

TOWN OF FORT MYERS BEACH — 2008 PROPOSED COMPREHENSIVE PLAN AMENDMENTS

Application #: 2008-13-TEXT

Description: Modify the Coastal Management ~~and Future Land Use~~ Elements to reflect the state's new definition of "coastal high-hazard area"

Pages to be changed: Comprehensive Plan Pages 5-1, 5-2, and ~~5-25~~ 4-44 (see changes on attached pages)

Discussion in E/A Report (adopted on Jan 16 '07): This amendment was not discussed in the E/A Report.

This amendment and 2008-14-MAP are the result of recent state legislation (Chapter 2006-68, copy attached) which changed the definition of the term "coastal high-hazard area" in § 163.3178(2)(h), *Florida Statutes*. All local governments are required to use the new definition in their Comprehensive Plans.

The federal government uses this same term and requires that it be incorporated into each municipality's floodplain regulations. Regrettably, the federal definition is very different (essentially, it means the V or velocity zone along the beach where wave action is expected on top of a storm surge).

For purposes of the Fort Myers Beach Comprehensive Plan, although the old and new state definitions of "coastal high-hazard area" are different, both encompass the entire town. This amendment would replace the old statutory definition in the Coastal Management Element with the new definition.

This term is not defined in any other element of the Comprehensive Plan, but is referred to on page 4-39 of the Future Land Use Element. To ensure compliance with § 163.3178(9)(c), a new Policy 5-A-6 is being added to the Coastal Management Element, a map is being added to the Future Land Use Map Series, and an additional sentence is proposed for Policy 4-B-2 of the Future Land Use Element, as shown in amendment 2008-14-MAP, on the attached page 4-44.

Chapter 2006-68 provides optional processes to analyze the effect of a comprehensive plan amendment on hurricane evacuation. Since the town has not adopted a level of service for out-of-county hurricane evacuation, the statutory standard of 16 hours that is now found in § 163.3178(9)(b) will apply (copy attached).

Action by LPA: During a public hearing on November 18, 2008, the LPA unanimously recommended that the Town Council approve the changes as outlined in this report.

Action by Town Council: During a public hearing on December 15, 2008, the Town Council voted unanimously to transmit this amendment for state review.

DCA Objection: *“The proposed EAR-based amendments do not include an amendment to the Coastal Management Element to define the Coastal High Hazard Area as is defined by Section 163.3178, F.S.”*

DCA Recommendation: *“Revise the amendment to adopt a Coastal Management Element policy that defines the Coastal High Hazard Area consistent with the definition in Section 163.3178, F.S.”*

Response to DCA: *This amendment has been modified to accept DCA’s recommendation to add a new policy to the Coastal Management Element.*

Proposed Final Action: *The Town Council should adopt this revised amendment, as described above, as part of Ordinance 09-03.*

Final Action: *The Town Council adopted this amendment on August 17, 2009, as part of Ordinance 09-03.*
(Text shown in red is new or has changed since the initial transmittal of this amendment in January 2009.)

An act relating to hazard mitigation for coastal redevelopment; amending s. 161.085, F.S.; specifying entities that are authorized to install or authorize installation of rigid coastal armoring structures; authorizing the Department of Environmental Protection to revoke certain authority; authorizing the installation of certain structures as the core of a restored dune feature under specified conditions; amending s. 163.3178, F.S.; requiring the Division of Emergency Management to manage certain hurricane evacuation studies; requiring that such studies be performed in a specified manner; defining the term "coastal high-hazard area"; providing that the application of development policies shall be at the discretion of local government; authorizing local governments to amend comprehensive plans to increase residential densities for certain properties; providing criteria for certain comprehensive plan compliance; requiring local governments to adopt a certain level of service for out-of-county hurricane evacuation under certain circumstances; requiring local governments and developers to enter into certain agreements; providing a deadline for local governments to amend coastal management elements and future land use maps; amending 163.336, F.S., relating to the coastal resort area redevelopment pilot project; revising the requirements for placement of certain coastal redevelopment materials; authorizing the Department of Environmental Protection to consider certain information during certain permit review; deferring the expiration date of the pilot project; requiring the department and local governments to provide a specified analysis of certain projects and to provide a report to the Legislature by a certain date; amending s. 381.0065, F.S.; requiring the issuance of certain permits by the Department of Health to be contingent upon the receipt of certain permits issued by the Department of Environmental Protection; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 161.085, Florida Statutes, is amended, and subsections (8) and (9) are added to that section, to read:

