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Green Light for Sector Plans

Among the many landmark changes to Florida's Growth Management Act, the 2011 legislature converted a 13-year-old pilot program for large-area land use plans into a new tool for "long-term planning for conservation, development, and agriculture on a landscape scale"¹ — especially for large landholdings in strategic locations.

Since the pilot program was created by the legislature in 1998,² sector planning has been initiated in a number of communities around the state, and has resulted in final approval of a plan in four of those communities.³ The sector plan concept has also been studied closely and been praised by local governments, planners, environmentalists, landowners, and developers. It also spawned several large-area plans which copied many features of the sector plan statute. Overall, the Department of Community Affairs (DCA) concluded in 2007 that sector plans have enjoyed "significant local success" where completed.⁴

In deciding to change sector planning from a pilot program to a generally available tool in Florida's land planning toolbox, lawmakers restated their original intention that sector plans are to promote planning innovation and serve as a plan-based substitute for the development-of-regional-impact (DRI) program.⁵ Given the fiscal austerity that has limited state funding for conservation land purchases in recent years, lawmakers saw sector plans as a means "to facilitate protection of regionally significant resources, including, but not limited to, regionally significant water

courses and wildlife corridors."⁶ The new law is intended to achieve these purposes and also promote large-area planning through the establishment of planning standards that — unlike the Growth Management Act's general requirements — are specifically tailored to address the unique challenges of planning on a landscape scale.

The pilot program's basic requirements for a sector plan were modified in several important respects. First, the minimum acreage necessary to undertake a sector plan was increased from 5,000 to 15,000 acres, located in one or more local jurisdictions.⁷ Second, a sector plan is now expressly permitted to have a planning period longer than the generally applicable planning period of the local government's comprehensive plan, usually 20 years.⁸ These changes emphasize that a sector plan is a planning tool for creating and implementing a long-term vision for a large land area over an extended period.

Unlike the pilot program, a local government may now commence preparation of a sector plan without advance approval from the state land planning agency.⁹ Further, the "scoping" process to be conducted by the regional planning council before preparation of a sector plan is optional, rather than mandatory.¹⁰ The pilot program's list of specific issues to be addressed in scoping was eliminated.¹¹ Instead, the agenda for scoping is now defined as "the issues requested by the local government."¹² This is intended to give local government broad latitude to negotiate an agreement with the regional plan-

ning council based on local needs and conditions.¹³ Scoping meetings must continue to be noticed and open to the public.¹⁴

Under the new law, a sector plan will still include two levels of planning — a general first layer of planning to set the long-term vision for the entire planning area, and two or more detailed plans to authorize actual development of smaller components.¹⁵ Important changes were made to each of these planning layers, based on experience during the pilot program.

The first layer is a long-term master plan. Unlike the long-term conceptual build-out overlay used as a first planning layer under the pilot program, the long-term master plan will change the comprehensive plan's land use designations within the entire planning area.¹⁶ The applicant is not required to demonstrate "need" for changing land use designations based on population or any other criteria; however, the master plan must "specify the projected population within the planning area during the chosen planning period."¹⁷ Further, the master plan "may include a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period."¹⁸ Finally, owners of land within the planning area have an unconditional right to exclude their property from a master plan prior to its adoption by the local government.¹⁹

The planning standards for a long-term master plan were expanded so the sector plan will provide more specific direction about the ultimate conservation, development, and ag-

ricultural goals for the planning area. Emphasis on sound urban form was strengthened by requiring the master plan to set forth “the general framework for the development pattern in developed areas with graphic illustrations based on a hierarchy of places and functional place-making components.”²⁰

The long-term master plan will continue to be subject to a full compliance review coordinated by the state land planning agency,²¹ although this review will be conducted under new statutory requirements. As under prior law, the state land planning agency may issue a report on its objections, recommendations, and comments (ORC report) to the long-term master plan, but the new law requires such a report to address only whether the plan amendment is “in compliance” with statutory requirements and whether it “will adversely impact important state resources and facilities.”²²

