2. Some critics depict the consistency requirement as a state veto power over federal activities and suggest that it is an unconstitutional violation of the Supremacy Clause. For a complete discussion of this debate concerning the consistency requirement, see Whitney, Johnson & Perles, State Implementation of the Coastal Zone Management Consistency Provisions - Ultra Vires or Unconstitutional?, 12 Harv. Envtl. L. Rev. 67 (1988) and Archer and Bondereff, Implementation of the Federal Consistency Doctrine - Lawful and Constitutional: A Response To Whitney, Johnson & Perles, 12 Harv. Envtl. L. Rev. 115 (1988). Does your analysis differ if you consider use of the consistency provision by the states as the implementation of a federal statute rather than the imposition of state requirements?

3. NOAA's Office of Ocean and Coastal Resource Management [OCRM] (formerly the Office of Coastal Zone Management) is responsible for administering section 307 of the CZMA, the consistency requirement, and monitors the application of the requirement by other agencies. In its Biennial Report to Congress on Coastal Zone Management - Fiscal Years 1988 and 1989 (April 1990), OCRM reviewed the application of the doctrine:

   In 1985, NOAA published a Draft Federal Consistency Study which concluded that the Federal consistency process has generally worked well. The statistical results of the study were as follows: states concurred with the consistency determinations for about 93 percent of the approximately 400 direct Federal activities reviewed under Section 307(c)(1), including OCS lease sales, which were reviewed during FY83 only; states concurred with consistency certifications for about 82 percent of the approximately 5,500 federally licensed or permitted activities reviewed under Section 307(c)(3)(A), almost all of which were Corps of Engineers' dredge and fill permits; states concurred with the consistency certifications for about 99 percent of the nearly 435 plans for OCS exploration, development and production reviewed under Section 307(c)(3)(B); and states concurred with the consistency of over 99.9 percent of the nearly 2,000 Federal assistance proposals reviewed under Section 307(d). Where states objected, the study concluded that many of the objections were resolved by further negotiation to develop conditions or mitigating measures.

4. Can states raise consistency objections about projects in other states? The Corps of Engineers and the City of Atlanta want to make provisions to raise and maintain the level of Lake Lanier to serve as a drinking water reservoir for Atlanta. During low rainfall periods, this would greatly reduce the flow of Florida's Apalachicola River downriver and increase the salinity in Apalachicola Bay. The low salinity of the Bay has made it a unique habitat for oysters. Apalachicola River and Bay comprise an Estuarine Research Reserve and a state Aquatic Preserve within the state's Coastal Management Program (CMP). Must the Corps' actions with respect to Lake Lanier be consistent with the Florida CMP?

5. Consistency determinations may be difficult in Florida where the effect of an activity on twenty-six different statutes must be analyzed. The state reviews over
1,000 consistency determinations each year. The complexity of dealing with this large number of reviews, of applying the policies of a networked program, and of meeting time limitations imposed by federal regulations requires clear procedures and a high level of agency cooperation. The Federal Consistency Manual, which sets out state review procedures, has recently been revised and updated to incorporate new statutes and changes in agency organization.

A Memorandum of Understanding (MOU) designates DER as the lead agency and the Governor's Office of Planning and Budgeting (OPB) as the coordinator of intrastate federal consistency review. In coordinating the review, OPB is assisted by two units: the Growth Management and Planning Unit (GMPU) (formerly the Management Support Unit) and the Environmental Policy Unit (EPU). The GMPU, which includes the State Clearinghouse (SCH), initially receives the documentation, logs it, and routes it to agency reviewers. The SCH reviews the documentation to determine if it meets program eligibility criteria and compiles agency comments. The EPU also reviews consistency documents and agency comments. The EPU summarizes agency comments and formulates a recommended state response. Consistency evaluations are routed by the SCH to the Intergovernmental Coordination Section (IGCS) of DER and other agencies for review. IGCS staff review may include consultation with other sections of DER and with DER district offices. The agency's comments are returned to the SCH. If the state concurs with a project, the final consistency letter is prepared by the SCH and signed by the GMPU Coordinator. If a finding of inconsistency is recommended, a letter is prepared in cooperation with DER and signed by the Secretary of DER. If there is disagreement between state agencies concerning a consistency review, OPB is responsible for initiating conflict resolution discussions. OPB may recommend that the IMC mediate serious interagency conflicts.

For the authoritative guide to federal consistency review, see Department of Environmental Regulation and The Governor's Offices of Planning and Budgeting and Environmental Affairs, Florida Coastal Management Programs: Federal Consistency Evaluation Procedures (Sept. 1989).

6. Consider the effect the following section of the Florida Coastal Management Act, has on state consistency determinations. Why would a state want to limit the possible federal activities that potentially may be required to be consistent with Florida's CMP?

Fla. Stat. 380.23 Federal consistency.-

(1) When an activity requires a permit or license subject to federal consistency review, the issuance or renewal of a state license shall automatically constitute the state's concurrence that the licensed activity or use, as licensed, is consistent with the federally approved program. When an activity requires a permit or license subject to federal consistency review, the denial of a state license shall automatically constitute the state's finding that the proposed activity or use is not consistent with the state's federally
approved program, unless the United States Secretary of Commerce determines that such activity or use is in the national interest as provided in the Federal Coastal Zone Management Act of 1972.

(2) Where federal licenses, permits, activities, and projects listed in subsection (3) are subject to federal consistency review and are seaward of the jurisdiction of the state, or there is no state agency with sole jurisdiction, the Department of Environmental Regulation shall be responsible for the consistency review and determination; however, the department shall not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. All decisions and determinations under this subsection shall be appealable to the Governor and Cabinet.

(3) Consistency review shall be limited to review of the following activities, uses, and projects to ensure that such activities and uses are conducted in accordance with the state's coastal management program:

(a) Federal development projects and activities of federal agencies which significantly affect coastal waters and the adjacent shorelands of the state.

(b) Federal assistance projects which significantly affect coastal waters and the adjacent shorelands of the state and which are reviewed as part of the review process developed pursuant to OMB Circular A-95.

(c) Federally licensed or permitted activities affecting land or water uses when such activities are in or seaward of the jurisdiction of local governments required to develop a coastal zone protection element as provided in s. 380.24 and when such activities involve:

1. Permits required under ss. 10 and 11 of the Rivers and Harbors Act of 1899, as amended.
2. Permits required under s. 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.
3. Permits required under ss. 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.
5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C. s. 401, as amended.
6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1801-1812, as amended, or 33 U.S.C. s. 419, as amended.
7. Permits and licenses required under 43 U.S.C. s. 717 for construction and operation of interstate gas pipelines and storage facilities.
9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), as amended.
10. Permits and licenses required for drilling and mining on public lands.
11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C. s. 1331, as amended, of exploration, development, and production plans.
12. Permits for pipeline rights of way for oil and gas transmissions.

(4) The department shall by rule adopt procedures for the expeditious handling of emergency repairs to existing facilities for which consistency review is required pursuant to subsections (1), (2), and (3).

(5) In any coastal management program submitted to the appropriate federal agency for its approval pursuant to this act, the department shall specifically waive its right to determine the consistency with the coastal management program of all federally licensed or permitted activities not specifically listed in subsection (3).

(6) Agencies shall not review for federal consistency purposes an application for a federally licensed or permitted activity if the activity is vested, exempted, or excepted under its own regulatory authority.

(7) The department shall review the items listed in subsection (3) to determine if in certain circumstances such items would constitute minor permit activities. If the department determines that the list contains minor permit activities, it may by rule establish a program of general concurrence pursuant to federal regulation which shall allow similar minor activities, in the same geographic area, to proceed without prior department review for federal consistency.

(8) This section shall not apply to the review of federally licensed or permitted activities for which permit applications are filed with the appropriate federal agency prior to approval of the state coastal management program by the appropriate federal agency pursuant to 16 U.S.C. §§ 1451 et seq.
C. Florida's Coastal Management Program

The beginnings of Florida's interest in coastal management planning predate the federal CZMA by two years. In 1970 the legislature created the Coastal Coordinating Council which from 1970 to 1975 worked toward development of a coastal resource management program. The Council was abolished in 1975, and its duties were transferred first to the Department of Natural Resources and, in 1977, to the Department of Environmental Regulation.

The legislative basis for developing a coastal management plan (CMP) was also in place at an early stage. The 1970 coastal construction setback line program and the 1972 Environmental Land and Water Management Act, Fla. Stat. ch. 380, the State Comprehensive Planning Act, Fla. Stat. ch. 23, the Land Conservation Act, Fla. Stat. ch. 259 and the Florida Water Resources Act, Fla. Stat. ch. 373, went far towards establishing the necessary authority for developing an approvable CMP. The shift of emphasis from the "environmental crisis" after 1972, lack of political support, and other problems plagued development of Florida’s CMP. The development of the current plan was authorized, however, by the Legislature in 1978 in what has been referred to as the "No New Nothing Act." In other words, although the Act did reflect a continuing commitment to coastal planning, the legislative consensus was that existing legislation provided an adequate basis for coastal planning and that the emphasis should be on coordination of state efforts.

Florida Statutes - Coastal Planning and Management

380.19 Department of Environmental Regulation.
380.20 Short title.
380.21 Legislative intent.
380.22 Lead agency authority and duties.
380.23 Federal consistency.
380.24 Local government participation.
380.25 Previous coastal zone atlases rejected.

