

More Legal Quick Takes: SLR, Law & Flooding



Erin Deady, President,
Erin L. Deady, PA
&
Thomas Ruppert
Coastal Planning Specialist,
Florida Sea Grant

Overview

- SB 1094—SLR in Coastal Element
- Federal Risk Management Standard (FFRMS)
- Flood insurance
 - NFIP Reauthorization
 - State bills related to flood insurance

What are local governments doing?

How local governments are addressing sea level rise

- **Comprehensive Planning**
 - Adaptation Action Areas (“AAAs”) – adopted in 2011; gives local governments option to designate AAAs
 - SB 1094: Peril of Flood - enacted 2015; new mandate on local governments to consider sea level rise and other factors that increase flood risk
 - Required in the Coastal Management Element



Photo: www.volusia.org

Flood Peril Legislation (SB 1094)

What are the principle requirements?

- Development and redevelopment principles, strategies, and engineering solutions that reduce flood risks and losses
 - Elevation certificates submitted to DEM
 - “Flexible” flood insurance coverage
 - Other provisions such as flood insurance policy requirements
1. Development and redevelopment **principles and strategies**, that reduce the flood risk in coastal areas from high-tide events, storm surge, flash floods, stormwater runoff, and **the related impacts of sea-level rise**.
 2. **Best practices** for the removal of coastal real property from FEMA flood zones
 3. **Site development techniques** that may reduce losses and claims made under flood insurance policies
 4. Be consistent with, or more stringent than, the flood-resistant construction requirements **in the Florida Building Code** and flood plain regulations
 5. Construction activities consistent with **Chapter 161**.
 6. Encourage local governments to participate in the National Flood Insurance Program **Community Rating System**














What are local governments doing?

Adaptation Action Areas

- 195 local governments have Coastal Management Element
 - 161 municipalities and 34 counties
- As of May 2017:
 - Approximately 43 (22%) explicitly mention or address **sea level rise in their Comprehensive Plans**
 - Eleven (11) mention **AAAs** in their Comprehensive Plans
 - Five (5) have a physical designation:
 - **Satellite Beach** designates Coastal High Hazard Areas as AAAs
 - **Village of Pinecrest** designates AAAs
 - **Broward County** sand bypass project at Port Everglades
 - **Ft. Lauderdale** 16 areas 38 stormwater projects
 - **Yankeetown** designated natural resource AAA

Recent and Current EAR Based Amendments

In Compliance with SB 1094

West Palm Beach		Yankeetown	
Ponce Inlet		North Miami	
Santa Rosa County		Palm Bay	
Boynton Beach		Clearwater	
Jupiter		Broward County	
Jupiter Inlet Colony		Pinecrest	
Sunny Isles Beach			

Recent and Current EAR Based Amendments

In Process of Complying with SB 1094

Palm Beach	IP	Levy County	IP
Hillsborough County	IP	Miami Beach	IP
Lake Park	IP	St. Petersburg	IP
Duval/Jacksonville	IP	Tampa	IP
Sarasota	IP	Treasure Island	IP (Litigation)
Northport	IP	*South Pasedena, Madiera Beach & Satellite Beach forthcoming	
Cutler Bay	IP		

City of West Palm Beach

- Submitted proposed comprehensive plan amendment, complete as of November 16, 2016
 - amendments specifically addressed Peril of Flood
- DEO reviewed and sent response letter back January 17, 2017
- Objection 2: DEO expressly identified need for revision based on SB1094 requirements
- City submitted Final Adopted Proposed Comprehensive Plan Amendment on March 3, 2017
 - specifically addressed Objection 2
 - included revised language addressing Peril of Flood
- DEO approved amendments April 19, 2017

Objection 2: Peril of Flood

Policies proposed within the amendment do not completely address the requirements of section 163.3178(2)(f), F.S. These requirements are partially met by proposed Coastal Management Element Goal 6 and its associated Objectives and Policies.

