legal support for the development of regulations and their enforcement.

The implications are that substantially more staff personnel will be required at the local government level or else the various requirements will not be implemented or will be implemented inefficiently and ineffectively. There will be a proliferation of differing standards on the same subjects among the local governments in the same county, region, and as a consequence, the state. There is no basis to conclude that these various differences will serve to achieve resource goals in a better fashion than the current system of coastal management which is focused at the state and federal levels. There may, in fact, be a more fragmented approach to the management of coastal resources. Most of the subject matter covered by coastal policies relate to resources which are at least regional in nature, if not part of the Atlantic or Gulf Coast systems. That would suggest that management of these resources ought to be focused on a state or regional basis.

We can anticipate a substantially increased overlap and compounding of approval processes with the existing regional, state, and federal systems. The number and complexity of coastal issues addressed by the coastal elements can be expected to generate many third-party challenges to the implementing regulations under Rule 9J-24, subjecting them to highly technical administrative trials.

The results which can be expected are increased costs to the taxpayer who pays for all of these systems at a time when tax revenues have not kept pace with legitimate demands for those revenues. To force local governments into that management process does not suggest that the most efficient and effective management of coastal resources will result. This increased involvement of local government in coastal issues is, however, consistent with the recent growth management efforts of the Florida legislature and executive branches to shift responsibility for road construction and maintenance

to local governments. Unfortunately, in this case, the state is not removing itself from the management loop, nor is it providing the financial resources to local governments needed to implement these various policies at the local level.

No fiscal analysis was performed by the state of the costs to local governments of implementing the state and regional policies on growth management. The state simply mandated a host of new policies on local governments through the Planning Act. Meanwhile, local governments are strapped for revenue and confronted by a general attitude among the electorate against tax increases. Facing the same electorate, the legislative and executive branches have been unwilling to give local governments any new tax options.

The vast majority of local revenue is from ad valorem taxation on real estate. The amount of revenue generated is a combination of appraised values and the tax millage rate applied to those values. On the appraisal side, Florida has moved closer and closer to 100 per cent valuation. However, local governments are subject to a constitutional millage cap of 10 mills, and many of them are at or near the cap [Fla. Const., Art. VII, Sec. 9].

Coastal zone management definitely has arrived at the local level of government. Whether the people or the resources are ready for that will depend upon whether it is approached with a practical view of the technical capabilities required, the costs to be incurred, and the regionality of many of the issues and objectives.

□ RÉSUMÉ □

On est sur le point d'aboutir en Floride à une nouvelle génération de règlements issus d'une planification d'Etat depuis la législation de 1985. Tous les gouvernements locaux doivent développer une planification détaillée. Chaque comté et municipalité du littoral doivent féder un élément du plan et assurer l'application de ses différentes polices. Les gouvernements ont deux options: développer leurs propres règles sur le littoral, ou incorporer des règlements fédéraux ou d'Etat déjà existants. La plupart des gouvernements ont choisi la première option, ce qui aboutit à une fragmentation et une stratification du schéma réglant les activités côtières, alors que celles-ci sont centrées souvent au niveau de l'Etat. Cela vient à un moment où les gouvernements locaux ont de moins en moins d'argent à investir dans les programmes gouvernementaux et qu'il y a une prise de conscience croissante de la nécessité de gérer les ressources sur des bases régionales, à travers l'entité de la région. Cet article délimite les champs d'action de la police des côtes que le plan global de l'Etat demande aux gouvernements locaux d'adresser; des exemples de polices locales qui ont été définies dans ces zones; les implications pour une réglementation locale future, qui tiendrait compte des besoins de l'utilisation des ressources littorales.—*Catherine Bressolier (Géomorphologie EPHE, Montrouge, France).*

□ RESUMEN □

Una nueva generación de regulaciones está a punto de aparecer en Florida como resultado de la legislación aprobada en 1985. Todos los gobiernos locales han de desarrollar las reglas que permitan el seguimiento del plan. El resultado neto es que existirá una mayor fragmentación de la actual legislación sobre actividades costeras, la cual, actualmente, emana de un nivel estatal. Esto sucede en el momento en que los gobiernos locales tienen menos dinero que nunca que desarrollar este tipo de programas. Este artículo propone áreas en las cuales el plan estatal requiere planes locales, ejemplos de policías locales, que han sido desarrollados en dichas áreas y las implicaciones que las nuevas regulaciones pueden tener.—*Department of Water Sciences, University of Cantabria, Santander, Spain.*

□ ZUSAMMENFASSUNG □

Als Ergebnis des umfassenden staatlichen Planungsprozesses, der 1985 durch Gesetzgebung verabschiedet wurde, wird es in Florida bald eine neue Generation von Verordnungen geben. Alle Kommunen und Gemeinden müssen umfassende Planungen entwickeln. Jeder Bezirk und jede Stadtverwaltung an der Küste müssen in ihrem Plan den Punkt Küstenmanagement ausweisen und sich Vorschriften zur Entwicklung zu eigen machen, damit die verschiedenen Absichten des Plans verwirklicht werden. Jene Regierungen haben die Wahl, ihre eigenen, die Küste betreffenden Vorschriften zu entwickeln oder Vorschriften des Staates bzw. Bundes über Küstenressourcen zu übernehmen. Bisher haben sich die meisten dazu entschlossen, ihre eigenen Vorschriften und Erlässe zu entwickeln. Als Gesamtergebnis wird es eine weitere Zersplitterung und Überlappung von bereits bestehenden Vorschriften über Aktivitäten an der Küste geben, die sich gegenwärtig auf die Staatsebene konzentrieren. Dies kommt zu einer Zeit, in der den Gemeindeverwaltungen weniger Geld als je zuvor für Regierungsprogramme zur Verfügung steht und gleichzeitig ein Bewußtsein für die Notwendigkeit entstanden ist, viele unserer Ressourcen auf regionaler Basis von einer Gebietskörperschaft verwalten zu lassen. Dieser Artikel schildert die politischen Bereiche, welche die Küste betreffen und mit denen sich gemäß dem umfassenden Plan des Staates Florida die Gemeinden und Kommunen befassen müssen. Er bringt lokalpolitische Beispiele und beschreibt die Folgen für zukünftige örtliche Vorschriften im Blick auf die wirksame Zuteilung der Nutzungsrechte von Küstenressourcen.—*Helmut Brückner, Geographisches Institut, Universität Düsseldorf, F.R.G.*