161.085 Rigid coastal armoring structures.—

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an the agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

1

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- (a) Protection of the beach-dune system.
- (b) Siting and design criteria for the protective structure.
- (c) Impacts on adjacent properties.
- (d) Preservation of public beach access.
- (e) Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

(8) If a political subdivision or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the political subdivision or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

(9) The department, or an agency, political subdivision, or municipality described in subsection (3), may authorize sand-filled tubes or similar structures proposed as the core of a restored dune feature if the applicant meets the requirements of this section and:

(a) Demonstrates that the United States Fish and Wildlife Service has approved a habitat conservation plan that includes the shoreline where each structure will be placed;

(b) Provides reasonable assurance that adequate sand cover will be maintained over the structure such that the structure will not interact with the beach dune system as rigid coastal armoring or adversely affect marine turtle nesting and provides for a responsible entity to conduct such maintenance; and

(c) Provides reasonable assurance that each structure will be removed if the maintenance required by paragraph (b) proves to be not feasible.

Section 2. Paragraphs (d) and (h) of subsection (2) of section 163.3178, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

163.3178 Coastal management.—

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(d) A component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster. The Division of

2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Emergency Management shall manage the update of the regional hurricane evacuation studies, ensure such studies are done in a consistent manner, and ensure that the methodology used for modeling storm surge is that used by the National Hurricane Center.

(h) Designation of coastal high-hazard coastal areas and the criteria for mitigation for a comprehensive plan amendment in a coastal high-hazard area as defined in subsection (9), which for uniformity and planning purposes herein, are defined as category 1 evacuation zones. The coastal high-hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. However, Application of mitigation and the application of development and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

(9)(a) Local governments may elect to comply with rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7), Florida Administrative Code, through the process provided in this section. A proposed comprehensive plan amendment shall be found in compliance with state coastal high-hazard provisions pursuant to rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7), Florida Administrative Code, if:

1. The adopted level of service for out-of-county hurricane evacuation is maintained for a category 5 storm event as measured on the Saffir-Simpson scale;

2. A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or

3. Appropriate mitigation is provided that will satisfy the provisions of subparagraph 1. or subparagraph 2. Appropriate mitigation shall include, without limitation, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation shall not exceed the amount required for a developer to accommodate impacts reasonably attributable to development. A local government and a developer shall enter into a binding agreement to memorialize the mitigation plan.

(b) For those local governments that have not established a level of service for out-of-county hurricane evacuation by July 1, 2008, but elect to comply with rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7), Florida Administrative Code, by following the process in paragraph (a), the level of service shall be no greater than 16 hours for a category 5 storm event as measured on the Saffir-Simpson scale.

(c) This subsection shall become effective immediately and shall apply to all local governments. No later than July 1, 2008, local governments shall amend their future land use map and coastal management element to include the new definition of coastal high-hazard area and to depict the coastal high-hazard area on the future land use map.

Section 3. Subsections (2) and (3) of section 163.336, Florida Statutes, are amended to read:

163.336 Coastal resort area redevelopment pilot project.—

(2) PILOT PROJECT ADMINISTRATION.—

(a) To be eligible to participate in this pilot project, all or a portion of the area must be within:

1. The coastal building zone as defined in s. 161.54; and

2. A community redevelopment area, enterprise zone, brownfield area, empowerment zone, or other such economically deprived areas as designated by the county or municipality with jurisdiction over the area.

(b) Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote redevelopment and revitalization within the pilot project areas.

(c) The Office of the Governor, Department of Environmental Protection, and the Department of Community Affairs are directed to provide technical assistance to expedite permitting for redevelopment projects and construction activities within the pilot project areas consistent with the principles, processes, and timeframes provided in s. 403.973.

(d) The Department of Environmental Protection shall exempt construction activities within the pilot project area in locations seaward of a coastal construction control line and landward of existing armoring from certain siting and design criteria pursuant to s. 161.053. However, such exemption shall not be deemed to exempt property within the pilot project area from applicable local land development regulations, including but not limited to, setback, side lot line, and lot coverage requirements. Such exemption shall apply to construction and redevelopment of structures involving the coverage, excavation, and impervious surface criteria of s. 161.053, and related adopted rules, as follows:

1. This review by the department of applications for permits for coastal construction within the pilot project area must apply to construction and redevelopment of structures subject to the coverage, excavation, and impervious surface criteria of s. 161.053, and related adopted rules. It is the intent of these provisions that the pilot project area be enabled to redevelop in a manner which meets the economic needs of the area while preserving public safety and existing resources, including natural resources.