However, these proposed policies do not completely address all of the statutory requirements due to the following issues:

- Coastal areas that are currently at risk or projected to be at risk in the future from high-tide events, storm surge from storms of greater than category one-intensity, flash floods, stormwater runoff, and sea-level rise are not identified, either in the data and analysis supporting the amendment or through a map or policy to be adopted.
- Proposed Objective 6.1 and proposed policies 6.1.1 through 6.1.4 do not adequately

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

April 19, 2017

The Honorable Jeri Muoio
Mayor, City of West Palm Beach
401 Clematis Street
West Palm Beach, Florida 33401

Dear Mayor Muoio:

The Department of Economic Opportunity has completed its review of the comprehensive plan amendment for the City of West Palm Beach adopted by Ordinance No. 4665-16 on February 27, 2017 (Amendment No. 16-4ER), which was received and determined complete on March 6, 2017. We have reviewed the amendment in accordance with the state coordinated review process set forth in Sections 163.3184(2) and (4) Florida Statutes (F.S.) and have determined that the adopted amendment meets the requirements of Chapter 163, Part II, F.S., for compliance, as defined in Section 163.3184(1)(b), F.S. The Department of Economic Opportunity is therefore issuing a Notice of Intent to find the comprehensive plan amendment "In Compliance." A copy of the Notice of Intent has been posted on the Department of Economic Opportunity's Internet website. You may access the Notice of Intent at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/orc-reports-notices-of-intent-and-school-interlocal-agreement-consistency-findings>.