Section 380.19 Department of Environmental Regulation.-

(1) It is the intent of the Legislature that the environmental aspects of the coastal areas of this state have attracted a high percentage of permanent population and visitors and that this concentration of people and their requirements has had a serious impact on the natural surroundings and has become a threat to the health, safety, and general welfare of the citizens of this state. It is further determined that a coordinated effort of interested federal, state, and local agencies of government is imperative to plan for and effect a solution to this threat, and that the recreation of an advisory council will aid in accomplishing this purpose and in the implementation of s. 7, Art. II of the State Constitution, and s. 20.03(9).
(4) The duties of [DER] shall be:
(a) To employ a staff director and such other personnel as may be necessary to aid in carrying out the work of the [department];
(b) To conduct, direct, encourage, coordinate, and organize a continuous program of research into problems relating to the coastal zone;
(c) To review, upon request, all plans and activities pertinent to the coastal zone and to provide coordination in these activities among the various levels of government and areas of the state;
(d) To develop a comprehensive state plan for the protection, development, and zoning of the coastal zone, making maximum use of any federal funding for this purpose;
(e) To provide a clearing service for coastal zone matters by collecting, processing, and disseminating pertinent information relating thereto;
(f) To make use of pertinent data as may be secured from departments, boards, commissions, officials, agencies, and institutions, except such records or information as may be required by law to be confidential; and
(g) To provide such other services as any interested agency may request.

Section 380.20 Short title.- Sections 380.21-380.25 may be cited as the "Florida Coastal Management Act of 1978."

380.21 Legislative intent.-

(1) The Legislature finds that:
(a) The coast is rich in a variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources, including, but not limited to, energy facilities, as that term is defined in s. 304(5) of the Federal Coastal Zone Management Act of 1972, of immediate potential value to the present and future well-being of the residents of this state.
(b) It is in the state and national interest to protect, maintain, and develop these resources through coordinated management.
(c) State land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development.

(2) The Legislature therefore grants authorization for the Department of Environmental Regulation to compile a program based on existing statutes and existing rules and submit an application to the appropriate federal agency as a basis for receiving administrative funds under the Federal Coastal Zone Management Act of 1972. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes or provide additional regulatory authority to any governmental body except as otherwise provided by s. 380.23. The enactment of this
legislation shall not in any other way affect any existing statutory or regulatory authority.

Section 380.22. Lead agency authority and duties.-

(1) The Department of Environmental Regulation shall be the lead agency pursuant to 16 U.S.C. ss. 1451 et seq., and shall compile and submit to the appropriate federal agency an application to receive funds pursuant to s. 306 of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464). The application for federal approval of the state’s program shall include program policies that only reference existing statutes and existing implementing administrative rules. In the event the application or the program submitted pursuant to this subsection is rejected by the appropriate federal agency because of failure of this act, the existing statutes, or the existing implementing administrative rules to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended, no state coastal management program shall become effective without prior legislative approval. The coastal management application or program may be amended from time to time to include changes in statutes and rules adopted pursuant to statutory authority other than this act.

(2) The Department of Environmental Regulation shall also have authority to:
   (a) Establish advisory councils with sufficient geographic balance to insure statewide representation.
   (b) Coordinate central files and clearinghouse procedures for coastal resource data information and encourage the use of compatible information and standards.
   (c) Provide to the extent practicable financial, technical, research, and legal assistance to effectuate the purposes of this act.
   (d) Review rules of other affected agencies to determine consistency with the program and to report any inconsistencies to the Legislature.

(3) The Secretary of Environmental Regulation shall adopt by rule a specific formula for allocation of federal funds for the administration of the program.

Section 380.25 Previous coastal zone atlases rejected.- The legislative draft of the coastal management program submitted to the Legislature by the department dated March 1, 1978, and the prepared coastal zone atlases are expressly rejected as the state’s coastal management program. The department shall not divide areas of the state into vital, conservation, and development areas.

Although many states enacted special legislation to create a CMP, Florida legislative authorization required a plan based on existing statutes. The process for developing such a plan is called "networking." The approach has advantages and disadvantages. Networking lacks the advantage of having specialized legislation dealing with the unique problems of the coastal zone. Since all of the state could
**Figure 7. Florida’s Networked Statutes**

<table>
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<tr>
<th>Florida Statute</th>
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<td>Chapter 259</td>
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<td>Chapter 334</td>
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<td>Chapter 339</td>
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<td>Chapter 377</td>
<td>Oil and Gas Production</td>
<td>DNR</td>
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<tr>
<td>Chapter 380</td>
<td>Developments of Regional Impact; Areas of Critical State Concern; Coastal Management</td>
<td>DCA, DER</td>
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<td>Chapter 388</td>
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<td>Chapter 403</td>
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<td>DER</td>
</tr>
<tr>
<td>Chapter 582</td>
<td>Soil and Water Conservation</td>
<td>DACS</td>
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</tbody>
</table>

**Key:**
- APC - Administrative Procedures Commission
- DACS - Department of Agriculture and Consumer Services
- DCA - Department of Community Affairs
- DER - Department of Environmental Regulation
- DHRS - Department of Health and Rehabilitative Services
- DNR - Department of Natural Resources
- DOAH - Division of Administrative Hearings
- DOC - Department of Commerce
- DOS - Department of State
- DOT - Department of Transportation
- GFWFC - Game and Freshwater Fish Commission
- GO - Governor's Office
- MFC - Marine Fisheries Commission
- PSC - Public Service Commission
- RPC - Regional Planning Council
- TIITF - Trustees of the Internal Improvement Trust Fund
- WMD - Water Management District
reasonably be classified a coastal zone, this may not be as much of a problem in Florida as in other states using networking. A major advantage of networking may prove to be that networked plans have a better chance of survival after federal funding dwindles. Special coastal zone management agencies or departments may be institutionalized by law in a state, but may be extremely ineffective when loss of federal funding results in staff and budget cuts.

The chart on the preceding page, Figure 7, sets out the statutory authorities that have been networked to form Florida's CMP and the agencies involved.

The CMP is implemented primarily by three agencies - the Department of Environmental Regulation, the Department of Natural Resources and the Department of Community Affairs. The Department of Environmental Regulation (DER) is the lead agency for the CMP and administers environmental permitting programs for air and water pollution sources, dredge and fill, drinking water, solid and hazardous wastes, and siting of power plants, transmission lines and industry. The Department of Natural Resources manages submerged lands and other state-owned lands, recreation and conservation lands, marine resources, mineral resources, and shoreline use and protection. The Department of Community Affairs has primary responsibility for a state disaster preparedness program, as the state planning agency, and coordinates the state response to the Development of Regional Impact, Areas of Critical State Concern Programs, and local government comprehensive plans.

The Coastal Resources Interagency Management Committee (IMC), originally created by Joint Resolution of the Governor and Cabinet in 1980, is the mechanism for coordinating state legislation and agency regulation. The IMC is responsible for integration and coordination of coastal activities, identification and resolution of jurisdictional overlap or conflict, and making recommendations for new legislation, memoranda of understanding, and rulemaking to the Governor and Cabinet. The IMC is composed of representatives of eleven agencies involved in coastal activities.

The IMC has repeatedly been criticized in NOAA reviews of Florida's CMP, questioning the ability of DER and the IMC to provide leadership and coordination. The evaluation report for 1985-87 went so far as to state that the IMC is "not functioning." To strengthen and better define the role of the IMC, the legislature amended chapter 380 in 1989.

Section 380.31. Coastal Resources Interagency Management Committee established.

There is established a Coastal Resources Interagency Management Committee composed of: the Secretary of Commerce, the Secretary of Community Affairs, the Secretary of Environmental Regulation, the Secretary of Transportation, the Assistant State Health Officer for Environmental Health in the Department of Health and Rehabilitative Services, the executive director of the Department of Natural Resources, the executive
director of the Marine Fisheries Commission, the executive director of the Game and Fresh Water Fish Commission, the director of the Division of Historical Resources of the Department of State, the director of the Division of Forestry of the Department of Agriculture and Consumer Services, and the director of the Governor's Office of Planning and Budgeting. Each member shall attend the meetings of the committee or appoint a designee. A designee shall be a policy-making administrator who can speak for the agency.

Section 380.32. Duties and responsibilities of the Coastal Resources Interagency Management Committee

The Coastal Resources Interagency Management Committee shall:

(1) Have the primary responsibility for addressing problem issues and developing means of resolving conflicts and inconsistencies in the implementation of laws, research, and funding programs under the jurisdictions of the member agencies. The committee shall make recommendations to the Governor and Cabinet on specific actions necessary to implement improvements to the state coastal management program.

(2) Develop a priority list of work items and a time schedule for the resolution of each item. Members of the committee shall direct their respective program staffs who serve on the Coastal Resources Interagency Advisory Committee to participate in the implementation of the approved priority work items and completion of specific coastal zone management grant work tasks to the extent compatible with statutory responsibilities of the agencies. Cooperation among agencies and coordination of agency activities shall be conducted in a manner consistent with the state coastal management program.

(3) Give special attention to the management and protection of coastal resources, including wetlands, watersheds, estuarine and marine systems, beaches, and cultural resources by working to improve natural storm hazard prevention and mitigation, discouraging research and funding practices which create conflicts with natural resource management policies, and ensuring a more efficient, effective, and coordinated administration of environmental laws and guidelines.