Under the new law, the state land planning agency still may initiate a formal compliance proceeding on a long-term master plan. As in the past, such a proceeding will be heard by an administrative law judge²³ and is subject to the preponderance-of-evidence standard.²⁴ Third parties continue to have a right to seek a formal administrative hearing on whether a long-term master plan is “in compliance” with statutory requirements;²⁵ however, under the new law, a compliance proceeding initiated by a third party will be subject to the fairly debatable standard.²⁶

The second planning layer is detailed specific area plans (DSAP).²⁷ During the pilot program, a DSAP was required to be adopted as an amendment to the local government’s comprehensive plan; however, under the new law, a DSAP is a development order and is not subject to any state compliance review.²⁸ The statute continues to require, generally, that the DSAP encompass at least 1,000 acres and expressly requires it to be “consistent with the long-term master plan.”²⁹ As with the master plan, the DSAP is not required to demonstrate “need” based on population or any other basis. It also may have a longer

planning period than the generally applicable planning period of the local government’s comprehensive plan.³⁰

The new law eliminates the mandate that a DSAP be based on “a functional relationship between a full range of land uses,”³¹ a change that is intended to facilitate the use of sector plans for specialized uses for economic development purposes similar to the new Panama City-Bay County International Airport located within the West Bay Area Sector Plan in Bay County.

The legislation imposes new, important requirements for resource protection and land preservation. The master plan must identify regionally significant natural resources based on best available data and provide “procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area.”³² It also must address “protection and, as appropriate, restoration and management of lands identified for permanent preservation.”³³ The new law requires the state land planning agency to consult with the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, Department of Agriculture and Consumer Services, and water management districts in evaluating the design of conservation set-aside areas.³⁴

Additionally, land identified for permanent preservation must be subject to a conservation easement consistent with F.S. §704.06, the granting of which must “be phased or staged in coordination with detailed specific area plans to reflect phased or staged development within the planning area.”³⁵ For lands within a DSAP that are to be permanently preserved, the conservation easement must be “effective before or concurrent with the effective date of the detailed specific area plan.”³⁶ All lands identified in the master plan for permanent preservation must be subject to a recorded conservation easement no later than the effective date of the final DSAP within the planning area.³⁷

Perhaps the new law’s most important change is increased coordination of transportation and water supply

planning in relation to land use. Both a master plan and a DSAP will be subject to stronger planning standards for transportation and water supply.³⁸ In addition, the legislature created new linkages between land use, transportation, and water supply planning. A metropolitan planning organization’s long-range transportation plan “must be consistent, to the maximum extent feasible, with the long-term master plan, including, but not limited to, the projected population and the approved uses and densities . . . of use and their distribution within the planning area.”³⁹ A water management district must incorporate into its regional water supply plan the “water needs, sources and water resource development, and water supply development projects identified in” both the long-term master plan and a DSAP.⁴⁰

As under the pilot program, all development within an approved DSAP is exempt from DRI review.⁴¹ However, as a DRI surrogate, the DSAP has the same protection from arbitrary down-planning or down-zoning as a DRI.⁴² Also like the DRI program, the new law authorizes the state land planning agency to bring an administrative appeal on grounds that an adopted DSAP “is not consistent with the comprehensive plan or with the long-term master plan.”⁴³ Such an appeal must be commenced within 45 days of rendition of the DSAP to the state land planning agency and must be conducted pursuant to the process and procedures in F.S. §380.07(6).⁴⁴

The new law also allows a local government to enter into a development agreement pursuant to the Florida Local Government Development Agreement Act,⁴⁵ addressing the entire planning area of the master plan or the area addressed in a discreet DSAP.⁴⁶ By entering into a concurrent development agreement, a landowner or developer may ensure that local “laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement,”⁴⁷ subject to certain limitations.⁴⁸

Finally, lawmakers concluded that

the new sector plan process may be applied to large-area plans adopted by a local government prior to July 1, 2011, as long as such plans “meet [] the requirements for a long-term master plan,” and the state land planning agency enters into a planning agreement with the local government, conferring that status on the previously approved plan.⁴⁹ If so, then thereafter, “the large-area plan is implemented through detailed specific area plans that meet the requirements of [the new law] and shall otherwise be subject to this section.”⁵⁰

In summary, the improvements to the 1998 sector plan law enacted by the legislature this year provide a flexible but principled planning tool to be used for vision-based long-term planning of conservation, development, and agriculture on a landscape scale. By freeing local governments and landowners from the normal conventions of a 20-year planning period and a demonstration of “need” when preparing a land plan, the legislature has signaled its desire for creative,

vision-based, long-term plans that have the potential to shape this state far into the future. □

¹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(1) (2011)).