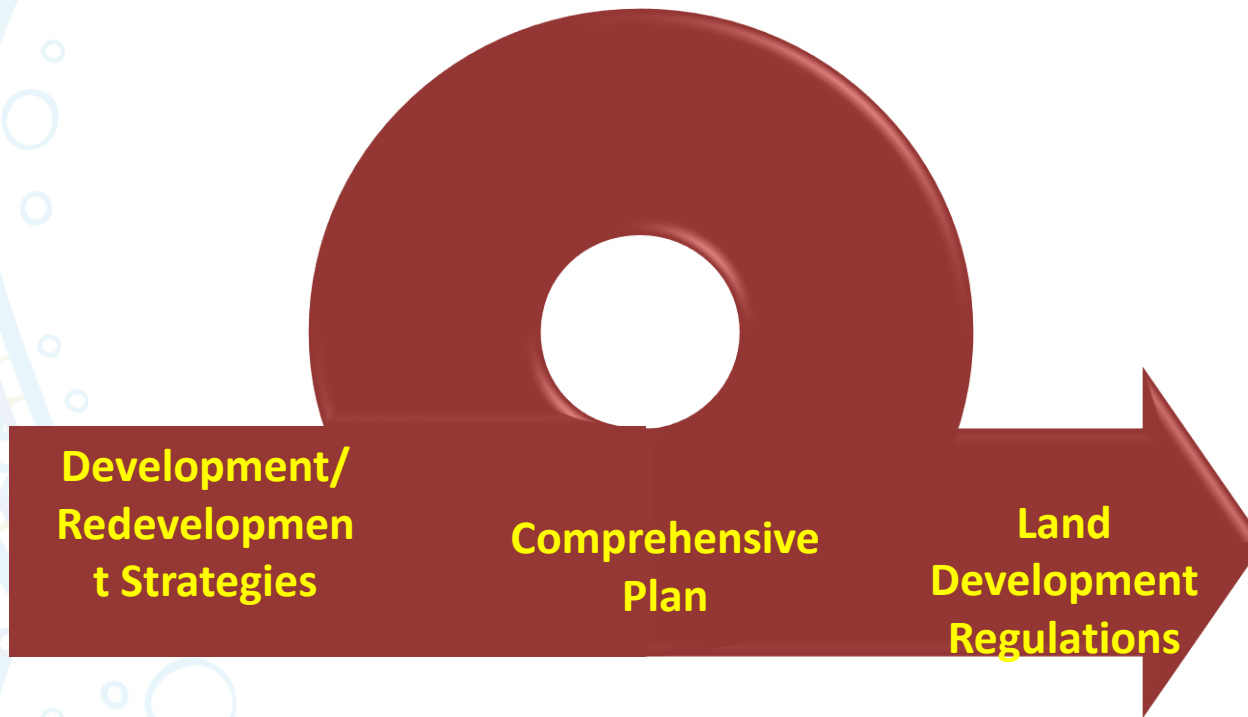
City of West Palm Beach



- Goal 6: The City shall coordinate development and redevelopment activities to address reduction of current and future flood risk and to eliminate inappropriate and unsafe development in the coastal areas
- Objective 6.1: Create new strategies to reduce flood risk from high tide, storm surge and sea level rise and remove property from exposure in FEMA flood zones (within 2 years)
 - Policy 6.1.1: Update Stormwater Master Plan in 2017
 - Policy 6.1.2: Revise and develop new regulations and policies that reduce water quality and quantity impacts and create new stormwater projects to mitigate flood risk within 2 years
 - Policy 6.1.3: Freeboard standards established within 1 year (consider implications with historic properties)
 - Policy 6.1.4: Update floodplain management regulations within 2 years
 - Policy 6.1.5: Develop and maintain SLR maps 1, 2 and 3'
 - Policy 6.1.6: Consider relocation of public buildings if > 50% damage
- Objective 6.2: Site development technique and best practices to reduce flood loss and claims based on STWMP in 2017
 - Policy 6.2.1: Revise stormwater regulations to include low impact development and consider impacts to adjacent properties, historic properties, private and public development and infrastructure projects within 2 years
 - Policy 6.2.2: Stormwater Manual to guide development review within 1 year
 - Policy 6.2.3: Ensure applications include flood reducing site development techniques
 - Policy 6.2.4: Enforce general hazard mitigation regulations
- Objective 6.3: Continue and enhance participation in CRS
 - Policy 6.3.1: Strive to improve score in CRS (currently a 6 and going for a 4)
 - Policy 6.3.2: Prioritize public outreach to residents, business and development community on importance of mitigation flood risk
- Also developing Climate and Resiliency Element of Comp Plan

Sample Compliance Strategy

How do these requirements relate to or affect planning activities and infrastructure investments in the short- and mid-term?



Short Term

- Compliance Strategy (timeline and scope)
- Frame “development”
- Short term capital projects
- AAAs

Mid Term

- Comp Plan Goals, Objectives and Policies
- Review land uses

Long Term

- LDRs: Development / design standards
- Areas subject to flooding
- ESLs
- Infrastructure LOS

What Would we do Differently if the Legislation were Fully Implemented?



- Road design for future flood risk
- “Resilient” construction standards (ie; FORTIFIED)
- Encouraging or enhancing buffering and natural shoreline protection strategies
- Discouraging or modifying regulations that result in “hard” protection strategies
- Harmonizing stormwater regulations for future conditions (ERP/404 also)

Photo Credits: Stephanie Russo, Smart Home America, Palm Beach County, Erin Deady and Dr. Jennifer Jurado

