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School of Law

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Title: A Model Shoreline Vegetation Ordinance
for Counties and/or Municipalities
in Florida

Requested by: State of Florida Coastal Coordinating
Council

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A MODEL SHORELINE VEGETATION ORDINANCE
FOR COUNTIES AND/OR MUNICIPALITIES IN FLORIDA

INTRODUCTION

The following proposed draft of a model shoreline vegetation ordinance is designed to be used anywhere in the State of Florida by either a county or municipality. It is designed to protect: 1) high marsh vegetation in the wetlands areas, in order to provide a protective fringe around them from development; 2) upland or white mangroves located along the mean high water line; and 3) shoreline vegetation located back of the active dune system on duned beaches and vegetation above the mean high water on non-duned beaches to prevent erosion and consequent loss of the berm.

It is to be enacted to supplement but not stand in basic conflict with the Beach and Shore Preservation Act of 1965, F.S.A. §161.011 et seq. It coincides with the coastal setback line of 50' measured from the mean high water established in F.S.A. §161.052 of that statute for sandy beaches until the Department of Natural Resources, subsequent to an engineering study and holding of public hearings, shall declare another setback line pursuant to F.S.A. §161.053. For non-sandy beaches and lands bordering bays, inlets, rivers and lakes, either the line of existing white mangrove, a

50' setback line or some other line to obtain the desired results, may be enacted pursuant to F.S.A. §161.35. It applies to all shoreline vegetation removal. Exceptions for minor removals comparable to the pro forma permitting of 5000 yds./5000 cubic ft. dredge and fill projects as an exception to the Randall Act are not recommended, given the past history of the loopholes in that law. It is enacted pursuant to the broad grant of home rule contained in Art. VIII of the Constitution of the State of Florida and F.S.A. §161.36 to all counties. Other municipalities should consult their respective charters for statutory authority for such an enactment. Within the context of that broad grant of home rule, the ordinance is a valid exercise of the police power with the express goal of enhancing the health, safety and general welfare of the citizens of Florida as well as protecting the valuable resources of the State and its citizens.

The creation of the shoreline vegetation preservation zone extending from the mean high water to a line 50' inland in all places, the limit of the coastal construction setback line is to be enacted pursuant to F.S.A. § 161.053 on a county by county basis. Procedural due process is provided for by the requirement that a public hearing be held within at least 30 days notice for an opportunity to be heard by all interested parties before the ordinance is enacted. Since no exceptions are built into the ordinance,

fair and impartial administration of the permitting process should insure compliance with equal protection requirements of the federal and state constitutions. Approval of the Department of Natural Resources of the setback line pursuant to F.S.A. §161.052, 161.035 for the case of sandy beaches and F.S.A. §161.35 in the case of non-sandy beaches and bays, inlets, rivers and lakes, will insure consistent application of concurrent jurisdiction with the various state statutes.

There is no relevant federal jurisdictional conflict with the sample ordinance. In its intent, design and application it is eminently reasonable in all respects. Delegation of enforcement powers to an official will be deemed a ministerial act, however. Exercise of the ordinance should not amount to a taking without due process of law resulting in inverse condemnation claims. No undue inhibition on development by the riparian owner is intended consistent with existing zoning regulations. The ordinance is designed to be a valid exercise of the police power imposing regulations or restrictions on the use of riparian property only for the protection of the public health, safety and welfare and protection of the vital natural resources of the state. It is thus entitled to a presumption of validity as a reasonable exercise thereof.

It is recommended that the local building code be amended to provide that no building permit will be issued without prior securing of a vegetation removal permit from the county, county/municipality permitting authority. Conforming with federal flood control minimum height standards for all construction is also recommended. Penalties should include but not be limited to any or a combination of the following:

- a) Mandatory fines, each day without seeking a permit constituting a separable offense.
- b) Late application with penalty fee, restoration where vegetation has already been removed and permit is denied.
- c) A time limit on planning where ordered to include daily fines and the right of the local government to do planning itself, cost to be assessed as a lien on the property and duly recorded.
- d) Criminal penalty defined as a misdemeanor, providing for jail sentence and/or fine again each day constituting a separable offense.

It is further recommended that distinction be made between failure to obtain a permit and violation of any terms stipulated on a granted permit, each day constituting a separable offense for violation of either.

Person or persons to be prosecuted should include the riparian owner, persons actually removing vegetation and persons in charge of said removal.