(4) Conduct thorough and timely reviews of proposed direct federal activities and development projects, federal assistance projects, federally licensed and permitted activities, and outer continental shelf exploration and development plans to ensure that such activities and uses are conducted in a manner consistent with the state coastal management program.

(5) Work together to implement the State Comprehensive Plan within member agencies. Each agency shall ensure that its functional plan and management processes achieve and are consistent with the legislatively
approved State Comprehensive Plan in chapter 187 and with the policy plans set out in chapter 186.

All agencies are encouraged to enter into memoranda of understanding and rulemaking to further define the specific implementation, cooperation, and planning activities related to coastal issues necessary to implement this section.

The IMC receives staff support from DER's Office of Coastal Management (OCM). Originally located in the Secretary's Office, the Office of Coastal Management was transferred in 1987 to the Bureau of Surface Water Management. This move has been criticized by NOAA as reducing the visibility of the coastal management office and impairing its "ability to function as the statewide oversight agency."

The IMC receives additional input from the State Interagency Advisory Committee (IAC) on Coastal Zone Management and the Governor's Coastal Resources Citizens Advisory Committee, the mechanism for public participation in the coastal management process. The IAC includes representatives from all the state agencies with coastal management responsibilities and serves as the interagency liaison for implementation of the CMP and prepares background and issue papers for the IMC.

The CAC is the mechanism for public involvement in implementation of the coastal program. The Governor appoints CAC members to represent varied interests including government, public interest, geographic areas, economic groups, and private citizens. The CAC advises the OCM, IAC, the Governor and Legislature, and Congress, as well as the IAMC. The CAC has been a vital part of the state's CMP.

Florida's CMP received federal approval in September 1981. The federal CZMA, however, calls for periodic review of the state program in order to maintain its status as an approved program. Federal review of Florida's program has continually cited the need to improve interagency coordination. In spite of legislation addressing the IMC and improvements in the IMC, including regular meetings and adoption of a formal work plan, the latest review of the CMP continues have "ongoing concerns regarding the effectiveness of the IMC." NOAA criticized the ability of the IMC to function as a policy forum or to carry out its work plan.
1. For an interesting overview of Florida's program development and approval, see O'Connell, Florida's Struggle for Approval Under the Coastal Zone Management Act, 25 Nat. Resources J. 61 (1985).

2. Because the Florida CMP relies on statutory authority that is enforced statewide, the entire state is included within the program boundaries. However, only local governments within the thirty-five coastal counties are eligible to receive coastal management funds.

3. The administrative structure for the state CMP is being substantially changed by the 1992 legislature with designation of the state's Department of Community Affairs as the new lead agency.

D. Major Aspects of Florida's Coastal Management Programs

1. Comprehensive Planning

Florida's phenomenal growth after World War II stressed a sensitive environment that was already susceptible to natural fluctuations in weather patterns that caused droughts and fires one year and floods and hurricanes the next. Florida's economic and environmental survival demanded planning for future growth and the development of policies for land and water management. Some of the state's early attempts were "false starts," but provided lessons for the future. The following excerpts briefly outlines the first stages of comprehensive planning in the state. For more detailed historical analyses, see J. DeGrove, Land, Growth and Politics 100-176 (1986); Rubino, Can the Legacy of a Lack of Follow-Through in Florida State Planning Be Changed?, 2 J. Land Use & Envtl. L. 27 (1986); and Finnell, Coastal Land Management in Florida, 1980 Am. B. Found. Res. J. 303, 314-323.


I. Introduction

For more than a decade Florida has been attempting to create a statewide comprehensive planning process to manage the state's phenomenal growth. The effort commenced in 1971 with the appointment by Governor Reubin Askew of a Task Force On Resource Management to develop proposed growth management legislation. The work of the task force culminated in the passage by the 1972 Florida Legislature of a landmark package of land management legislation. This legislation included the Florida State Comprehensive Planning Act of 1972 and The Florida Environmental Land and Water Management Act of 1972. The former directed the Division of State Planning to prepare a state comprehensive plan for consideration and approval by the Governor and legislature, and the latter created
a statutory framework for regulating developments of regional impact (DRI) and areas of critical state concern.

The drive to create a statewide comprehensive planning process gained new momentum with the enactment of the Local Government Comprehensive Planning Act of 1975 (LGCPA). This Act, which at the time constituted the strongest piece of local planning enabling legislation ever enacted in this country, required every local government in Florida to adopt a comprehensive plan in accordance with detailed statutory requirements by 1979. Although the Act did not require local plans to be consistent with the state comprehensive planning process, the LGCPA did establish the foundation for a strong local component of an integrated statewide comprehensive planning process.

Florida’s planning movement faltered badly in 1978 when the proposed state comprehensive plan was submitted to the legislature for approval. Although the plan, which had been prepared over a period of six years, was approved by the Governor, the legislature refused to adopt the proposed plan as official state policy. Instead, the legislature amended the State Comprehensive Planning Act to provide that the plan would be advisory only, thereby rendering the document virtually meaningless. The failure of the 1978 legislature to adopt the proposed state comprehensive plan temporarily halted the state’s effort to establish and integrated statewide comprehensive planning framework.

By that time, the weaknesses in chapter 380 and the LGCPA were becoming increasingly evident. Shortly after assuming office in January 1979, Governor Bob Graham appointed a Resource Management Task Force to study Florida’s growth management legislation. The Task Force recommended strengthening chapter 380’s areas of critical state concern program by expanding legislative involvement. Also, the Task Force recommended retention and streamlining of the developments of regional impact process the adoption of comprehensive regional resource management policies by each regional planning agency, and the creation of a comprehensive coastal planning and regulatory system for the state. In response, the 1980 legislature retained the developments of regional impact program with some procedural revisions, and adopted a major amendment to the state’s regional planning legislation.

The Florida Regional Planning Council Act required each of the state’s eleven regional planning agencies to adopt a comprehensive regional policy plan. These plans were to constitute the basis for review of developments of regional impact, local comprehensive plans, and any other regional review functions. Although most regional planning agencies have been unable to comply with this statutory mandate because of inadequate state funding, the Act did represent another important step in the development of a statewide comprehensive planning process.

In 1982, Governor Graham appointed the Environmental Land Management Study Committee (ELMS Committee). The Governor "charged the Committee to review chapter 380, and all related growth management programs, and to prepare
a blueprint to guide growth and development in Florida for the 80's and beyond. “In February 1984 the ELMS Committee issued its final report containing three major sets of recommendations. The first set called for the development of a statewide planning framework which would include a legislatively adopted state plan to be implemented in state agency functional plans, regional plans, and local government comprehensive plans. The second set of recommendations consisted of proposals to improve the DRI review process and to integrate the process into the statewide planning framework. The third group of recommendations addressed Florida’s coastal management program and urged new legislation to protect the state’s coastal resources and to require state approval of the coastal protection elements of local comprehensive plans.

The recommendations of the ELMS Committee met with only limited success when considered by the 1984 legislature, which was preoccupied with major wetlands legislation. A number of proposed bills, which collectively contained many of the elements of a statewide comprehensive planning framework, were introduced but were not passed by the legislature. Several bills proposing reform of the developments of regional impact review process were also introduced, but only one passed. However, the 1984 legislature did enact one highly significant piece of planning legislation which added important state and regional components to the emerging statewide comprehensive planning framework.

The Florida State and Regional Planning Act of 1984 had several significant features. First, it required preparation of a state comprehensive plan and established procedures for its adoption and implementation. Second, the Act required each state agency to prepare and adopt a state agency functional plan consistent with the state comprehensive plan. Third, the Act required each regional planning agency to prepare and adopt a comprehensive regional policy plan which is consistent with and implements the state comprehensive plan. However, the Act did not require that local comprehensive plans be consistent with either the regional or state comprehensive planning framework was still missing.

The efforts of the past fourteen years finally reached fruition in 1985 with the enactment of two growth management laws of national significance. House Bill 1338 adopts the State Comprehensive Plan. House Bill 287, an omnibus act relating to growth management, requires local plans to be consistent with the state and regional comprehensive plans and provides for state review and approval of local plans . . .
The 1984 State and Regional Planning Act

The 1984 State and Regional Planning Act requires the governor to prepare a state comprehensive plan which "provides long-range guidance for the orderly social, economic, and physical growth of the state." The proposed plan, which was to be developed by December 1, 1984, was recommended to the Administration Commission (Governor and Cabinet) and transmitted to the Legislature. The legislature gave statewide effect to the state comprehensive plan by enacting it, with some modifications, into law during the 1985 legislative session.

The following excerpt explains the state and regional planning framework and how the plan will function. Does the 1984 legislation solve all the problems noted in the Finnell article?

Rhodes & Apgar, Charting Florida’s Course: The State and Regional Planning Act of 1984
12 FLA. ST. U.L. REV. 583, 593-602 (1985)

III. Overview of The Planning Framework

As finally passed, the Act features a decentralized planning process that spreads responsibility for implementing state policies to state and regional agencies, and an innovative adoption process that highlights legislative involvement. The Act stresses that planning is an ongoing process and establishes mechanisms for continuing mediation and conflict resolution among planning units.