2. The criteria for review under s. 161.053 are applicable within the pilot project area, except that the structures within the pilot project area shall not be subject to specific shore parallel coverage requirements and are allowed to exceed the 50 percent impervious surface requirement. In no case shall stormwater discharge be allowed onto, or seaward of, the frontal dune. Structures are also not bound by the restrictions on excavation unless the construction will adversely affect the integrity of the existing seawall or rigid coastal armoring structure or stability of the existing beach and dune

COASTAL MANAGEMENT ELEMENT

The state of Florida requires all counties and cities along the coast to address special coastal management concerns that do not apply to non-coastal communities. An important reason is the need to protect these resources and human life and property in locations that are subject to large-scale destruction by tropical storms and hurricanes. This element begins with brief inventories of coastal resources in and around the Town of Fort Myers Beach, followed by in-depth treatment of critical coastal planning issues.

COASTAL PLANNING

Coastal Boundaries

The state provides guidelines for local governments in establishing their “coastal planning area,” specifying: (1) water and submerged lands oceanic water bodies or estuarine water bodies, (2) shorelines adjacent to oceanic waters or estuaries, (3) coastal barriers, (4) living marine resources, (5) marine wetlands, (6) water-dependent facilities or water-related facilities on oceanic or estuarine waters, (7) public access facilities to oceanic beaches or estuarine shorelines, (8) and all lands adjacent to such occurrences where development activities would impact the integrity or quality of the above resources.

Another important coastal boundary is the coastal high-hazard area which is defined by state law as the area below the elevation of the evacuation zone for a category I storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. ~~hurricane as established in the regional hurricane evacuation study.~~

Based on many of these guidelines, the entire municipal boundary of the town is within the coastal planning area. Figure 1 is an aerial view of the southerly end of Estero Island, taken from the south. Figure 2 illustrates the precise boundary of the town’s coastal planning area and coastal high-hazard area (the entire land area of the town plus its 1,000-foot jurisdiction over the waters). Figure 3 depicts the various hurricane vulnerability zones as determined by the Hurricane Evacuation Study, Southwest Florida (SWFRPC, 1995).



Figure 5, Aerial view of Estero Island from the south

Existing Land Use Conditions

The proximity of the Gulf of Mexico and Estero Bay make Fort Myers Beach one of the most desirable places to live and work in southwest Florida. Located within a highly populated county and being located on a bridged barrier island, it is not surprising that the Town of Fort Myers Beach is nearing full build-out of its developable land.

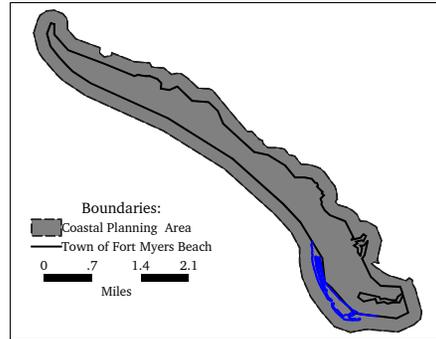


Figure 2, Coastal Planning Area, Coastal Floodplain, and Coastal High-Hazard Area (entire town)

The entire coastal planning area, as shown in Figure 2, is in the floodplain for coastal flooding, and also is in the coastal high-hazard area as defined by the state of Florida (see [Figure 17 of the Future Land Use Map series and Policy 5-A-6](#)).

The Town of Fort Myers Beach is approximately 1466 acres in size. The town stretches about 7 miles in length and averages ½ mile wide. The town is surrounded by water: to the southwest is the Gulf of Mexico; to the north is San Carlos Bay; to the east is Matanzas Pass and Estero Bay; and to the south is Big Carlos Pass. The town has approximately 41 miles of streets with Estero Boulevard running the length of the island serving as the main thoroughfare.

Because of its proximity to coastal waters, the town's land uses are intimately tied to tourism and resort living. Although the existing uses are linked primarily to tourism, there are distinct areas within the town's municipal limits.

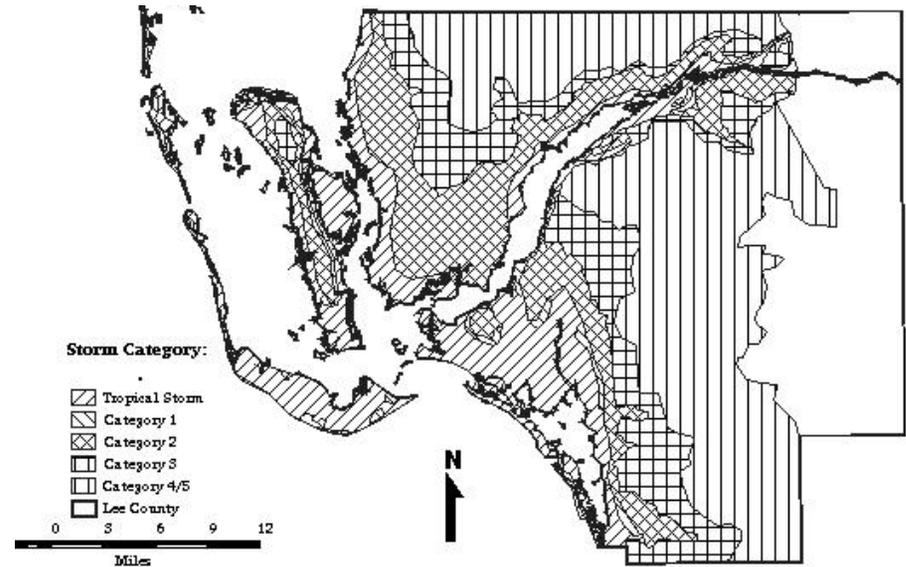


Figure 3, Lee County Hurricane Vulnerability Zones

The North End maintains a residential and resort identity. At the northern tip of the island lies Bowditch Point, a regional park. Close to Bowditch Point are several highrise hotels, resorts, and multi-family developments. Single-family dwellings are interspersed among these uses, especially on the bay side.

The Times Square area is filled with restaurants and stores that cater to tourists and residents alike. The centerpiece is Lynn Hall Memorial Park, a popular destination for beachgoers where they can sunbathe and enjoy the Gulf waters within easy reach of parking, shopping, and food.

Many of Estero Island's original settlers located in what is now referred to as the Near Town district. This district, located on the bay side of Estero Boulevard, has primarily single-family homes with a few multi-family units mixed in. The homes are among the oldest on the island. Many of the homesites have direct water access, with canals having been dredged at the time of original development.

GOALS - OBJECTIVES - POLICIES

Based on the analysis of coastal issues in this element, the following goals, objectives, and policies have been drafted for inclusion in the Fort Myers Beach comprehensive plan.

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

OBJECTIVE 5-A COASTAL PLANNING GENERALLY — Protect and enhance coastal resources through an on-going planning process that recognizes the advantages and limitations of living within a sensitive coastal environment. Enhancement of coastal resources can be measured by increased sea turtle nesting, improvements in estuarine water quality, and restoration of sand dunes. Important limitations on development in this coastal high hazard area include the existing over-concentration of people plus town, state, and federal policies against public expenditures that subsidize further private development.

POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance

commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

POLICY 5-A-2 The maximum density of future residential development is limited to the densities described in the Future Land Use Element in recognition of natural hazards and existing population concentrations. For rebuilding of existing development, refer to the buildback policies under Objective 4-D and 4-E of the Future Land Use Element.

POLICY 5-A-3 When state funding is required for the relocation or replacement of infrastructure currently within the Coastal Building Zone, the capacity of the replacement structure shall be limited to maintaining required service levels, protecting existing residents, and providing for recreation and open space needs.

POLICY 5-A-4 Since the entire Town of Fort Myers Beach is within the coastal planning area and is designated as a coastal high hazard area, specific policies addressing historic buildings, phasing of infrastructure, limitations on development, and environmental resources are contained in other elements of this plan and are not repeated here.

POLICY 5-A-5 Due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach comprehensive plan.

POLICY 5-A-6 The entire town is located within the coastal high-hazard area, as shown on Figure 17 which is part of the adopted Future Land Use Map series (see Policy 4-B-2).