² Ch. 98-176, §15, 1998 Fla. Laws (codified at FLA. STAT. §163.3245 (1999)).

³ Sector plans with adopted long-term buildout overlays as of 2009 included the 38,000-acre Horizons West in Orange County, the 72,000-acre West Bay Area Sector Plan in Bay County, and the 18,000-acre Clear Springs Sector Plan in the City of Bartow. See Dept. of Community Affairs (DCA), 2009 OPTIONAL SECTOR PLAN REPORT (2009). Since then, Escambia County adopted and won state approval for the 16,000-acre Midwest Optional Sector Plan.

⁴ Dept. of Community Affairs, OPTIONAL SECTOR PLAN 2005, 2006, AND 2007 REPORTS, 11 (2007) [hereinafter 2007 DCA REPORT].

⁵ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(1) (2011)).

⁶ *Id.*

⁷ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(1) (2011)).

⁸ Act effective June 2, 2011, Ch. 2011-

139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) (2011)).

⁹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(1) (2011)). This change was recommended by DCA. 2007 DCA REPORT at 12. In 2011, the legislature created the new Department of Economic Opportunity (DEO), transferred DCA’s land planning functions to DEO, and designated DEO as the state land planning agency. Act effective June 2, 2011, Ch. 2011-139, §6, 2011 Fla. Laws (amending FLA. STAT. §163.3164(20) (2011)).

¹⁰ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(2) (2011)).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* Compensation for scoping services by a regional planning council was not required under the 1998 law and is not required under the new law. One rationale for scoping to be optional under the new law is that it will enable a regional planning council to negotiate compensation for scoping services, if requested.

¹⁴ *Id.*

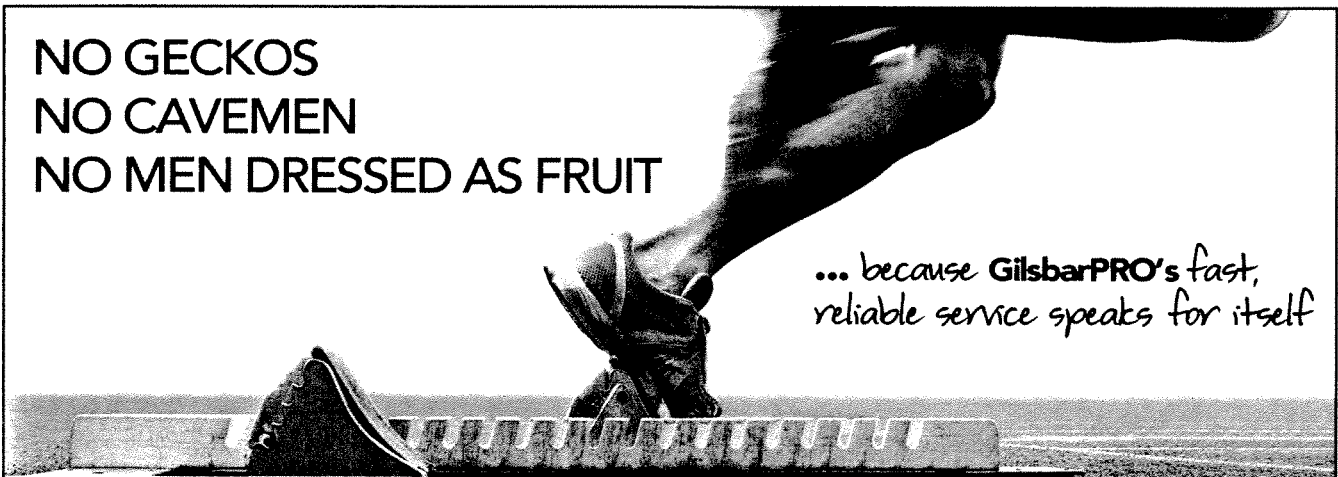
¹⁵ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) (2011)).