A. The State Comprehensive Plan

Under the Act, the state comprehensive plan "shall be composed of goals and policies briefly stated in plain, easily understood words that give specific policy direction to state and regional agencies. This one sentence description marks an important shift in emphasis in Florida’s planning process. The Act makes it clear that the state plan is not to become a lengthy, detailed document to which every unit of government will look for specific direction in every situation. Rather, the goals and policies of the state plan must be developed further in functional plans by each unit of government.

B. State Agency Functional Plans

The distinction between the state plan and agency functional plans is clearly drawn through the Act’s definitions of three plan components:
"Goal" means the long-term end toward which programs and activities are ultimately directed.

"Policy" means the ways in which programs and activities are conducted to achieve identified goals.

"Objective" means specific, measurable, intermediate ends that are achievable and mark progress toward a goal.

The Act combines these elements as follows: The state plan is composed of "goals" and "policies," while an agency functional plan contains "agency program policies and objectives and administrative directions." State "goals," the long-term end of all state programs, are found only in the state plan; "policies," expressing the manner in which programs are to be conducted to achieve these goals, are a shared responsibility of the state plan and agency plans; and "objectives," specific measurable ends, are reserved for the agencies' functional plans.

The Act requires each state agency to develop a functional agency plan that is consistent with the state plan within one year of the adoption of the state comprehensive plan. Each agency's plan is required to contain a statement of the policies that guide the agency's programs, in addition to the objectives "against which the agency's achievement of its policies and the state comprehensive plan's goals and policies shall be evaluated."

C. Comprehensive Regional Policy Plans

Comprehensive regional policy plans comprise a second category of implementing functional plans. As with the functional agency plans, the regional plan must be consistent with the state comprehensive plan. Unlike an agency plan, however, the regional plan is an intermediate-level plan; it addresses "regional goals and policies" but not objectives. The Act further directs: "Regional plans shall address significant regional resources, infrastructure needs, or other issues of importance within the region."

Regional plans should form a vital link between state and local governments. Presently, this link is incomplete because there is no requirement in the Act for local government comprehensive plans to be consistent with the state's goals and policies. The Act lays the groundwork, however, for the region to become the coordinating body between state and local units of government. It emphasizes a strong local role in developing the regional plan and requires the regional planning council to "seek the full cooperation and assistance of local governments" in the planning process. Further, "[t]he draft regional plan shall be circulated to all local governments in the region. Local governments shall be afforded a reasonable opportunity to comment on the regional plan."

D. The Scope of Regional Policy Plans

One of the significant issues that emerged from the 1984 legislative debate concerned the proper scope of the regional plan. The question was whether the
regional policy plan should go beyond the policies reflected in the state plan or statutes, or whether the state plan and statutes should constitute an absolute outer limit for the policies and programs that a region might adopt. The ELMS Committee struck a balance on this issue and recommended:

Regional plans shall minimize overlap or duplication between the regional plan and state regulatory and permitting programs. Any proposed regional standard that is substantially different from a state agency regulatory or permitting standard covering the same subject shall be accompanied by an explanation and justification setting out the importance of the standard to the region, the impact on the affected state regulatory program, and the benefits and costs of the standard.

The ELMS Committee also recommended that "substantially different" regional standards be specifically reviewed and approved by the Administration Commission before taking effect.

By the time the Senate Natural Resources Committee considered Senate Bill 550 some concern had arisen about the scope of regional authority. The ELMS Committee's recommendation was dropped from the bill and the following language was substituted and included in the bill passed by the legislature:

Regional plans shall specify regional issues that may be used in reviewing a development of regional impact. Such issues shall be consistent with any state statutes, rules, or policies that specifically relate to or govern a regional issue or criteria adopted for DRI reviews. All regional issues and criteria shall be included in the comprehensive regional policy plan adopted by rule pursuant to s. 160.072.

Debate on the role of regional planning councils is a major unresolved issue that could seriously hamper the development of a statewide planning framework. The debate erupted early in 1984 in hearings before a subcommittee of the House Select Committee on Growth Management, chaired by Representative Sam Bell. After this early flurry, opposing interests seemed to reach an uneasy truce. Only late in the 1984 session did regional planning councils reemerge to secure a strong position for themselves in the planning process.

IV. The Roles of The Executive Office of the Governor and of The Cabinet

The Act establishes a strong central role for the Governor but provides a check against the Governor's authority through review by the Cabinet at various points in the process. The Governor has a vital role—to prevent the plan from becoming simply a collection of numerous agency desires. As the state's highest elected official, it is appropriate that this task fall to the Governor. The Governor's role begins with preparing the draft plan. During that process, the Governor is authorized to "[p]repare or direct appropriate state or regional agencies to prepare
such studies, reports, data collections, or analyses as are necessary or useful in the
preparation or revision of the state comprehensive plan, state agency functional
plans, or regional comprehensive plans." The Governor's Office is given wide
latitude in drafting the plan." The Act directs the Governor's office to prepare
"statewide goals and policies" dealing with "growth and development in Florida," with
initial emphasis on "the management of land use, water resources, and transportation
system development."

Before the plan is submitted to the legislature, the Administration Commission
will review the proposed state plan. The Act provides that the plan will be
transmitted to the Administration Commission "on or before December 1, 1984," and
at that time "copies shall also be provided to each state agency, to each regional
planning agency, to any other unit of government that requests a copy, and to any
member of the public who requests a copy." As an intermediate step, the
Commission serves two important functions. First, it provides a public forum.
Submission to the Administration Commission is the first date for formal publication
of the proposed plan document. After receiving public comment, the Commission
submits the plan to the legislature "together with any amendments approved by the
Commission, and any dissenting reports." The Act thus provides an opportunity for
formal public comment, for an expression of differences at the executive level, and
for those comments to accompany the draft plan to the legislature. The
Commission's second important function is to identify the parts of the draft plan that
go beyond existing law and therefore could not survive if the legislature fails to
adopt the plan.

Review by the Administration Commission is an important threshold step in the
innovative adoption process. It sets the stage both for legislative consideration and
for adoption by rule if the legislature fails to act. However, it would be unfortunate
if the Cabinet attempted to resolve all conflicts and concerns of various interests in
this phase. This fine-tuning should take place in the legislative process. In
recognition of this fact, the Act provides for both the draft plan "and any dissenting
reports" to be forwarded to the legislature.

The Governor's plan implementation responsibilities are also significant. The
Act states that the Governor "as chief planning officer of the state, shall oversee the
implementation process." For that task, the Governor is empowered to prepare and
adopt by rule "criteria, formats, and standards for the preparation and the content
of state agency functional plans and comprehensive regional policy plans." The
Governor designates and prepares specific data, forecasts, and projections, and,
perhaps most significantly, "assumptions" to be used "by each state and regional
agency in the preparation of plans." Finally, the Governor has general authority to
"[d]irect state and regional agencies to prepare and implement, consistent with their
authority and responsibilities under law, such plans as are necessary to further the
purposes and intent of the state comprehensive plan."

The Executive Office of the Governor has a strong central role in coordinating
the functional plans of agencies and regional policy plans. The Act provides that
state agency functional plans shall be submitted to the Executive Office of the Governor "within 1 year of the adoption of the state comprehensive plan." The Governor's office is allowed [sixty] days to review a proposed agency functional plan for consistency with the state plan and then is to return the plan to the agency "together with any [proposed revisions]." The state agency must incorporate the Governor's recommended changes or petition the [Administration] Commission to resolve any disputes. Here the [Administration] Commission is a check on the power of the Governor's office.

The Governor [also] has ... review authority for comprehensive regional policy plans. [Regional policy plans must be submitted to the Governor within 18 months of the adoption of the state comprehensive plan for review and recommended revisions. Regional planning councils will adopt the comprehensive regional policy plans by rules which will be subject to legislative review. The legislature may reject, modify, or take no action on rules. If the legislature takes no action, the rules become effective; otherwise, the regional councils must conform the rules to the legislative changes.]

V. Mediation of Conflicts

An innovative ELMS Committee contribution to the State and Regional Planning Act is the recognition and requirement of informal dispute resolution when agency plans conflict. The ELMS Committee concluded that intergovernmental and interagency coordination are vital to an effective statewide system. Successful planning only occurs when all levels of government regularly communicate and coordinate their comprehensive and functional plans. To effect this aim and to encourage a cooperative conflict resolution approach, the committee recommended mediation rather than an adversary proceeding, such as a judicial or administrative hearing. If conflicts cannot be settled by mediation, the ELMS Committee recommended that a formal appeal should be available to allow the Florida Land and Water Adjudicatory Commission to resolve the controversy.

The ELMS Committee's mediation recommendations are incorporated in several of the Act's provisions. Once the state comprehensive plan is adopted, each state agency must adopt a functional plan that is consistent with the adopted state comprehensive plan. Consistency is initially determined by the Executive Office of the Governor. The Governor is also required to mediate all consistency disputes between agencies. If mediation is unsuccessful, the Adjudicatory Commission will take final action. The language in the statute that mandates the Governor to mediate all disputes provides an opportunity for informal dispute resolution in all cases prior to formal adjudication by the Adjudicatory Commission.

A similar process to resolve consistency disputes is provided when conflicts arise between the Governor's office and regional planning councils, whose comprehensive
regional policy plans also must be consistent with the adopted state comprehensive plan.