After enactment it should be made certain that the ordinance is approved by the mayor, county commissioners, etc., properly published and recorded in compliance with Florida law.

SHORELINE VEGETATION PROTECTION ORDINANCE

WHEREAS, development has occurred and will continue to occur on lands bordering the ocean, gulf, bays, estuaries, rivers, lakes, and other bodies of water; and

WHEREAS, development in these areas presents special problems of pollution and potential destruction of natural resources; and

WHEREAS, Article II Section 7 of the Constitution of the State of Florida declares it to be state policy to protect natural resources; and

WHEREAS, it is the expressed desire of the _____
_____ to balance the interests and rights of the affected property owners and those of the citizenry of this _____; and

WHEREAS, the _____
_____ finds the threat to the natural resources is real, immediate and apparent and will continue without regulatory action; and

WHEREAS, Article VIII of the Constitution of the State of Florida confers the powers of home rule on all counties of Florida; and

WHEREAS, _____

_____ have held public hearings with due public notice; and

WHEREAS, _____

_____ have determined that regulations to protect shoreline vegetation are necessary and constitute a proper and reasonable exercise of the police power to order to protect the public health safety and welfare of this _____; and

WHEREAS, all applicable requirements of law have been met in the adoption of these regulations;

NOW, THEREFORE, BE IT ENACTED:

Section 1. Intent and Purpose. It is the purpose of these regulations that shorelines of this county/municipality be protected, and that shoreline vegetation shall be protected and preserved in _____ in order that said vegetation may continue its vital role in the natural ecosystem of this _____.

Shoreline vegetation protects the shoreline from erosion, contributes to biological food chains, is necessary habitat for marine organisms and birdlife, acts a filtration element to trap and gradually release upland pollution, assists in the balance of nature, is necessary to maintain productive sport and commercial

fisheries, assists in minimizing storm damage from winds, flooding and hurricanes, and in the case of mangroves to actually create land for the riparian owner, in general contributes to a more pleasing environment and is a natural resource of the state. The public interest, convenience, order, health, safety, and welfare are best served by the retention of natural shoreline vegetation to the maximum extent possible.

Section 2. General Scope of Authority. This ordinance applies to all lands fronting on waters in which the citizenry have any interest either by virtue of public ownership, navigability, long-term public use, or are otherwise regulated by federal, state or local authorities.

Section 3. Definitions. For the purpose of this ordinance, the following terms are defined as follows:

a) Shoreline: that area fronting on any body of water and extending to a distance inland where shoreline vegetation ceases to grow.

b) Shoreline vegetation: any of the following species: (These may be detailed for specificity for each area.)

c) Shoreline preservation zone: a zone measured from the mean high water to an inner battery of the coastal setback line as adopted within which

shoreline vegetation removal is prohibited without proper permit.

Section 4. Standards. (Alternate I) Administration of the provisions of this ordinance shall be guided by the following standards:

- a) These provisions are not to be interpreted to prohibit or unduly inhibit development of private property. In each case, the paramount consideration shall be the legal right of the private owner to utilize his property consistent with its existing zoning.
- b) Applications for removal of shoreline vegetation shall be viewed in regard to the intended use of the property, and an analysis of the area with regard to the effects of removal and a site evaluation thereof, including but not limited to the following:
 - 1) existing vegetation and density
 - 2) amount of shoreline vegetation to be removed
 - 3) topography of the area, soils and natural/artificial drainage
 - 4) lot coverage required for building, parking and driveways
 - 5) effects on surrounding land and water areas

- 6) other existing zoning regulations as applicable
- 7) height and spacing, width and orientation of dunes where applicable, including width of the high tide on the beach or shoreline.

Section 4. Standards. (Alternative II) [Note: In lieu of the standards set out in version I, a system of permitted and conditional uses may be utilized depending on local situations and still pass constitutional muster.]

a) Permitted uses.

- 1) In those portions of the shoreline vegetation preservation zone where development is allowed, permitted uses shall conform to those existing in the official _____ zoning regulations at the time of the enactment of this ordinance.
- 2) In those portions of the shoreline vegetation preservation zone where development is not allowed, permitted uses shall include: a) boating, b) swimming, c) sunbathing, d) picnicking, e) other active and passive recreational uses not inherently destructive to the existence or integrity of shoreline vegetation.

b) Conditional uses. The following uses shall be permitted in the shoreline vegetation preservation zone on a conditional basis, subject to the conditions set forth:

1) seawalls, jetties, bulkheads, revetments, groins, breakwaters, roads and streets, utility lines, sewer lines, provided that:

i) The applicant for a conditional use permit prove conclusively that the proposed use will have no significant short or long term adverse environmental effects, including but not limited to increasing potentials for beach or shoreline erosion, or exposure of inland properties to wind, water, or wave damage.