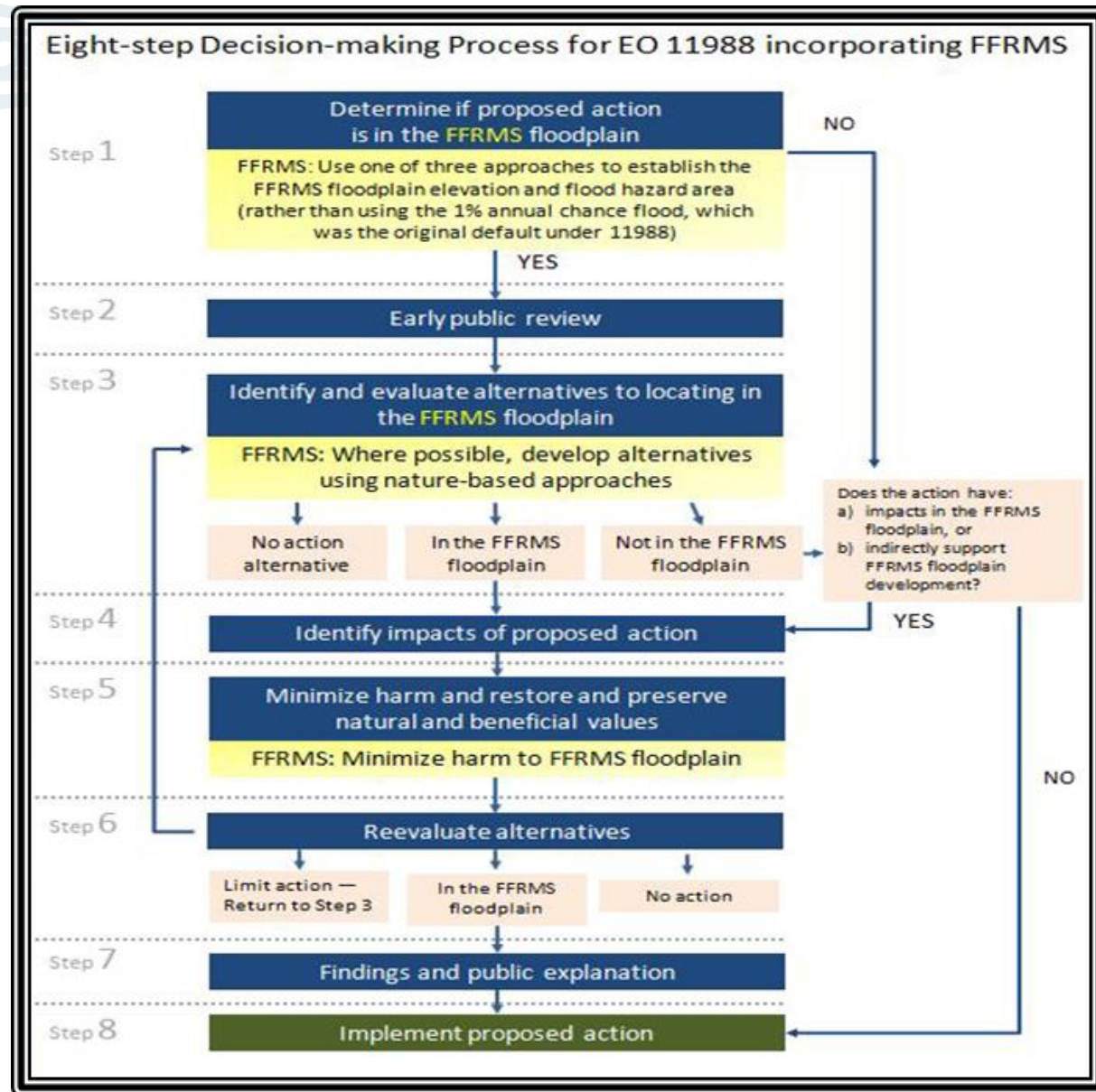
Toth v. City of Treasure Island

Amended Complaint Dec Judgment filed 7/27

- Crux of argument is failure to comply with SB 1094 (one FLUE-related allegation)
- Linkage to Community Resilience Initiative Study (alleged data to support Coastal Element update) (Section 309 Grant funds through DEO for planning)
- Alleged failure to apply DEO's comments regarding Coastal Element compliance
- DEO correspondence states that the City must address SB 1094 requirements by November 2020 (EAR Notification due date) and has no comments related to important state resources or facilities
- DEO further comments on SB 1094-related issues in the form of a "technical assistance comment"
- Motion to Dismiss filed 8/5 (jurisdiction and standing)
- Amended Motion to Dismiss Amended Complaint filed 10/28/16 (jurisdiction and standing)
- **Amended Motion to Dismiss granted and case dismissed with prejudice on 11/10/16**
- Plaintiff filed Motion for Rehearing and or to Set Aside Order 11/21/16
- Notice of Withdrawal or Motion for Rehearing and Notice of Voluntary Dismissal filed 12/21/16

Fed. Floodplain Risk Mgmt. Std. (FFRMS)

- Redefines floodplain:
 - Climate-informed science, or
 - Freeboard (2 or 3 ft), or
 - 500-year (.02% chance) flood
- EO has received significant public input
- Not yet implemented, but agencies working on it



FFRMS

- Expands and modifies 1977 Exec. Order on floodplains
- Larger floodplain, higher standards when federal funding or support involved



Introduction

On January 30, 2015, the President signed Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, which amended E.O. 11988, Floodplain Management, issued in 1977. Once



U.S. ARMY CORPS OF ENGINEERS

Applicability of Floodplain Management and FFRMS Executive Orders to USACE Permitting Authorities

BUILDING STRONG®

Background

On January 30, 2015, the president signed Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, which amended E.O. 11988, Floodplain Management, issued in 1977. Once implemented by Federal agencies, the Federal Flood Risk Management Standard (FFRMS) is intended to reduce the risk and cost of future flood disasters by ensuring that Federal investments in and affecting floodplains are constructed to better withstand the impacts of flooding.

NFIP


- Reauth. req'd
- Context of debt
 - \$24.6 billion
- Lots of specific interests
 - Actuarial rates
 - Maint. of subsidies
 - Private ins.
 - Primary res. or not



State Law

- CS/CS/HB 813 An act relating to flood insurance
- “Surplus line” w/out denials
 - Until 2019
 - “Superior” or “excellent” financial strength
- Notice about impacts of private insurance



A coastal scene with a lighthouse on stilts in the upper right, a rocky shore in the middle ground, and a large, weathered concrete block in the foreground. The sky is blue, and the ocean is visible in the background.

“[A] foolish man . . . built his house on sand. The rain came down, the streams rose, and the winds blew and beat against that house, and it fell with a great crash.”

Matthew 7: 26-27

Thomas Ruppert
Coastal Planning Specialist
Florida Sea Grant College Program
TRUPPERT@UFL.EDU
www.flseagrant.org/coastalplanning