Although the Act places the responsibility for mediation on the Governor, the spirit of the legislation would seem to enable the Governor to designate an experienced and recognized mediator to carry out the Governor's duty. This may be desirable for several reasons. Mediation is a voluntary process in which those involved in a dispute jointly explore and hopefully reconcile their differences with the assistance of a qualified and impartial third party. To maintain necessary credibility, a mediator must be impartial, and just as important, must not be perceived as entertaining any possibility of bias. Since the Governor's own office must initially determine if a state agency functional plan or regional comprehensive plan is inconsistent with the state plan, it is possible the Governor might be perceived as biased in favor of his office's findings. To avoid this perception, and thereby maximize the potential for effective resolution through mediation, the Governor could appoint recognized and experienced mediators as his designees in this process.

Another option is to request the Division of Administrative Hearings to assign a hearing officer to mediate, provided the hearing officer is adequately trained in mediation techniques. If this approach is followed, and mediation is unsuccessful, a different hearing officer would have to be assigned to hear an appeal if the Land and Water Adjudicatory Commission were to assign the appeal to the Division of Administrative Hearings.

The ELMS Committee also recommended that regional planning agencies establish a mediation process to resolve conflicts among local government comprehensive plans. However, the resolution of any issue through the mediation process should not alter any person's right to a judicial determination of any issue if otherwise authorized by law. These recommendations were incorporated in the Act.

The ELMS Committee's several mediation recommendations were accepted by the legislature as promising alternatives to time-consuming, costly, and perhaps improvident formal litigation between government agencies. If implemented by agencies with the proper orientation towards problem resolution, mediation will fulfill this promise.

VI. The Consistency Mandate

The key word used throughout the Act to describe the relationship between the state plan and lower tiers of implementing plans is "consistency." State agency functional plans and comprehensive regional policy plans are required to be consistent with the state plan and are subject to mandatory change if they are found to be inconsistent. In the ELMS Committee's discussion of the planning bill, and in the legislative debate, the question repeatedly arose: Can we define "consistency" so that we can better understand the nature and extent of the obligation it imposes?
No satisfactory definition emerged, because in large part the definition depends on the specific language of the applicable state goal or policy.

Fundamentally, the consistency mandate requires that state agency and regional plans remain within the limits that the state plan places on lower tiers of implementing plans or regulations. Those limits will always be either express or implied within the different elements of the state plan. For example, suppose the state plan includes the following policy: "channelization or other alteration of natural rivers or streams shall be prohibited." Obviously, the range of options on this issue for state agency functional plans or regional plans would be very limited. On the other hand, if the state comprehensive plan states that "the state shall have a management system adequate to protect the state’s water quality and quantity resources," a great many different state and regional agency policies and programs could be fashioned that would contribute significantly toward achieving this goal.

The state plan should include a general definition of "consistency" and additional specific definitions for particular program areas where they would prove useful. The general definition should be along the following lines: "A policy, objective, program, or regulation that contributes significantly to the attainment of a goal or goals stated in the state comprehensive plan, and which does not substantially detract from the attainment of any other state goal shall be found to be consistent with the state comprehensive plan."

VII. Conclusions and Recommendations

The State and Regional Planning Act of 1984 is law. Now comes the crucial challenge—implementation. Since Florida has not experienced a successful state planning process, there is no helpful positive precedent. Nonetheless, lessons can be learned from the unsuccessful 1978 experience, the Act’s legislative adoption history, and similar efforts in other states.

... .

NOTES

1. The State Comprehensive Plan, as enacted, did not contain a definition of consistency; however, the following sections were included in the plan description:

... .

2. The State Comprehensive Plan is intended to be a direction-setting document. Its policies may be implemented only to the extent that financial resources are provided pursuant to legislative appropriation. . . . The plan
does not create regulatory authority or authorize the adoption of agency rules, criteria, or standards not authorized by law.

[Note: The plan specifically states that agency functional plans "are not rules and therefore are not subject to the provisions of chapter 120."]

(3) The goals and policies contained in the State Comprehensive Plan shall be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights. The plan shall be construed and applied as a whole, and no specific goal or policy in the plan shall be construed or applied in isolation from the other goals and policies in the plan.

How does the current State Comprehensive Plan differ from the former "failed" State Plan that was "advisory only"?

2. The State Comprehensive Plan, which is codified at ch. 187, Florida Statutes, contains 26 goals and 362 associated policies. The Coastal and Marine Resources goal and policies are set out below:

(9)(a) Goal – Florida shall ensure that development and marine resource use and beach access improvements in the coastal areas do not endanger public safety or important natural resources. Florida shall, through acquisition and access improvements, make available to the state’s population additional beaches and marine environment, consistent with sound environmental planning.

(b) Policies –

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 exploration and development of mineral resources which threaten marine, aquatic, and estuarine resources.
9. Prohibit development and other activities which disturb coastal dunes, and ensure and promote the restoration of coastal dune systems that are damaged.
10. Give priority in marine development to water-dependent uses over other uses.

Local Government Comprehensive Planning

The state comprehensive plan's Plan Implementation goal provides that "[s]ystematic planning capabilities shall be integrated into all levels of government in Florida with particular emphasis on improving intergovernmental coordination and maximizing citizen involvement." The seventh policy statement under that goal directs the state to "[e]nsure the development of comprehensive ... local plans that implement and accurately reflect state goals and policies and that address problems, issues, and conditions that are of particular concern in a region." Although the state comprehensive plan does not apply directly to local governments, 1985 amendments to the Local Government Comprehensive Planning Act of 1975 (now the Local Government Comprehensive Planning and Land Development Regulation Act) require the state land planning agency, the Department of Community Affairs [DCA], to review local plans for consistency with the state plan and the regional policy plans. If the DCA finds that the local plan is inconsistent, the DCA can recommend, but not require, changes in the plan. If after the opportunity for revision, the local government does not bring the plan into compliance, the DCA will issue a notice of intent to determine the plan not in compliance and will request an administrative hearing. The hearing officer's recommended order submitted to the Administration Commission must sustain the local plan "unless it is shown by a preponderance of the evidence" that the plan is not in compliance. If the Administration Commission finds the local plan not in compliance, the commission must specify the remedial action required by the local government. The commission can also limit state funding, grants, and revenue sharing to local governments that are not in compliance.

If the DCA review of a local government plan finds the plan in compliance, the DCA will issue a notice of such intent, and the local government will adopt the plan. Within 21 days of adoption of the plan, an "affected person" who objects to the DCA finding and who has participated in local government proceedings can file a petition with the DCA for an administrative hearing. An affected person includes "the affected local government, persons owning property or residing or owning or operating a business within the boundaries of the local government . . . , and adjoining local governments" that would have substantial fiscal or environmental impact from the plan.
The hearing officer's standard of review is whether the "local government's determination of compliance is fairly debatable." After the hearing officer submits a recommended order to the DCA, the DCA will issue a final order if it finds the plan in compliance, or will submit the recommended order to the Administration Commission for final action if the plan is found not in compliance.

In addition to reviewing local plans for consistency with the state and regional comprehensive plans, the 1985 legislation requires the DCA to review the local plans for:

- compliance of plan elements with the legislative requirements of chapter 163.
- consistency of elements within the plan.
- coordination and consistency in management of bays, estuaries, and harbors falling in more than one jurisdiction.
- policies to guide future development.
- programs, procedures, mechanisms, and processes for implementing and evaluating effectiveness of the local plan.

The same review procedures apply as discussed above.

Yet another consistency requirement of chapter 163 mandates that local government actions be consistent with local government comprehensive plans. The LGCP & LDRA defines consistency for determining whether developments or local government actions are consistent with the local comprehensive plan.

**Florida Statutes § 163.3194**

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3187, Florida Statutes, attempts to prevent circumvention of the plan consistency requirement by providing that the local comprehensive plans may be amended only twice per calendar year except in the case of an emergency.
Appellants challenge the denial of an injunction against the City of Jacksonville's construction of a sanitary landfill. We affirm.

The City proposes to locate the landfill in the vicinity of Durbin Creek Swamp on an 880 acre tract of land which it owns in Southeastern Duval County. There are approximately 328 acres of freshwater wetlands located on this parcel, which adjoins St. Johns County and is located in the immediate vicinity of land owned by appellants McCormicks. Construction of the landfill will require the excavation and/or filling of approximately 53 acres of wetlands. The City intends to mitigate for the wetlands impact by creating wetlands and by placing approximately 263 acres of contiguous wetlands and 126 acres of uplands buffer in a perpetual conservation easement. Additionally, the City plans to restore surface water flow to approximately 40 acres of contiguous wetlands through the removal of a road which currently stretches across the wetlands. Other components of the City's elaborate and extensive mitigation plan are designed to minimize adverse environmental impact upon the affected area and preserve the natural functions of the wetlands. The City's Planning Department concluded that the project is consistent with the City's 2005 Comprehensive Plan for growth and development.

Appellants filed suit to enjoin construction of the landfill, asserting that the use of the proposed site as the location for a sanitary landfill is inconsistent with the comprehensive plan and is therefore prohibited. The trial court found that the construction of the landfill is consistent with the plan, and denied relief.