¹⁶ *See id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Act effective June 2, 2011, Ch. 2011-



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139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(8) (2011)). After adoption of the master plan, "an owner may withdraw his or her property from the master plan only" by a comprehensive plan amendment adopted by the local government. *Id.* Therefore, obtaining the informed consent of all owners within a planning area will be an important task early in the planning process.

²⁰ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(a)1 (2011)).

²¹ Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA.

STAT. §§163.3184(2)(c) and (4)(a) (2011)).

²² Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA. STAT. §163.3184(4)(d)1 (2011)).

²³ Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA. STAT. §163.3184(5)(b) (2011)).

²⁴ Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA. STAT. §163.3184(5)(c)2.a (2011)).

²⁵ Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA. STAT. §163.3184(4)(d)1 (2011)).

²⁶ Act effective June 2, 2011, Ch. 2011-139, §17, 2011 Fla. Laws (amending FLA. STAT. §163.3184(5)(c)1 (2011)). The new law does not prescribe the standard to be applied if both the state land planning agency and a third party initiate compliance proceedings, and the two proceedings are consolidated.

²⁷ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) (2011)).

²⁸ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) (2011)). DCA recommended in 2007 that a DSAP be subject to "an expedited review process...thereby eliminating the current disincentive created by the existing requirement to go through the full comprehensive plan amendment process[.]" 2007 DCA REPORT at 12.

²⁹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(b)1 (2011)). A local government has discretion to approve a DSAP of less than 1,000 acres. *Id.*

³⁰ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) (2011)).

³¹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(b)1 (2011)).

³² Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(a)5 (2011)).

³³ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(a)6 (2011)).

³⁴ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(c) (2011)).

³⁵ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(a)6 (2011)).

³⁶ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(b)7 (2011)).

³⁷ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(b) (2011)).

³⁸ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §§163.3245(3)(a)2-3 and 163.3245(3)(b)3-4 (2011)).

³⁹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(4)(a) (2011)).

⁴⁰ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(4)(b) (2011)). Water management districts are authorized to issue consumptive use permits "for dura-

tions commensurate with the long-term master plan or detailed specific area plan," provided that all other permitting criteria are satisfied. *Id.*

⁴¹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3) & (5) (2011)).

⁴² Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(5)(d) (2011)). An approved DSAP will be protected from down-planning or down-zoning "unless the local government can demonstrate that implementation of the plan is not continuing in good faith based on standards established by plan policy, that substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred, that the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or that the change is clearly established to be essential to the public health, safety, or welfare." *Id.*

⁴³ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(3)(e) (2011)).

⁴⁴ *Id.* The state land planning agency's requirements for "rendition" of a DRI development order may be found at Fla. Admin. Code R. 9J-2.025(5).

⁴⁵ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(7) (2011)); FLA. STAT. §§163.3220-163.3243 (2010).

⁴⁶ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(7) (2011)).

⁴⁷ FLA. STAT. §163.3233(1) (2010).

⁴⁸ FLA. STAT. §163.3233(2) (2010). A landowner also may achieve protection from arbitrary down-planning or down-zoning for the entire planning area through approval of a master incremental DRI pursuant to FLA. STAT. §380.06(21). Review of such an application "shall be at a level of detail appropriate for the long-term and conceptual nature of the long-term master plan[.]" Fla. H.B. 7207 (amending FLA. STAT. §163.3245(6) (2010)).

⁴⁹ Act effective June 2, 2011, Ch. 2011-139, §28, 2011 Fla. Laws (amending FLA. STAT. §163.3245(10) (2011)).

⁵⁰ *Id.*

David L. Powell is a shareholder in the Tallahassee law firm of Hopping Green & Sams and is a graduate of the Florida State University College of Law. He represents landowners and others in matters relating to land use planning, growth management, and facility siting and assisted clients on a number of large-area plans. He is an adjunct professor of law at Florida State University.

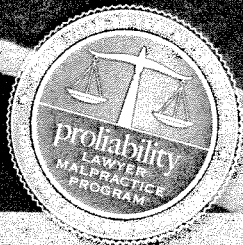
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