5. Permits. Any person, corporation, or other entity desiring to remove shoreline vegetation as defined herein shall submit an application to the _____.

Applications may accompany a building permit or may simply be a request for a shoreline vegetation removal permit. This provision shall not be interpreted as being in conflict with the authority of the State of Florida relative to coastal construction permits, dredge and fill permits, or any other state requirements but is in addition thereto. The application shall be accompanied by a site

plan which depicts:

- a) The location or proposed location of structures, driveways, utility lines, parking areas, piers, docks, and any other proposed or existing manmade objects on the property.
- b) Location and delineation of shoreline vegetation showing species types to the inland extent of the shoreline vegetation.
- c) Designation of the area from which shoreline vegetation is to be removed and what will be substituted in its place.
- d) The location of the mean high water line, the burden of proof as to its location shall rest on the applicant.

Permits shall be granted or denied by the _____
_____ after consultation with the _____
_____.

In granting, denying or requiring modification of applications, the permitting shall be governed by the evaluation and assessments of the required consulting bodies and may also utilize the services of professionals, including federal and state agencies, university personnel, and such other experts as may be available. (Such consulting authorities may be specified

either generally or particularly depending on the locale and the needs of the county/municipality enacting this ordinance.)

If granted, the permit shall designate the area where vegetation is permitted to be removed, and the permit shall be posted in a conspicuous location upon the lot for which the permit was issued.

Where removal is permitted, the permitting body may the applicant to replant additional indigenous species in an amount not to exceed that which is to be removed.

The permitting body may permit temporary removal and/or destruction of shoreline vegetation as may be required for construction and require replanting of the same or other indigenous species for those that have been destroyed or removed. Such replanting shall be completed within _____ days of completion of construction.

Section 6. Shoreline Vegetation Preservation Zones.

No vegetation may be removed from submerged areas without required federal and state permits and approval of the local permitting body as well. The submerged areas and the area extending from the mean high water line to a distance of fifty (50) (or other applicable boundary) feet inland is designated as a shoreline vegetation preservation zone.

Within the preservation zone permits may be granted for the following (at the discretion of the permitting body):

- a) For the removal of vegetation for purposes of access to the water, such access route to be no wider than is necessary to allow ingress/egress to the water and in no event shall be wider than twenty-five (25) feet.
- b) For removal of shoreline vegetation exceeding the 25-foot maximum access width within the preservation zone for water dependent activities where there is a showing by the applicant that no feasible alternative is available. Such access or portion thereof shall be usable by the general public.
- c) For temporary removal or destruction of vegetation where same is required for construction.

The permitting may impose any further reasonable restrictions and/or regulations on the applicant in granting permits for shoreline vegetation removal or destruction within the preservation zone.

The permit application standards as set forth in Section 4 (or permitted in traditional uses) and the permit provision of Section 5 shall also be applied to preservation zones except as

limited herein.

Section 7. Adoption by Reference. The criteria for selection of consulting bodies, whether named or unspecified infra, additional technical regulations, means of establishing mean high water, or publications detailing the various flora to be protected in the shoreline vegetation preservation zone may be added here as necessary by the individual enacting body.

Section 8. Effective Date of Ordinance.

Section 9. Penalty Provisions. (See Introduction for recommended penalty provisions).

Section 10. Amending Ordinances (As Necessary).

Section 11. Repealing Provisions. (Including saving clause for pending actions by the local enacting body).

Section 12. Severability.

Section 13. Recitals of Procedural Steps.

Section 14. Certificate.

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A D D E N D U M

There is at this time a proposed amendment to the Beach and Shore Preservation Act of 1965 by the ELMS Committee of the State of Florida. It would extend the coastal setback line to "one hundred fifty feet landward of the line of mean high water or, where there is a demonstrable dune line, twenty-five feet landward of the crest of the dune line, at any riparian coastal location fronting the Gulf of Mexico or Atlantic Coast shoreline of the State."

This would substantially amend under §6 of the proposed ordinance the boundaries of the Shoreline Vegetation Preservation Zones. In the view of the author this a warranted extension of the limits of the zone, since it provides for additional protection of fringing shoreline vegetation and in duned areas, would include the entire active and stable duned system.

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