Under the terms of the Local Government Comprehensive Planning and Land Development Regulation Act, Sections 163.3161-163.3243, Florida Statutes (1987), each county and municipality is required to prepare and adopt a comprehensive plan to manage future growth and development. Section 163.3194(1)(a) provides:

After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

Section 163.3194(3)(b) provides:

A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities
in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Once adopted, a comprehensive plan may be amended. Sections 163.3184, 163.3187. Section 163.3215 provides for injunctive and other relief for parties aggrieved by land use changes that are inconsistent with the comprehensive plan.

Pursuant to the statutory mandate, Jacksonville developed in 1980 the 2005 Comprehensive Plan. The plan is composed of "elements," each of which sets out "policies," and appellants assert that the landfill is inconsistent with certain policies of the conservation/coastal zone protection element which pertain to freshwater wetlands. The policies relating to freshwater wetlands state in part:

A. The basic function served by selected freshwater marshes and swamps as natural ecological units, natural retention mechanisms and surface water storage and treatment areas should be maintained.

B. Major wetlands areas (those that are related to the existing or proposed drainage systems) should be acquired and retained in their natural state where feasible.

C. The principal stream valleys and other wetlands needed for stormwater retention, wildlife habitat, or other special environmental uses should be organized into the components of the city's open space and drainage system.

D. Natural drainage patterns should be maintained and water flow should not be impeded by excavation or alteration of land topography except when necessary to improve water quality and/or control downstream flooding.

E. Natural watercourses may be channelized, straightened or otherwise modified when proven to be of public benefit.

F. In general, wetland areas should not be drained when this destroys the character of the area.

G. There should be no filling of the wetlands.

H. As a general rule, there should be no excavation in wetlands because the wetland function would be disrupted; vegetation would be obliterated, water flow disrupted, soil layers destroyed and drainage and drying out of wetlands facilitated. Excavation should occur only when required for public benefit.

I. Land clearing, grading or removal of natural vegetation in wetlands should be discouraged.

J. There generally should be no solid fill roads or other structures in wetlands because they obstruct water flow.
K. New development occurring in or adjacent to wetlands areas should be designed in such a way as to protect their natural ecological integrity.

L. Development in areas surrounding small pockets of wetlands such as cypress ponds should be encouraged to make use of those areas by maintaining their natural function and retaining them as open space.

M. Location of sanitary landfills; spoil and dump sites; sewage, waste and industrial lagoons within or adjacent to freshwater marshes and swamps should be discouraged.

Appellants assert that the landfill project is inconsistent with Polices G, I, L, and M, and hence inconsistent with the comprehensive plan, particularly in light of its proximity to Durbin Creek Swamp and the fact that when completed this project will be Jacksonville's largest landfill.

The City, on the other hand, successfully argued that the plan is more flexible than the construction urged by appellants. The City argued, and the trial court found, that in light of the elaborate mitigation, monitoring, and maintenance plans, the landfill proposal is consistent with the objectives and policies of the comprehensive plan.

The parties differ on the applicable standard of review. The City submits that its decision to site the landfill at this location should be reviewed by the deferential "fairly debatable" standard traditionally applied to zoning decisions, whereas appellants submit that the decision should be subjected to the more demanding standard of "strict scrutiny."

In City of Jacksonville Beach v. Grubbs, 461 So.2d 160 (Fla. 1st DCA 1984), we held that where the local zoning authority refused to rezone Grubbs' property from R-1A (a use less intensive than that contemplated by the comprehensive plan) to R-2 (the zoning classification recommended by the comprehensive plan), the zoning authority's decision was subject to the traditional "fairly debatable" standard because the plan set a maximum, not a minimum, limit on growth. At page 163, footnote 3, we said in dicta that if the zoning authority had approved a use more intensive than that recommended by the plan, the decision would be subject to strict scrutiny.¹

¹(n.3) The distinction drawn in Grubbs has been criticized as conducive to poor zoning practices. City of Cape Canaveral v. Mosher, 467 So.2d 468, 470 n. 4 (Fla. 5th DCA 1985) (Cowart, J., concurring specially); McPherson, Cumulative Zoning and the Developing Law of Consistency with Local Comprehensive Plans, 61 Fla. B.J. 71 (July/August 1987). The Third District also apparently disagrees with Grubbs. Machado v. Musgrove, 519 So.2d 629, 633 (Fla. 3rd DCA 1987). The Fourth District, on the other hand, has indicated that it agrees with the Grubbs rationale. Southwest Ranches Homeowners Association, Inc. v. County of Broward,
The City submits that *Grubbs* calls for application of the fairly debatable standard to this case because the landfill is a less intensive use than other uses permitted at the proposed site. The City points to evidence that with the planned mitigation, the landfill will be a less intensive use than other uses permitted by the land use element (which addresses intensity of land development) and the conservation/coastal zone protection element. We disagree with the City’s analysis. The “fairly debatable” standard was applied in *Grubbs* because we concluded that the local government’s zoning decision was within the limits set by the plan. Accordingly, there was no reason not to apply the deferential test typically applied to zoning. In the instant case, however, the issue is not zoning, but rather whether the project is consistent with the plan.

In *Southwest Ranches Homeowners Association, Inc. v. Broward County*, 502 So.2d 931, 935 (Fla. 4th DCA 1987), the court rejected Broward County’s argument that it was obligated to comply only with the land use element of the comprehensive plan. We also reject the City’s comparable argument that compliance with the land use element of the plan requires that the question of compliance with the other elements be answered by means of the “fairly debatable” standard. We agree with the view expressed by the Fourth District that the statutory purpose “cannot be achieved without meaningful judicial review in lawsuits brought under the Planning Act[,]” *Id.* at 936, and that a standard of review stricter than “fairly debatable” is appropriate.

Case law addressing the meanings of “consistency” and “strict scrutiny,” e.g., *City of Cape Canaveral v. Mosher*, 467 So.2d 468 (Fla. 5th DCA 1985); *Southwest Ranches; Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987), is of limited assistance because these cases deal primarily with zoning changes and whether such changes are consistent with land use intensity limitations imposed by the comprehensive plan, a matter relatively easily subject to examination for strict compliance with the plan. In the instant case, however, resolution of the issue of consistency depends heavily upon interpretation of the terms of the plan, a circumstance not present in the above-cited cases.

In *Machado v. Musgrove*, at 632, the court stated:

The test in reviewing a challenge to a zoning action on grounds that a proposed project is inconsistent with the comprehensive land use plan is whether the zoning authority’s determination that a proposed development conforms to each element and the objectives of the land use plan is supported

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4th DCA 1987).

2(n.4) A party asserting that a zoning decision is invalid because not fairly debatable bears an extraordinary burden. S.A. Healy Company v. Town of Highland Beach, 355 So.2d 813 (Fla. 4th DCA 1978).
by competent and substantial evidence. The traditional and non-deferential standard of strict judicial scrutiny applies.

Strict scrutiny is not defined in the land use cases which use the phrase but its meaning can be ascertained from the common definition of the separate words. Strict implies rigid exactness, People v. Gardiner, 33 A.D. 204, 53 N.Y. S. 451 (1898), or precision, Black's Law Dictionary 1275 (5th ed. 1979). A thing scrutinized has been subjected to minute investigation. Commonwealth v. White, 271 Pa. 584, 115 A. 870 (1922). Strict scrutiny is thus the process whereby a court makes a detailed examination of a statute, rule or order of a tribunal for exact compliance with, or adherence to, a standard or norm. It is the antithesis of a deferential review.

In a special concurring opinion in City of Cape Canaveral v. Mosher, at 471, Judge Cowart stated:

The word "consistent" implies the idea or existence of some type or form of model, standard, guideline, point, mark or measure as a norm and a comparison of items or actions against that norm. Consistency is the fundamental relation between the norm and the compared item. If the compared item is in accordance with, or in agreement with, or within the parameters specified, or exemplified, by the norm, it is "consistent" with it but if the compared item deviates or departs in any direction or degree from the parameters of the norm, the compared item or action is not "consistent" with the norm.

In Southwest Ranches, the Southwest Ranches Homeowners Association challenged Broward County's decision to rezone a parcel of land so as to permit the construction of a sanitary landfill on that site. The rezoning permitted a more intensive use of the land than was contemplated by the comprehensive plan, thus rendering it apparently inconsistent with the land use element of the comprehensive plan. The Fourth District rejected Judge Cowart's "fairly rigid approach," concluding that "the legislative scheme calls for a more flexible approach to the determination of consistency." Id. at 936. The court based this determination heavily upon Sections 163.3194(4)(a)-(b), which provide:

(a) A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan, or element or elements thereof, relating to the issue justiciably raised or the appropriateness and completeness of the comprehensive plan, or element or elements thereof, in relation to the governmental action or development regulation under consideration. The court may consider the relationship of the comprehensive plan, or element or elements thereof, to the governmental action taken or the development regulation involved in litigation, but private property shall not be taken without due process of law and the payment of just compensation.
(b) It is the intent of this act that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.

The Homeowners Association also asserted that the landfill project was inconsistent with other plan elements relating to environmental protection. These allegations were rejected, primarily on the basis of the trial court's finding that the project as proposed did not pose an environmental hazard. The opinion also noted that the County acknowledged that it had selected the lightly settled site largely because of resistance that it had encountered at other locations from residents of municipalities opposed to the placing of the site in their neighborhoods. In the view of the Fourth District, this factor of public opposition constituted "a valid additional consideration to the overall determination of consistency." Id. at 939. Accordingly, the court found that the project was not "fatally inconsistent" with the plan. Id. at 939-40.

In Machado, the court agreed with Judge Cowart's view and disagreed with what it termed "the unique view adopted by the court in Southwest Ranches that it may weigh competing public and private interests for determining consistency even where a proposed development fails to conform to one or more critical elements of the land use plan." 519 So.2d at 633 n. 3.

In Battaglia Fruit Co. v. City of Maitland, 530 So.2d 940 (Fla. 5th DCA 1988), Chief Judge Sharp stated in her dissent that "zoning decisions are held by reviewing courts to strict scrutiny when the change is apparently inconsistent with the plan."

As previously noted, the above-cited cases, which address the application of strict scrutiny to a zoning action which is facially inconsistent with the plan, are distinguishable from the instant case, in which resolution of the issue of consistency is heavily dependent upon interpretation of the terms of the plan.

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3(n.5) The majority decided the case on procedural grounds and found it unnecessary to reach the merits. Cf. St. Johns County v. Owings, 554 So.2d 535 (Fla. 5th DCA 1989) (where requested rezoning is denied on grounds that the rezoning would be inconsistent with the comprehensive plan, fairly debatable standard applies to circuit court appellate review of denial); Sengra Corporation v. Metropolitan Dade County, 476 So.2d 298 (Fla. 3rd DCA 1985) (accord); Hillsborough v. Putney, 495 So.2d 224 (Fla. 2nd DCA 1986) (denial of rezoning should not be overturned where evidence before Board of County Commissioners reasonably supported its conclusion that rezoning application did not comply with comprehensive plan requirements); Alachua County v. Eagle's Nest Farms, Inc., 473 So.2d 257 (Fla. 1st DCA 1985) (application for special use permit properly denied where applicant failed to meet burden, imposed by county ordinance, of showing that issuance of the permit would not substantially impair the intent and purpose of the comprehensive plan).
It is well established that the construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight and should be upheld unless clearly unauthorized or erroneous. . . . We have implicitly recognized the local planning agency's authority to construe the comprehensive plan, where we held that the applicant for a special use permit failed to overcome the county's objection that granting of the permit would impair the intent and purpose of the comprehensive plan.

In the instant case, however, the provisions of the conservation/coastal zone protection element cited by appellants indicate that the placement of a landfill in a wetlands area is, at best, considered undesirable. Under such circumstances, the explanation offered by the local body for concluding that the project is consistent with the plan, despite suggestions to the contrary in the language of the plan itself, should not simply be accepted at face value. It should instead be carefully examined in light of the language of the plan, with regard to whether the local government's rationale can be reconciled with the provisions of the plan. Upon examination, we conclude that competent substantial evidence supports the conclusion of the trial court and the City's planning department that this project is consistent with the comprehensive plan.

John Cannon, who supervised the preparation of the plan, testified that the statement "[t]here should be no filling in wetlands" was not meant to literally prohibit all filling of wetlands. Cannon and other witnesses testified that as a practical matter the occurrence of development would necessarily require some filling of wetlands, which are abundant in Jacksonville. Additionally, Cannon testified that at the time that the plan was promulgated, the definition of "wetlands" was uncertain. Victoria Tschinckel, the former Secretary of the Department of Environmental Regulation, assisted in the selection of the site for the landfill. She testified that after "negative screening," which screens out areas due to other factors, it was not possible to locate this landfill within Duval County without impacting wetlands. . . . Additionally, she testified that the only absolute prohibition against filling of wetlands of which she is aware is a prohibition against the filling of approved shellfish harvesting areas (not involved in this case). A consulting engineer testified that "it would be next to impossible" to site a landfill of this size in Duval County without impacting wetlands.

Dr. Earl Starnes (an expert who testified on behalf of appellants that in his opinion the landfill project is inconsistent with the plan) testified that, in his view, the references in Policies I and M to "discouraging" of certain activities do not totally proscribe these activities but rather require that standards be adopted to review applications for such activities. Chapter 380 of the City of Jacksonville Ordinance Code provides for some general standards, and we note that federal, state and local authorities have independently adopted extensive standards regarding development in wetlands. Additionally, the City's mitigation plan includes an upland buffer between the wetland and the construction. Accordingly, we find that competent substantial evidence supports the trial court's finding that the plan does not necessarily prohibit the location of a sanitary landfill in freshwater wetlands.
particularly in light of the reasonableness standard expressed in Section 163.3194(4)(a), previously quoted herein.

The City also maintains that the 2005 Comprehensive Plan is concerned with the protection of natural functions of wetlands and permits development therein so long as those functions are conserved, drawing a distinction between preservation of the wetlands themselves and conservation of the functions thereof. . . . While the plan does evidence specific concerns with conservation of natural functions of wetlands, the policies relied upon by appellants also indicate a concern with protection of the wetlands themselves in addition to their functions. Nevertheless, the City's preservation of the functions of the wetlands, along with the extensive mitigation measures taken, lends support to a finding that the project is consistent with the plan.

Accordingly, we find that competent substantial evidence supports the finding of the City and the trial court that this project is not inconsistent with the comprehensive plan.

Appellants also assert that the operation of a sanitary landfill on the proposed site is not authorized by the governmental use zoning classification of this site. We have examined this contention and find it to be without merit.

Affirmed.

NOTES

1. The 1985 Local Government Comprehensive Planning and Land Development Regulation Act [LGCP&LDRA] provides that local governments must implement plans with regulations consistent with the local government plans. The act requires that local governments adopt, at a minimum, land development regulations:

   -for subdivisions.
   -to implement the land use element of the plan, ensure compatible adjacent uses, and provide for open space.
   -to protect potable water supplies.
   -to regulate areas subject to flooding, and provide for drainage and stormwater management.
   -to protect environmentally sensitive areas.
   -to regulate signage.
   -to provide for public services and facilities.
   -to regulate traffic flow.

Although the local regulations are not generally reviewable, the DCA may require a local government to submit regulations, if "it has reasonable grounds to believe that a local government has totally failed to adopt any one or more of the . . .
regulations required by [the act]." If DCA finds that the local government has not adopted the necessary regulations, "it may institute an action in circuit court to require adoption of these regulations." The court cannot review compliance of regulations with the act or consistency with the local plan.

2. A 1984 Florida Supreme Court case, Citizen's Growth Management Coalition of West Palm Beach v. City of West Palm Beach, 450 So.2d 204 (Fla. 1984), involved the challenge of a citizen's group to a rezoning decision which was alleged to be inconsistent with the local government plan. The court found that the citizen's group lacked standing to question the validity of the ordinances. The following excerpt illustrates the court's reasoning.

The question of standing to challenge zoning decisions was comprehensively explained in Renard v. Dade County (261 So. 2d 832). In that case a district court of appeal certified as a question of great public interest:

The standing necessary for a plaintiff to (1) enforce a valid zoning ordinance; (2) attack a validly enacted zoning ordinance as not being fairly debatable and therefore an arbitrary and unreasonable exercise of legislative power; and (3) attack a void ordinance, i.e., one enacted without proper notice required under the enabling statute or authority creating the zoning power.

261 So.2d at 834. This Court held that under the first category a plaintiff had to prove special damages different in kind from that suffered by the community as a whole, that under the second category a plaintiff needed to have a legally recognizable interest that was adversely affected, and that under the third category an affected resident, citizen, or property owner had standing.

It therefore became important to determine into which category a particular case fell, for different rules of standing applied depending on whether the action sought to enforce a valid zoning ordinance, whether it attempted to attack a validly enacted zoning ordinance as being an unreasonable exercise of legislative power, or whether it involved an attack upon a zoning ordinance which was void because not properly enacted.

Skaggs-Albertson's v. ABC Liquors, Inc., 363 So.2d 1082, 1087 (Fla. 1978).

Appellant argues that none of these three categories are applicable to actions seeking to enforce compliance with the Local Government Comprehensive Planning Act. Appellant claims that although the legislature did not
enact a separate statutory section on standing, it intended to grant standing to the fullest extent possible by using the phrase "justiciably raised" in section 163.3194(3)(a), which provides in part:

--A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan or element or elements thereof relating to the issue justifiably raised or the appropriateness and completeness of the comprehensive plan or element or elements thereof in relation to the governmental action or development regulation under consideration.

We do not find that the legislature, by adopting this section, intended to broaden the requirements for standing. Because the legislature did not specifically address the question of who has standing to enforce compliance with the Act, we find that it must not have intended to alter the standing requirements established in Renard v. Dade County.

In the alternative, appellant argues the Act creates for citizens and residents legally recognizable interests which are adversely affected if a rezoning ordinance fails to comply with the Act's requirements. We disagree with this contention. The legislature specifically delineated the intent and purpose of this act in section 163.3161 . . .

. . . [T]he legislature has not indicated in this section that it intended to create additional legal rights in citizens who are only affected in common with the community as a whole. The expressed intent contained in subsection (5) that development shall not be permitted unless it is in conformity with the comprehensive plan imposes a legal duty upon the governing body but does not create a right of judicial redress in the citizens and residents of the community. The legal duty imposed on local governmental bodies is akin to their general obligation to pass ordinances that are reasonable. See 1 Rathkopf, The Law of Zoning and Planning sec. 3.05 (4th ed. 1979). We therefore hold that only those persons who already have a legally recognizable right which is adversely affected have standing to challenge a land use decision on the ground that it fails to conform with the comprehensive plan. Since the trial court found that the Coalition had failed to prove that it or any of its members had a legally recognizable interest which would be affected by the city's ordinances, we affirm its holding that appellant lacked standing to question the validity of the ordinances.

It is so ordered.

3. Largely in response to Citizen's Growth Management Coalition, the legislature created an administrative review process for development regulations to assure consistency with the local comprehensive plan. Within twelve months of the
adoption of a regulation, substantially affected persons may challenge it as inconsistent with the local plan. (A regulation that is not challenged within twelve months is deemed consistent.) "Substantially affected" is defined in the same terms as in Chapter 120, the Administrative Procedures Act. As a condition precedent to the proceeding, the affected person must file a petition with the local government outlining the facts and the basis for considering the regulation inconsistent. Within thirty days of the local government's response, the person may petition the DCA for an informal hearing.

The DCA will issue a written opinion on whether the regulation is consistent with the local plan. If the DCA finds the regulation consistent, the person who filed the original petition may request an administrative hearing. The act provides that the "adoption of a land development regulation is legislative in nature and shall not be found to be inconsistent with the local plan if it is fairly debatable that it is consistent with the plan." The order of the hearing officer will constitute a final order, appealable pursuant to section 120.68.

If DCA finds the regulation inconsistent, the agency will request an administrative hearing. The standard of review is the same, and the hearing officer's order will be a final order.

In either proceeding, if the hearing officer finds the regulation inconsistent, the order will be submitted to the Administration Commission. The Administration Commission shall hold a hearing to consider sanctions against the local government, including restriction of funding, grants, and revenue sharing.

4. The provisions of Section 163.3215, Florida Statutes (1989), sets out the requirements to challenge a development order as inconsistent with the local comprehensive plan. That section provides in pertinent part:

(1) Any aggrieved or adversely affected party may maintain an action for injunctive or other relief against any local government to prevent such local government from taking any action on a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan adopted under this part.

(2) "Aggrieved or adversely affected party" means any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.
(3) (a) No suit may be maintained under this section challenging the approval or denial of a zoning, rezoning, planned unit development, variance, special exception, conditional use, or other development order granted prior to October 1, 1985, or applied for prior to July 1, 1985.

(b) Suit under this section shall be the sole action available to challenge the consistency of a development order with a comprehensive plan adopted under this part.

5. Even though coastal jurisdictions were originally required to include a "coastal element" in their local comprehensive plans, the LGCPA was not listed as part of Florida's networked coastal management plan. The federal government requires that elements of a state's coastal management plan have a state enforcement mechanism, and the state had only had the authority to review and comment upon local plans.

The 1985 amendments greatly expanded the requirements for the "coastal management" element of local comprehensive plans. The legislation included new policies, including limiting public expenditures that subsidize growth in high-hazard coastal areas, required extensive studies and inventories as a basis for the coastal management elements, and listed components that the elements must contain. Among the components are:

- a component outlining principles of hazard mitigation and protection of human life, including population evacuation in the event of impending natural disaster.
- a beach and dune protection component.
- a redevelopment component outlining principles for eliminating inappropriate and unsafe developments when opportunities arise; e.g., post-hurricane redevelopment.
- a shoreline use component identifying public beach access areas and assessing the need for water-dependent and water-related facilities.
- designation of high hazard coastal areas.
- a deep-water port component.

With the expanded coastal management element and the DCA review procedures in place, can local comprehensive plans and the LGCP&LDRA be included in Florida's networked coastal plan? How would consistency reviews be conducted?

Regional Planning Councils

The state is divided into eleven regional planning councils. Each council is headed by a governing body which is made up of representatives appointed by local governments and the Governor. Each council has the authority to fix and collect
membership dues to support its work. In addition, operating funds may be provided by the Legislature.

The role of Regional Planning Councils [RPCs] has been discussed briefly in the context of developing comprehensive regional policy plans, but the RPCs have other important duties including review of Developments of Regional Impact. The nature and function of RPCs is set out in the following case excerpt:

**SOUTH FLORIDA REGIONAL PLANNING COUNCIL**

**v.**

**BOARD of COUNTY COMMISSIONERS of PALM BEACH COUNTY**

372 So.2d 1142 (Fia. 4th DCA 1979)

The cause of action sued upon had its genesis in an Interlocal Agreement entered into on July 1, 1974, between Dade, Monroe, Broward and Palm Beach Counties. Said counties joined together to form the SFRPC pursuant to Section 163.01, Florida Statutes (1969) the purpose of which was:

a. To provide local governments with a means of exercising the rights, duties and powers of a Regional Planning Agency as defined in Chapters 23, 163, and 380 of the Florida Statutes, including those functions enumerated hereinabove by preambles, and other applicable Florida, Federal and Local law.

b. To provide a means for conducting the comprehensive regional planning process.

c. To provide regional coordination for the members of the Council.

d. To exchange, interchange, and review the various programs of the individual members which are of the regional concern.

e. To promote communication among members and the identification and resolution of common regional-scale problems.

f. To cooperate with Federal, State, Local and non-governmental agencies and citizens to insure the orderly and harmonious coordination of State, Federal, and Local planning and development programs in order to assure the orderly, economic, and balanced growth and development of the Region, consistent with the protection of the natural resources and environment of the Region and to protect the health, safety, welfare and quality of life of the residents of the Region.

Although the district contemplated to be affected by the Council’s planning activities also included Martin and St. Lucie counties, these counties never saw fit to join in the Interlocal Agreement.

Among the planning activities which the Council engaged in were the following: review of developments of regional impact, nominations for Areas of Critical State Concern, review of proposed federally funded projects, review of applications for Army Corp. of Engineer Dredge and Fill Permits and Subdivision Feasibility Studies.
In addition, the SFRPC published a Coastal Zone Management Study and numerous other reports.

The operating budget of the SFRPC is derived from membership assessments, legislative appropriations, grants and matching funds from the state and federal governments, and charges for various services. The annual membership assessment, however, is the basic source of operating revenue, as legislative appropriations vary yearly, grants and matching funds span fiscal periods and fluctuate, and the various service charges are insubstantial. . . .

2. **Developments of Regional Impact**

Florida Statutes, Section 380.06  Developments of regional impact. ---

(1) **Definition.**— The term "development of regional impact," as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

(2) **Statewide Guidelines and Standards.**—

(a) The state land planning agency shall recommend to the Administration Commission specific statewide guidelines and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt statewide guidelines and standards to be used in determining whether particular developments shall undergo development-of-regional-impact review. The statewide guidelines and standards previously adopted by the Administration Commission and approved by the Legislature shall remain in effect unless revised pursuant to this section, or superseded by other provisions of law. Revisions to the present statewide guidelines and standards, after adoption by the Administration Commission, shall be transmitted on or before March 1 to the President of the Senate and the Speaker of the House of Representatives for presentation at the next regular session of the Legislature. Unless approved by law, the revisions to the present statewide guidelines and standards shall not become effective.

(b) In adopting its guidelines and standards, the Administration Commission shall consider and be guided by:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.
2. The amount of pedestrian or vehicular traffic likely to be generated.
3. The number of persons likely to be residents, employees, or otherwise present.
4. The size of the site to be occupied.
5. The likelihood that additional or subsidiary development will be generated.
6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.
7. The unique qualities of particular areas of the state.

. . . .
(12) Regional Reports.—
(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfavorable impact on the environment and natural and historical resources of the region.
2. The development will have a favorable or unfavorable impact on the economy of the region.
3. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.
4. The development will efficiently use or unduly burden public transportation facilities.
5. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.
6. The development complies with such other criteria for determining regional impact as the regional planning agency shall deem appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54. Regional planning agencies may also review and comment upon issues which affect only the local governmental entity with jurisdiction pursuant to this section; however, such issues shall not be grounds for or be included as issues in a regional planning agency appeal of a development order under s. 380.07.

(13) Criteria in Areas of Critical State Concern.— If the development is in an area of critical state concern, the local government shall approve it only if it complies with the land development regulations therefor under s. 380.05 and the provisions of this section.

(14) Criteria Outside Areas of Critical State Concern.— If the development is not located in an area of critical state concern, in considering whether the development shall be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area;
(b) The development is consistent with the local comprehensive plan and local land development regulations; and
(c) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (12).
(15) Local Government Development Order.--
(a) The appropriate local government shall render a decision on the application within 30 days after the hearing unless an extension is requested by the developer.
(b) When possible, local governments shall issue development orders concurrently with any other local permits or development approvals that may be applicable to the proposed development.
(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:
   1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.
   2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a termination date that reasonably reflects the time required to complete the development.
   3. Shall establish a date until which the local government agrees that the approved development of regional impact shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred, or that the development order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety, or welfare.
   4. Shall specify the requirements for the annual report designated under subsection (18), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.
   5. May specify the types of changes to the development which shall require submission for a substantial deviation determination under subsection 19.
   6. Shall include a legal description of the property.

Graham v. Estuary Properties, Inc.
399 So.2d 1374 (Fla. 1981)

[For the facts and identification of the issues in this case, see pages 242-46, supra.]

The decision of the district court is divided into two points. Simply stated they are: