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# CRITICAL AREA PROGRAMS IN FLORIDA: CREATIVE BALANCING OF GROWTH AND THE ENVIRONMENT

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## I. INTRODUCTION

### A. *Florida as a High Growth State*

The historical roots of Florida's current growth management system trace back to the efforts of a poor, sparsely populated pioneer state that strained to promote population and economic growth. In 1850, Florida's population was 87,445. By 1900 it had expanded to 528,542 and the 1950 census counted 2.7 million Floridians. From 1950 to the present, Florida has been in the midst of explosive economic and population expansion. The population counts by decade showed 4.9 million in 1960; 6.7 million in 1970; 9.7 million in 1980; and over 12.0 million in 1988. Strong population increases, fueled by immigration from the Northeast, Midwest and other parts of the South, are likely to continue. Current estimates project an annual increase of over 300,000, or about 3,000,000 each decade. Florida is now the fourth largest state in the nation, exceeded in population only by Texas, New York, and California. Some project the state to be third in population at the turn of the century, with 15 to 16 million people. Between 2020 and 2030, one projection shows Florida with 22 million people, or double the state's

1986 population.<sup>1</sup>

### B. *Responding to Unplanned Growth*

Even a state with the most sophisticated and adequately funded growth management system would find it difficult to manage such massive growth. This population expansion pressures the state to protect natural resources, to provide adequate infrastructure to support the impacts of growth, and generally to maintain a high quality of life. Florida lacked such a system, and the negative consequences of unplanned growth were clear by the 1960s.<sup>2</sup>

The state became increasingly concerned with environmental degradation. The prevailing consequences featured the widespread destruction of wetlands, the pollution of lakes, rivers, estuaries and groundwater drinking sources, and the destruction of dune systems through unregulated development along the shore. These and many other consequences of unplanned expansion caused the state to reexamine its love affair with growth. Consequently, in 1972 Florida enacted a far-reaching set of laws to replace unplanned growth with a new approach.

Florida's first package of growth management legislation, passed in 1972, provided for new initiatives in four areas: (a) the development of a comprehensive state plan to guide actions at all other levels of government;<sup>3</sup> (b) an improved system to manage the state's water resources through five water management districts covering the entire state;<sup>4</sup> (c) a new program to acquire environmentally endangered lands that were inadequately protected through the regulatory process;<sup>5</sup> and

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1. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, PUB. NO. C80-1-A11, 1980 CENSUS OF POPULATION: NUMBER OF INHABITANTS, FLORIDA (1980); UNIVERSITY OF FLORIDA, BUREAU OF ECONOMIC AND BUSINESS RESEARCH, FLORIDA ESTIMATES OF POPULATION tables 1, 6 (Feb. 1987); *Id.*, FLORIDA COUNTY COMPARISONS/1987 table 17.

2. For a more detailed assessment of the negative consequences of unplanned growth, see B. NELSON, *LAND INTO WATER, WATER INTO LAND* (1980); L. CARTER, *THE FLORIDA EXPERIENCE: LAND AND WATER POLICY IN A GROWTH STATE* (1974); and J. DEGROVE, *LAND, GROWTH AND POLITICS* 99-109 (1984) [hereinafter J. DEGROVE].

3. The State Comprehensive Planning Act, 1972 Fla. Laws 1072 (current version at FLA. STAT. §§ 186.001-.031, 186.801-.911 (1985)).

4. The State Water Resources Act, 1972 Fla. Laws 1082 (current version at FLA. STAT. ch. 373 (1985 and Supp. 1986)).

5. The Land Conservation Act, 1972 Fla. Laws 1126 (current version at FLA. STAT. ch. 259 (1985)).

(d) a new law aimed at addressing state and regional concerns in local development decisions of greater than local impact.<sup>6</sup>

During the decade following the adoption of these laws, the state was unable to implement them effectively. Notwithstanding the enactment of the Local Government Comprehensive Planning Act in 1975, mandating that all 467 local governments in Florida prepare a comprehensive plan to complement the state and regional components of the system adopted in 1972,<sup>7</sup> the growth management system proved inadequate. Weaknesses included the failure to develop a state comprehensive plan to frame the actions of regional and local governments and to implement Chapter 380,<sup>8</sup> and the failure to fund adequately any part of the system, state, regional or local, to allow effective implementation of the laws.<sup>9</sup>

In 1979 Florida began to appraise the weaknesses of its growth management system.<sup>10</sup> In response to its findings, the Florida legislature made far-reaching adjustments to the system and produced an integrated policy framework featuring a comprehensive state plan.<sup>11</sup> With this framework in place, between 1984 and 1986 the legislature approved extensive strengthening of the Local Government Comprehensive Planning Act, the regional planning component of the system, and Chapter 380.<sup>12</sup> The new growth management system authorized an

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6. The Environmental Land and Water Management Act, 1972 Fla. Laws 1162 (current version at FLA. STAT. §§ 380.012-.10 (1985 and Supp. 1986)) [hereinafter Chapter 380].

7. 1975 Fla. Laws 794 (current version at FLA. STAT. §§ 163.3161-.3215 (1985 and Supp. 1986)).

8. See *supra* note 6.

9. For a more detailed account of this initial implementation period, see J. DEGROVE, *supra* note 2, at 121-30.

10. In 1979, Governor Bob Graham created the Resource Management Task Force, composed of citizen members from throughout the state, to identify and examine problems of the state's resource management laws and policies. Its recommendations are contained in its FINAL REPORT TO GOVERNOR BOB GRAHAM 1 (Jan. 1980) [hereinafter FINAL REPORT TO BOB GRAHAM]. Governor Graham then appointed the Environmental Land Management Study (ELMS) Committee in 1982 and charged it with both reviewing Chapter 380 and all other related growth management programs and preparing guidelines for future growth and development in Florida. Its recommendations for a statewide planning framework, for revisions to the Development of Regional Impact Process, and for strengthening Florida's coastal management program are presented in the Committee's FINAL REPORT (Feb. 1984).

11. 1985 Fla. Laws 295 (codified at FLA. STAT. ch. 187 (1985)).

12. The State and Regional Planning Act, 1984 Fla. Laws 1166 (codified at FLA. STAT. ch. 186 (1985 and Supp. 1986)) mandated that a state comprehensive plan, state

integrated policy framework that required consistency among a set of state, regional and local plans, and the implementation of local regulations that were consistent with the local plans.

The goals and policies of the state plan provided the essential reference point for the growth management system. The state plan required state agency functional plans and comprehensive regional policy plans to be consistent with the state plan. The Governor's Office of Planning and Budgeting determined whether the state agency and regional policy plans were consistent with the state plan.<sup>13</sup> Cities and counties were required to reshape local plans and land development regulations to be consistent with the regional and state plan policies. The State Land Planning Agency, through a minimum criteria rule that the legislature approved, determines consistency of local plans and regulations.<sup>14</sup> This "top to bottom—bottom to top" growth management system is currently being implemented.<sup>15</sup>

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agency plans, and regional comprehensive policy plans be adopted within an integrated policy framework delineated by the adopted state plan.

The Growth Management Act, 1985 Fla. Laws 207, strengthened the efforts initiated by the State and Regional Planning Act by requiring local governments to adopt or amend their comprehensive plans and submit them to the governing regional planning councils and state agencies for review and approval. FLA. STAT. §§ 163.3161-.3211 (1985). The Growth Management Act also provided for the adoption of statewide guidelines and standards in the Development of Regional Impact review process of Chapter 380. FLA. STAT. § 380.06 (1985).

The Glitch Bill, adopted during the 1986 legislative session, amended FLA. STAT. §§ 163.3167, .3177, .3178, .3184, .3187, .3191, .3202 of the Local Government Comprehensive Planning Act; FLA. STAT. §§ 186.508 and .511 of the Regional Planning Act; and FLA. STAT. §§ 380.06, .07, .0651, and .061 of Chapter 380.

For a complete assessment of the provisions of the Glitch Bill, see deHaven-Smith and Paterson, *The 1986 Glitch Bill: Missing Links in Growth Management*, 14 FLA. ENVTL. AND URB. ISSUES 4 (1986).

13. FLA. STAT. § 186.022(2) (1985) requires state agency functional plans to be consistent with the adopted state plan. FLA. STAT. § 186.508(1) (1985 and Supp. 1986) requires each Regional Planning Council to prepare comprehensive regional policy plans consistent with the state plan.

14. FLA. STAT. § 163.3177(10)(a) and (b) (Supp. 1986); FLA. ADMIN. CODE ch. 9J-5 (1986). The legislature defined "consistency" as "compatible with and furthering the goals of" the state plan.

15. See Pelham, Hyde, and Banks, *Managing Florida's Growth: Toward an Integrated State, Regional, and Local Comprehensive Planning Process*, 13 FLA. ST. U.L. REV. 515 (1985) (analyzing the history of Florida's implementation of a statewide comprehensive planning process); see also DeGrove, *The Historical Development of Growth Management in Florida*, 13 FLA. ENVTL. AND URB. ISSUES 1 (1985); DeGrove, *Florida's Growth Management System: A Blueprint for the Future*, 14 FLA. ENVTL. AND URB. ISSUES 1 (1986); and DeGrove, *Balanced Growth in Florida: A Challenge for Local, Regional and State Governments*, 10 NEW JERSEY BELL J. 38, No. 3 (1987).

The focus of this analysis of Florida's growth management system is on the use of the Area of Critical State Concern component (section .05) of Chapter 380.<sup>16</sup> The Critical Area program serves as an interim method for applying an integrated growth management system to the state's important geographic areas. The analysis closely examines the use of Resource Planning and Management Committees (hereinafter "RPMC's") as key intergovernmental coordination and conflict resolution devices in the evolution of the critical area section of Chapter 380. The analysis begins with a brief assessment of the critical area technique as it has evolved in the United States.

## II. THE GENESIS OF THE CRITICAL AREA PROGRAMS

### A. *What are "Critical Areas?"*

The terms "areas of critical state concern," "areas of state interest" and "areas of critical environmental concern" denote a state's defined geographical areas that possess unique characteristics making them of statewide concern.<sup>17</sup> A state may designate an area "critical" for a variety of reasons.<sup>18</sup> Types of critical areas include fragile or historic areas, renewable resource lands, natural hazard lands, or areas subject to imminent development where critical resources may be threatened in the absence of special development controls.<sup>19</sup>

The critical area technique protects state and regional interests by subjecting land use and development in designated areas to special planning and regulatory requirements. Generally, a state or regional agency imposes and enforces the regulations.<sup>20</sup> Local governments generally play a strong and continuing role implementing the critical area controls. The critical area control systems generally limit the scope of state interference in local land use control.<sup>21</sup>

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16. FLA. STAT. §§ 380.05-.0555 (1985 and Supp. 1986).

17. T. PELHAM, *STATE LAND USE PLANNING AND REGULATION* 75 (1979).

18. A critical area, for example, may contain scarce or fragile historical, archeological, or environmental resources. A critical area may have major development potential or be near a major public facility. Or, a state may deem critical any area containing significant multi-jurisdictional resource management problems which a single functional agency or political jurisdiction cannot resolve.

19. INSTITUTE OF RATIONAL DESIGN, *CRITICAL AREA PROGRAMS* 15-17 (1977) [hereinafter INSTITUTE].

20. Pelham, *Regulating Areas of Critical State Concern: Florida and the Model Code*, 18 URB. LAW ANN. 3, 4 (1980) [hereinafter Pelham].

21. *Id.*

The following characteristics identify four of the key critical area concepts:

- (1) *Versatile and State Oriented*: The concept is versatile and can readily adapt to the needs and conditions of each state, as well as to the types of areas and resources requiring protection.
- (2) *Limited Scope*: The concept involves a clearly defined state interest in a very specific area and avoids extensive state usurpation of local authority. The state can undertake the critical area control program with minimal staff and funds. State comprehensive planning is not a prerequisite.
- (3) *Comprehensive*: Although it limits state involvement, the critical area approach offers a technique for state comprehensive planning and management of the critical area itself.
- (4) *Result Oriented*: The purpose of a critical area program is to design and implement a management program for the resources in question. The program's ultimate goal is to protect the resources that make the area "critical" to the state.<sup>22</sup>

### B. *State Critical Area Programs*

State critical area programs vary widely regarding the type of areas they protect, the specific resource problems they resolve, the criteria they use to designate areas, and their institutional and legal framework. This wide variety in state programs demonstrates that the critical areas approach can resolve a myriad of resource issues in diverse settings.

State critical area programs can be divided into two general categories. The first involves comprehensive statutory regulation of a specific geographic region on an individual or "ad hoc" basis.<sup>23</sup> Several states, including New York,<sup>24</sup> New Jersey,<sup>25</sup> California, Massachusetts,<sup>26</sup> and North Carolina<sup>27</sup> have experimented with the ad hoc legislative designation of specific geographic areas. Under this approach, the leg-

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22. Adapted from INSTITUTE, *supra* note 19, at 5.

23. Pelham, *supra* note 20, at 5.

24. An example of a specific area legislatively designated as "critical" is New York's six million acre Adirondack Park. To protect the Adirondacks, the New York Legislature adopted strong state administered controls over the 3.7 million acres of private lands in the Park. *Id.* at 6.

25. New Jersey implemented this approach to protect the New Jersey Pinelands. *Id.* at 7.

26. California and Nevada's Lake Tahoe region, as well as the San Francisco Bay Area receive special protection. *Id.*

27. Massachusetts has adopted protective legislation for Martha's Vineyard. *Id.*

islature establishes a special regulatory system for a particular region, applicable only to that area. Most coastal states, including California and North Carolina, have designated parts of their coastal zones as critical areas pursuant to the National Coastal Zone Management Act. The Coastal Zone Act requires states to designate areas of particular concern within the coastal zone as a prerequisite for federal coastal planning assistance. Washington has designated not only its entire coastline, but also 93 rivers and 62 lakes as "shorelines of statewide significance."<sup>28</sup>

The second general category of state critical area programs entails the creation of a comprehensive administrative system of statewide applicability.<sup>29</sup> This approach usually involves some modification of the critical area model contained in the American Law Institute's Model Land Development Code.<sup>30</sup> Essentially, the Model Code approach provides for critical area designations by a state administrative board pursuant to a state planning agency's recommendation. In addition to designating critical areas, the state board has the authority to establish principles for guiding development within the area and to review local land development regulations and decisions for consistency with the guidelines.<sup>31</sup>

The states which have adopted modified versions of the Model Code's critical Area Technique include Colorado, Florida, Minnesota, Nevada, North Carolina (in coastal areas) Oregon and Wyoming.<sup>32</sup> Some states significantly modify the Model Code by placing the authority for making critical area designations in an agency other than the state planning agency. This agency may be the state legislature (Oregon), the local government (Colorado), the governor (Nevada), or the governor and cabinet (Florida's Administration Commission).<sup>33</sup> Minnesota and Oregon have provided a closer linkage between the critical area process and state and local planning than that which the Model Code affords.<sup>34</sup> Minnesota has extended the critical area review

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28. R. HEALY AND J. ROSENBERG, *LAND USE AND THE STATES* 179 (1979).

29. Pelham, *supra* note 20, at 9.

30. AMERICAN LAW INSTITUTE, *MODEL LAND DEVELOPMENT CODE (OFFICIAL DRAFT)* [hereinafter *MODEL CODE*], Article 7 (1975).

31. *Id.* at § 7-201.

32. T. PELHAM, *supra* note 17, at 88.

33. D. MANDELKER, *ENVIRONMENTAL AND LAND USE CONTROLS LEGISLATION* 85 (1976).

34. *Id.* at 86.

process to include the review of local plans as well as local controls. In Oregon, the critical area recommendation process is part of the mandatory state planning functions.<sup>35</sup>

Only Colorado and Florida have had significant experience with the comprehensive critical areas approach.<sup>36</sup> Of all the state critical area programs, Florida's program most closely resembles the Model Code's critical area provision.<sup>37</sup>

### III. THE FLORIDA EXPERIENCE WITH THE CRITICAL AREA APPROACH TO MANAGING GROWTH

#### A. Introduction

Section 5 of Chapter 380 provides the statutory basis for the area of critical state concern component of Florida's growth management system. The language authorizing the critical area technique for managing growth parallels the Model Code.<sup>38</sup> The law authorizes the state to designate an area of critical state concern for a number of reasons. Florida may designate as critical an area containing or having a significant impact upon natural, historical or archaeological resources of regional or statewide importance.<sup>39</sup> Additionally, the state may deem critical any area having a significant impact upon, or being significantly affected by an existing or proposed major public facility or other area of major public investment.<sup>40</sup> With this statutory framework, Florida utilized the critical area tool as one of two major public policy approaches of the 1972 Land Management Act. The other major approach involved developments of regional impact.<sup>41</sup>

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35. *Id.*

36. T. PELHAM, *supra* note 17, at 88.

37. *Id.*

38. MODEL CODE, *supra* note 30, Part 2.

39. FLA. STAT. §§ 380.05(2)(a), (b), and (c) (1985).

40. *Id.*

41. FLA. STAT. § 380.06 (Supp. 1986). The statutory definition of "development of regional impact" is 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. *Id.* at 380.06(1). Under the development-of-regional-impact approach, the state land planning agency recommends to the Administration Commission specific statewide guidelines and standards for adoption. *Id.* at 380.06(2)(a). Subsequently, the Administration Commission adopts by rule statewide guidelines and standards to be used in determining whether particular developments shall undergo development-of-regional-impact review. *Id.*

### B. *Filling the Growth Management Gap*

As noted above, the growth management legislation Florida enacted in 1972, primarily reflected in Chapter 380, has shortcomings which have prevented it from being fully utilized as a growth management system. As a growth management tool, the critical area approach is important primarily because it enables the state, for certain areas, to define state goals and policies. Additionally, the state can mandate that local comprehensive plans and land development regulations reflect these policies. The critical area approach also requires that regional and state plans reflect the policies of a particular critical area management plan. Thus, the goal of an integrated policy framework has been achieved through the use of the critical area section of Chapter 380 as a balanced growth management tool.

The outstanding characteristic of the critical area approach involves its development as a conflict resolution tool. The critical area approach enhances cooperation between public agencies at all levels of government and the key actors in the private sector. Thus, state and regional agencies and local governments must interact with local and regional development, environmental, and other private sector interests. Furthermore, the approach encourages public and private agencies to solve problems of regional and statewide significance in a logical fashion. Prior to reaching a solution, the agencies must objectively evaluate the facts that define the problems. Thus, as noted in more detail below, a typical RPMC spends the first four to six months of its life collecting and evaluating data that bear on the problems that initially qualified the area as a critical area.<sup>42</sup>

### C. *Applying the Approach*

Since the passage of Chapter 380 there have been twelve applications of the critical area approach.<sup>43</sup> Eleven of those relied directly on Chapter 380.05, and one arose from the more general authority of the State Land Planning Agency under Chapter 380 to make agreements with local governments.<sup>44</sup> There have been two main phases in these

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42. See Marlow, *New Directions in Florida's Critical Area Program: The Expanded Role of Resource Planning and Management Committees*, 12 FLA. ENVTL. AND URB. ISSUES 12 (1984).

43. For a description of Florida's evolving use of the critical area approach until 1984, see J. DEGROVE, *supra* note 2, at 130-53. More recent application of the approach will be discussed below.

44. FLA. STAT. § 380.032(3) (1985).

applications of the critical area technique. The first phase involved three instances of formally designating an area as one of critical state concern in the early use of the law (1973-1975) and a more recent unique use of the critical area approach that the legislature took in 1984.

In the second phase, RPMCs were used to adopt management plans that might or might not lead to a formal designation as an area of critical state concern. This approach preceded a Florida State Supreme Court decision invalidating the original critical area component of Chapter 380.<sup>45</sup> In the readoption of Chapter 380.05, the 1979 session of the Florida legislature gave additional impetus to the approach.<sup>46</sup> During Phase Two, ten resource management plans were established between 1978 and 1985. The use of the critical area approach under Chapter 380's general authority for developing growth management agreements is a variation in Phase Two. However, the critical area technique is crucial even to this approach. Under the agreements executed by the State Land Planning Agency (Department of Community Affairs, hereinafter DCA), if local governments fail to implement the substantive and procedural policies and criteria involved in the agreement, the State Land Planning Agency will recommend that the State Administration Commission designate the area as one of critical state concern.

#### IV. PHASE ONE: FORMAL DESIGNATIONS OF AREAS OF CRITICAL STATE CONCERN

When Florida adopted Chapter 380 in 1972,<sup>47</sup> with the critical area section of the law as one of its two major growth management components, there were widely different expectations as to how the critical area section would be used. One view was that the state would use the approach frequently for all areas to assure effective growth manage-

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45. *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. Dist. Ct. App. 1977); *Askew v. Cross Key Waterways*, (Florida Supreme Court, No. 52,251 and 52,252, November 22, 1978); see also Stroud, *Areas of Critical State Concern: Legislative Options Following the Cross Key Decision*, 6 FLA. ENVTL. AND URB. ISSUES 4 (1979).

46. 1979 Fla. Laws 390 (current version at FLA. STAT. §§ 380.045(1)(2), 380.05(1)-(21), and 380.0552 (1985 and Supp. 1986)). See J. DEGROVE, *supra* note 2, at 127-28 for a review of the 1979 legislative amendments to Chapter 380.

47. The use of the Critical Area section of Chapter 380 prior to the reenactment of Chapter 380.05 by the 1979 Legislature did not involve the utilization of RPMCs, and thus are not central to the thesis of this paper. The pre-1978 use of Section 305.05 will, however, be summarized briefly as a backdrop to the focus on RPMCs.

ment wherever serious regional and state issues were involved. The second view was that the critical area designations would apply selectively to larger geographic regions where the "critical" nature of the area rendered it one of major environmental, historic or public importance. As such, the parties involved would more readily accept the critical area designation.

For several reasons, including inadequate budgetary support and staffing for the State Land Planning Agency, the state used the second, more selective critical area designation for the first decade after Florida adopted the law. Another reason for selective use of the critical area technique was the initial applications of the approach, which occurred between 1973 and 1975 in the environmentally sensitive Big Cypress, Green Swamp, and Florida Keys areas, produced extreme controversy in the local governments and special interests connected with each of these critical area initiatives.<sup>48</sup>

In each of the first three critical area designations, the governor and the cabinet<sup>49</sup> encountered well-organized and intensely emotional opposition from local interests. The opponents protested the "invasion of private property rights" and the "overriding of home rule interests." An additional factor that delayed use of the critical area section of Chapter 380 was an early challenge to its validity with respect to the Florida Keys area of critical state concern. Between 1976 and 1977 lower courts found the law to be unconstitutional, and in late 1978 the state supreme court ultimately declared the Critical Area Section unconstitutional as an unauthorized delegation of legislative authority to the executive branch.<sup>50</sup> The uncertainty surrounding that legal challenge led to limited use of the approach in the 1976-1978 period.<sup>51</sup>

### A. *The Big Cypress*

Although Chapter 380.05 authorized the designation of a critical area through an administrative process, it was the legislature that declared the Big Cypress area critical, followed by appropriate actions by

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48. J. DEGROVE, *supra* note 2, at 130-31.

49. These elected state officials sit as the administration commission and are responsible for the ultimate designation of an area as one of critical state concern. FLA. STAT. § 380.05(1)(b) (1985).

50. See *supra* note 45. A complete discussion of the effects of the *Cross Key* decision may be found in Finnell, Jr., *Coastal Land Management in Florida*, AM. BAR FOUND. RES. J. 307, 349-57 (1980).

51. See J. DEGROVE, *supra* note 2, at 126-27.

the State Land Planning Agency.<sup>52</sup> Thus, the Big Cypress designation was never subject to the Florida Supreme Court ruling that held Chapter 380.05 unconstitutional. In the Big Cypress case, the legislature's direct act cured the unconstitutional delegation of legislative authority.

The Big Cypress watershed area involves more than 1.5 million acres of land and water located in southwest Florida (see Map 1). Critical natural features within or adjacent to this area include the Everglades National Park. The critical area boundary ultimately adopted by the Administration Commission in its formal designation involved over 800,000 acres.<sup>53</sup>

The major purpose of the Big Cypress critical area designation was to protect the precious water resources of southwest Florida, particularly as those resources affected the Everglades National Park.<sup>54</sup> The state of Florida showed its commitment to this designation by appropriating \$40 million toward the cost of acquiring the land in the Federal National Freshwater Reserve.<sup>55</sup>

### B. *The Green Swamp*

The effort to designate the Green Swamp area as one of critical state concern faced the same opposition from local governments, developers and others that occurred in the Big Cypress. Supportive environmental groups were less organized than they were in the Big Cypress designation. Thus, the State Land Planning Agency's effort to persuade the governor and the independently elected cabinet was a key test of the political feasibility of the critical area program in Florida. The governor noted the importance of the designation in demonstrating the political feasibility of implementing the critical area section of the law.<sup>56</sup>

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52. A special law proposed by Governor Askew and enacted by the 1973 legislature designated the Big Cypress Swamp a critical area. The Big Cypress Conservation Act of 1973, 1973 Fla. Laws 251 (current version at FLA. STAT. § 380.055 (Supp. 1986)).

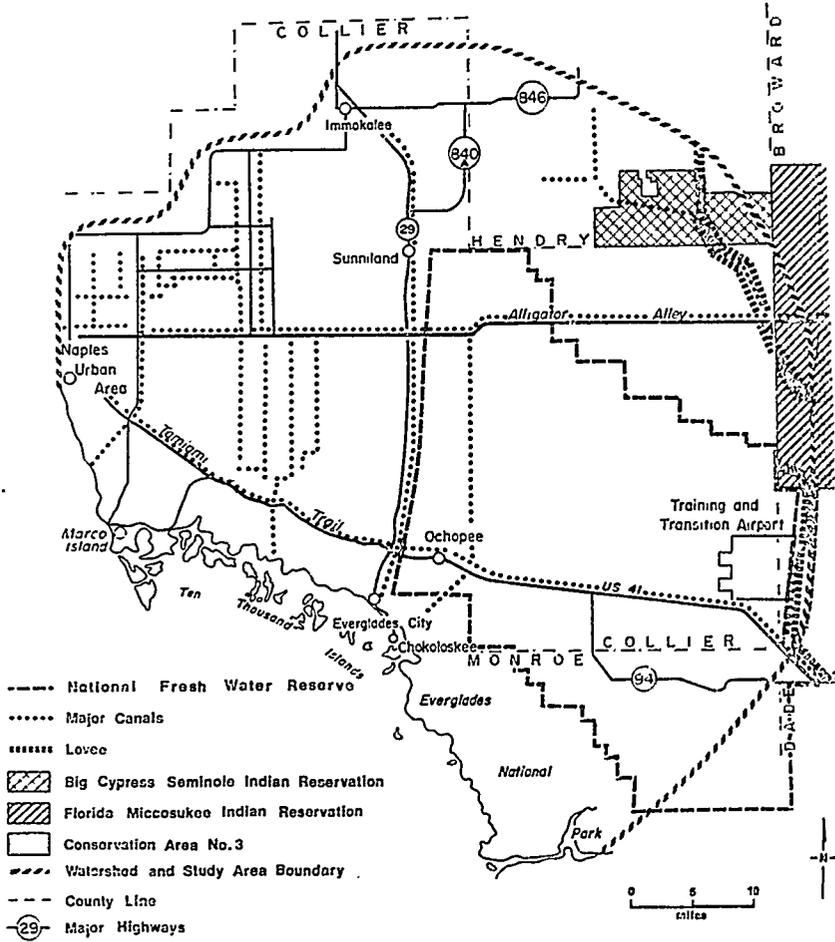
53. This designation included the federally sponsored Big Cypress Fresh Water Reserve, an area of over 500,000 acres that was contained within the designated Area of Critical State Concern. FLA. DEPT. OF ADMIN., DIV. OF STATE PLANNING, BUREAU OF LAND PLANNING, FINAL REPORT AND RECOMMENDATIONS FOR THE BIG CYPRESS AREA OF CRITICAL STATE CONCERN: COLLIER, DADE AND MONROE COUNTIES, FLORIDA 4, 13 (October 1973).

54. *Id.* at 13-21, 34, 35.

55. Federal funds totaling \$116 million were to match the state's fiscal commitment. For a more detailed treatment of the Big Cypress Critical Area designation, see J. DEGROVE, *supra* note 2, at 131-33, 136-37.

56. Governor Reubin Askew stated: "The Green Swamp was the first general use of the Critical Areas section of the law, and if we had not been able to pass that designa-

Map 1



BIG CYPRESS STUDY AREA

The State Land Planning Agency, then the Division of State Planning in the Department of Administration, mounted a strong effort to justify the Green Swamp designation in order to increase its chances for approval. The Green Swamp is comprised of approximately 800,000 acres lying roughly north and west of Orlando (see Map 2). It continues to be a vital source of recharge for the state's main underground water supply, the Floridian Aquifer, contributing 81 billion gallons of ground water annually to the aquifer. Although largely rural in character, Green Swamp received strong growth pressures on its southern edge from the Disney World complex.

The Division of State Planning initiated its study of the Green Swamp as a critical area candidate in May 1973. In July, 1974, the legislature designated 323,000 acres in Polk and Lake counties, constituting 15 percent of the land area in each county, as Florida's second area of critical state concern. The designation was the first to go through the full administrative process that the Critical Area section of the Land Management Act provided. The vote was very close, and the local governments and most local groups opposed the designation.<sup>57</sup>

The major objective of the designation was to protect the Green Swamp as a prime water recharge area through protecting its wetlands, assuring the natural flow of water so as to maximize recharge, and to protect the water conservation and flood detention areas of the Southwest Florida Water Management District. The principles for guiding development involved site planning, site alterations, groundwater protection, storm runoff controls, solid waste disposal and other such land use controls and restrictions.<sup>58</sup>

All three of Florida's early critical area designations remain important elements in the state's growth management efforts. None of the three initially involved the use of RPMCs as consensus building and conflict resolution devices. Use of such committees might have allowed stronger plans initially and far more effective implementation after designation as a critical area. The designation of the Florida Keys and the long and often frustrating effort to implement the princi-

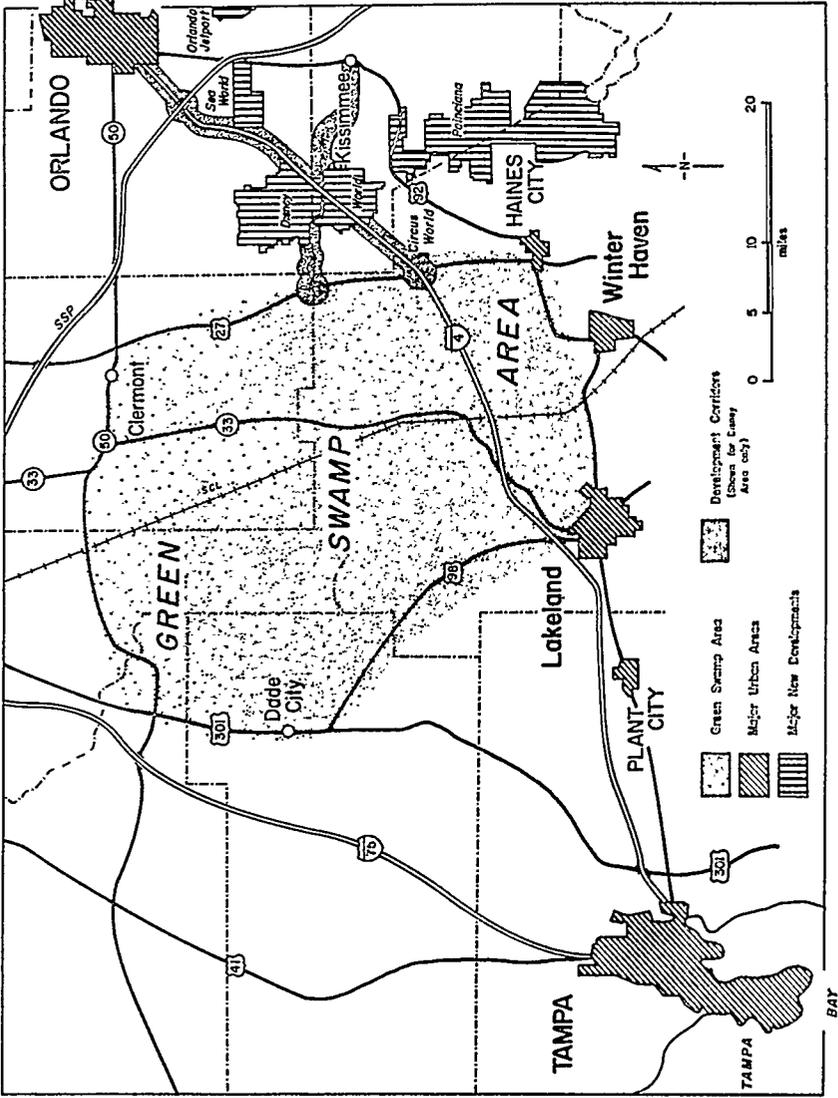
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tion, that is, get the votes in the Cabinet, we would have lost a very major part of the bill simply through not being able to implement it." This assessment of the Green Swamp Critical Area Designation is adopted from J. DEGROVE, *supra* note 2, at 133-34.

57. *Id.* at 133.

58. *Id.* at 133-34; for the full details on the Green Swamp designation, see FLA. DEP'T OF ADMIN., DIVISION OF STATE PLANNING, BUREAU OF LAND PLANNING, FINAL REPORT AND RECOMMENDATIONS FOR THE PROPOSED GREEN SWAMP AREA OF CRITICAL STATE CONCERN: LAKE AND POLK COUNTIES, FLORIDA (June 1974).

MAP 2



ples for guiding development best illustrates both the initial weaknesses in the plan's implementation and the strength that the RPMC added to the process.<sup>59</sup>

### C. *The Florida Keys*

The Keys are one of the nation's most beautiful and most fragile environments. Over the past four decades they have been the victim of unplanned, environmentally destructive growth patterns. The use of the critical area authority in the Keys was the first designation effort in a region with relatively strong growth pressures.<sup>60</sup>

The Florida Keys are a low-lying chain of 97 islands, 35 of which are linked by an overseas highway. The highway makes the islands easily accessible and, combined with their beauty and unique natural features, especially vulnerable to unplanned development. Ninety percent of the land area is at an elevation of five feet or less, and recorded hurricane tides have reached heights of more than 15 feet. Relative to south Florida standards, growth pressures have been modest in the Keys, with an increase from 48,000 in 1960, to 63,000 in 1980, and an estimated 72,000 in 1987.<sup>61</sup> However, the Keys are especially vulnerable to environmental degradation absent special growth control planning.

The Keys Critical Area report focused on the damage from uncontrolled development. In sum, the major dangers produced by uncoordinated development include (1) environmental degradation; (2) encroachment of incompatible land uses on essential resources and investments; (3) lack of development phasing with the ability to provide public facilities and services to existing and proposed populations;

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59. The Florida Keys Critical Area, then, falls under more than one phase of the critical area process. This concept is explained more fully below. *See infra* section VII B of this Article.

60. This section is adapted in part from J. DEGROVE, *supra* note 2, at 134-36. As one participant put it:

Many observers predicted that natural resource protection would be the effective limit of a critical areas program. Such a narrow view is understandable because in 1974 the concept of critical areas as a state land management technique was still being academically debated in most states; it was Florida that was breaking all the new ground in implementing the concept. The designation of the Florida Keys as the third critical area clearly showed that the program could deal with the infinitely more complex issues confronting a rapidly developing urban area.

Fox, *Florida Areas of Critical State Concern*, 5 FLA. ENVTL. AND URB. ISSUES 7 (1978).

61. UNIVERSITY OF FLA., BUREAU OF ECONOMIC AND BUSINESS RESEARCH, *FLORIDA ESTIMATES OF POPULATION '86*, Table 4 (Feb. 1987).

and (4) a substantial amount of precommitted growth which will exacerbate all the other problems and dangers.<sup>62</sup>

To address these problems, the principles for guiding development stressed protecting the natural and aesthetic values of the Keys and limiting development to a level that could be accommodated by the expansion of public service facilities.<sup>63</sup> The requirements for managing growth were stringent and included special zoning districts for environmentally sensitive areas such as tidal mangroves. The report also required community impact assessment for projects exceeding fixed height or density thresholds, which marked them as "major developments."<sup>64</sup>

The politics of adoption for the Keys area of critical state concern did not feature a uniform hostility from the local citizens and governments. Both were divided with some opposing the state intervention and some supporting such action. When the governor and cabinet sitting as the Administration Commission met in Key West to consider designation, the 800 attendees at the meeting were fairly evenly divided regarding the designation. The final Commission vote was in favor of designating the entire island chain as a critical area.<sup>65</sup> (See Map 3.)

#### D. *The Critical Area Approach: A Time of Crisis*

By the late 1970s the Critical Area program in Florida was suffering legal problems and difficulties regarding implementation. The legal crisis developed from the 1978 Florida Supreme Court decision holding the critical area component of Chapter 380 unconstitutional.<sup>66</sup> Governor Reubin Askew called a special session of the Florida Legislature in the fall of 1978 to take action that would prevent the invalidation on the grounds of unconstitutionality of the critical area designation in the Green Swamp and the Florida Keys. The special session temporarily redesignated these two critical areas, but provided that the redesignation would cease at the close of the 1979 legislative session unless that session, led by Florida's new governor, Bob Graham, reenacted the

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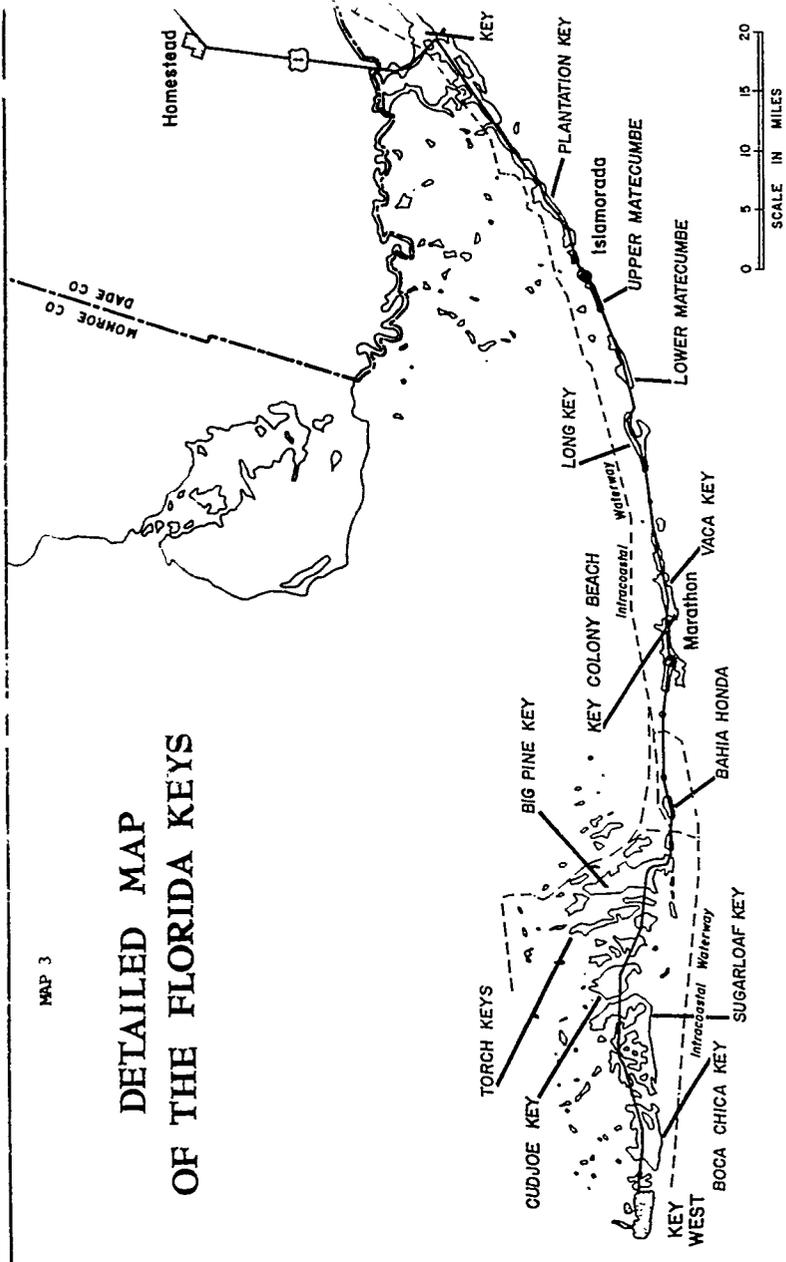
62. FLA. DEP'T OF ADMIN., DIV. OF STATE PLANNING, BUREAU OF LAND AND WATER MANAGEMENT, FINAL REPORT AND RECOMMENDATIONS FOR THE PROPOSED FLORIDA KEYS AREA OF CRITICAL STATE CONCERN 38-39 (Dec. 1974).

63. J. DEGROVE, *supra* note 2, at 135.

64. For a more complete assessment of the early phase of the Florida Keys Critical Area, see *id.* at 139-51; see also Finnell, *supra* note 50, at 346-49.

65. J. DEGROVE, *supra* note 2, at 136.

66. *Id.* at 126. See *supra* notes 37-38, 41.



critical area section of the law so as to circumvent the ruling of unconstitutionality by the Florida Supreme Court.<sup>67</sup>

In order to prepare the necessary statutory changes and begin a general assessment of the effectiveness of Florida's Land Management Act, Governor Graham established a Task Force on Resource Management. The task force addressed the development of a new critical area proposal for action by the 1979 session of the legislature.<sup>68</sup> The legislative proposal was successful and, as detailed below, set the stage for intensive use of the RPMC technique as a means for a balanced approach to managing growth in Florida.

Perhaps even more striking than the legal difficulties encountered between 1972 and 1978 was the legislature's clear failure to provide an effective implementation approach once it designated an area as one of critical state concern. Both the State Land Planning Agency and local governments lacked adequate resources with which to assure full implementation of the land development and other regulations of the critical area designation. This absence of enforcement ability was especially true of the State Land Planning Agency, which was responsible for the overall follow-up, monitoring, and enforcement to ensure full implementation of the principles for guiding development outlined in each critical area designation. Although most striking in the Florida Keys, the enforcement deficiency was also apparent in both the Big Cypress and the Green Swamp designations. The level of development pressure on the latter areas, however, was significantly lower, so the lack of funding and implementation was less crucial.<sup>69</sup>

As the efforts to implement the Critical Area designations progressed, it became increasingly clear that there was no effective method of involving all of the key private and public actors in the development of a plan and implementation regulations for the area. This deficiency was recognized even before the Critical Area section was declared unconstitutional. In reenacting the Critical Area section of Chapter 380, the 1979 session of the legislature mandated the use of a new approach. The new approach showed promise in overcoming this implementation problem by requiring the establishment of Resource Planning and Management Committees (RPMCs) as a mandatory pre-

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67. See *supra* note 38.

68. FINAL REPORT TO BOB GRAHAM, *supra* note 6, at 53.

69. See J. DEGROVE, *supra* note 2, at 136-51 for a review of implementation problems.

requisite to the formal designation of an area as one of critical state concern.

## V. PHASE TWO: DEVELOPMENT OF THE PROCESS

### A. *Provisions of the Amended Chapter 380.05*

The 1979 amendment to Chapter 380 required the establishment of RPMCs prior to formally designating a critical state area.<sup>70</sup> This caused Chapter 380's critical area section to emerge as the major growth management tool available to address state and regional resources in the 1979-1985 period. Originally, RPMCs were to establish a mechanism for de-designating an area that had successfully met the requirements of its critical area designation. The particular areas in question involved the Florida Keys, the Big Cypress Swamp, and the Green Swamp. In fact, the RPMC approach had consequences that went beyond and was quite different from its original purpose.<sup>71</sup>

The heart of the growth management balancing approach resulting from the 1979 amendment to Chapter 380<sup>72</sup> is found in the language of the statute. The statute provides that "a major objective of the proposed voluntary resource planning and management program shall be the effective coordination of state, regional, and local planning; program implementation; and regulatory activities for comprehensive resource management."<sup>73</sup> The law then requires that the committee's composition include local elected and planning officials and relevant state and regional agency appointees.<sup>74</sup>

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70. FLA. STAT. § 380.045 (1985).

71. In fact, the mandatory RPMC illustrates the doctrine of unanticipated consequences, in which a provision in a law turns out to be used for quite different purposes than that for which it was originally designed.

72. The operative language in the 1979 amendment to Chapter 380 is as follows: Resource planning and management committees; objectives; procedures. Prior to recommending an area as an Area of Critical State Concern pursuant to § 380.05, the governor, acting as the chief planning officer of the state, shall appoint a resource planning and management committee for the area under study by the State Land Planning Agency. The objective of the committee shall be to organize a voluntary, cooperative resource planning and management program to resolve existing, and prevent future, problems which may endanger those resources, facilities, and areas described in § 380.05(2) within the area under study by the State Land Planning Agency.  
*Id.* at 380.045(1).

73. *Id.* at § 380.045(3).

74. *See* § 380.045(2).

In what is now an especially important provision, the law gave the governor the flexibility to add other governmental or private sector members to the committees. As a result, the governor has appointed balanced committees that represent environmental, development, and other private sector interests along with the public agencies. The committees, therefore, represent the regional and state interests involved in a given geographic area of special concern.<sup>75</sup> The State Land Planning Agency is responsible for staffing the RPMCs. Once established, a committee must complete its work over a 12-month period.<sup>76</sup>

The RPMCs have produced a planning and management plan for the area that the State Land Planning Agency and the governor selected. The RPMC develops the plan during its first functional year. If the relevant actors in the public sector agree to implement the pertinent parts of the management plan, the State Land Planning Agency transmits the plan to the Administration Commission for its approval, modification or rejection.<sup>77</sup> Upon approval by the Administration Commission, the plan enters a monitoring phase in which the State Land Planning Agency assessed compliance with the management plan.

In language aimed at sustaining the crucial coordination between the governor-appointed committee, the Secretary of the State Land Planning Agency (DCA), and the Administration Commission, the law provides that:

[T]he Administration Commission shall request each state or regional agency that is responsible for implementing a portion of an approved program to conduct its programs and regulatory activities in a manner consistent with the approved program.<sup>78</sup>

The State Land Planning Agency must report to the Administration Commission before the end of the twelve-month monitoring and enforcement period with a recommendation as to whether all or part of the study area should be designated an area of critical state concern pursuant to section 380.05.<sup>79</sup> In making this recommendation, the State Land Planning Agency must consider the following factors: (a) an assessment of state agency compliance with the program, includ-

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75. *Id.* In naming RPMCs, Governor Graham consistently cited to this section of the statute.

76. *Id.* at § 380.045(5).

77. *Id.* at §§ 380.045(3) and (4).

78. *Id.* at § 380.045(4).

79. *Id.* at § 380.045(5)(d).

ing the degree to which the program recommendations have been integrated into agency planning, program implementation, regulatory activities, and rules; (b) an assessment of the compliance by each affected local government with the program; and (c) an evaluation of state, regional and local monitoring and enforcement activities and recommendations for improving such activities.<sup>80</sup> Thus, if it is impossible to develop an adequate management plan, or if one or more local governments are unwilling or unable to adopt and implement the provisions of that plan, the State Land Planning Agency must bring a recommendation for designation as an area of critical state concern to the Administration Commission.

### B. *The Evolution of the Approach*

The impetus for mandatory RPMCs was the voluntary use of the approach in the 1977-79 period, during which the validity of the critical areas section was unclear. The first use of RPMCs occurred with the establishment of the Apalachicola Resource Planning and Management program (the Apalachicola program) in early 1977. This ancestor to the RPMC approach included in its committee the public and private interests concerned with protecting the Apalachicola River and Bay system in northwest Florida (see Map 4).

Although the immediate issue involved the proposed construction of a dam, the Apalachicola program is important because it set the stage for the future use of the RPMC approach. The Apalachicola program embraced six major objectives that are instructive in understanding the evolution of the process. These objectives were: first, to assert the state's interest in protecting the Apalachicola River and Bay system; second, to unify the state and federal programs and policies for the area to avoid costly duplication; third, to provide local governments an opportunity to improve their planning capabilities without the time constraints imposed by section 380.05; fourth, to provide data to local, state and federal agencies on local citizen needs; fifth, to identify implementation mechanisms which will enforce regulations, plans and standards designed to protect the area's resources of local, state and regional interest; and, sixth, to identify resources available to promote the economic development of the area while protecting its valuable environmental resources.<sup>81</sup> These six objectives present the major thrust

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80. *Id.* at §§ 380.045(5)(a), (b), and (c).

81. FLA. DEP'T OF ADMIN., DIV. OF STATE PLANNING, BUREAU OF LAND AND WATER MANAGEMENT, APALACHICOLA RESOURCE MANAGEMENT AND PLANNING

MAP 4



————— County Lines  
 - - - - - Apalachicola River Basin Boundary (DER)

**APALACHICOLA RIVER AND BAY: BOUNDARIES OF PROPOSED RESOURCE MANAGEMENT AND PLANNING PROGRAM**

of future RPMCs.

The Apalachicola program's committee included a wide variety of public and private agencies and interests. Public interests included 7 counties, 12 state agencies, and 2 regional agencies actively participating in this voluntary effort. Private interests represented in the committee included economic, agricultural, hunting, fishing, and conservation groups. Although the committee failed to formally adopt a management plan, its actions illustrate how the state could bring to the bargaining table a wide range of public and private interests to address resource planning and management problems of regional and state significance.<sup>82</sup>

The second voluntary use of the RPMC approach during the 1977-1979 period was the Charlotte Harbor RPMC. It was originally established as a RPMC under Governor Askew in 1978 and was redesignated under the new law by Governor Graham in 1979 (see Map 5).<sup>83</sup> The State Land Planning Agency seriously considered designating Charlotte Harbor as an area of critical state concern, but when the adverse court ruling first occurred in 1976, that agency turned to the voluntary approach to pursue the same goals and objectives.<sup>84</sup>

The committee which designated Charlotte Harbor functioned under a very energetic chairperson and worked with three counties, a wide array of cities, state and regional agencies, and private sector interests. The State Land Planning Agency and the Southwest Florida Regional Planning Council coordinated the effort. The committee's tasks included: assessing the cumulative impacts of development in the three county areas on the available freshwater supplies; assessing the cumulative impacts of development upon the Charlotte Harbor estuarine

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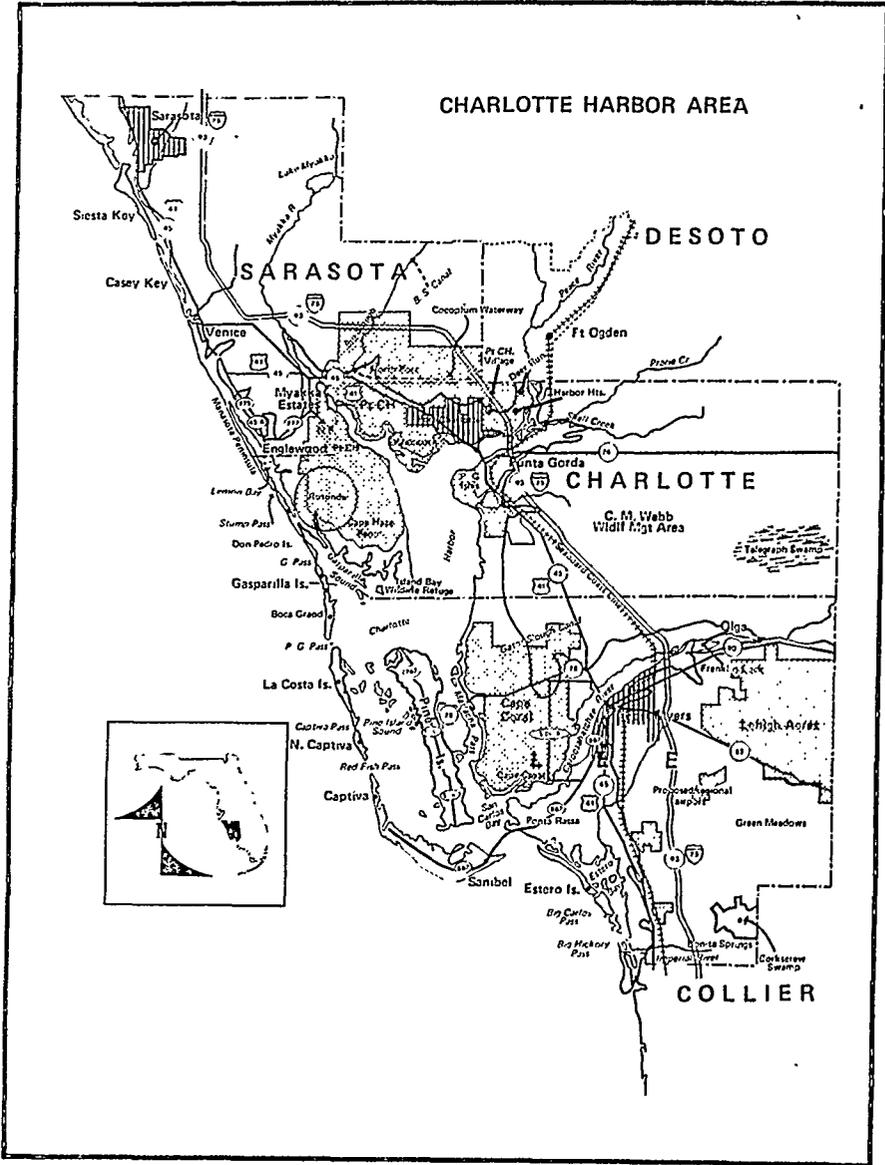
PROGRAM STATUS REPORT 1-6 (Feb. 1978). Each numbered objective is followed by a discussion in the Report.

82. *Id.* (unnumbered pages). This appendix lists the participants by agency and by name. See FLA. DEP'T OF ADMIN., DIV. OF STATE PLANNING, BUREAU OF LAND AND WATER MANAGEMENT, THE APALACHICOLA RIVER AND BAY SYSTEM: A FLORIDA RESOURCE (April 1977) (for a thorough description of the area, its development patterns and an assessment of their effects on the river and the bay).

83. Charlotte Harbor is a large area of sensitive wetlands, estuarine areas, barrier islands and other regional and state resources along the southwest Florida coast including parts of Sarasota, Charlotte and Lee Counties. See J. DEGROVE, *supra* note 2, at 151-53.

84. FLA. DEP'T OF ADMIN., DIV. OF STATE PLANNING, BUREAU OF LAND AND WATER MANAGEMENT, CHARLOTTE HARBOR: A FLORIDA RESOURCE ii (1978).

MAP 5



complex, including alteration of the quantity and seasonal patterns of freshwater input, loss of barrier island alterations, and input of urban runoff and wastewater treatment and disposal; and developing and implementing measures to address these adverse impacts.<sup>85</sup> As a result of these efforts, the participants adopted a management plan in 1981 that is still in existence. The plan guides the protection of the critical resources in the area. The plan also includes specific requirements for changing local government comprehensive plans and implementing regulations. It is, however, more general than those plans which have evolved in succeeding management committee actions.<sup>86</sup>

Both the Charlotte Harbor and Apalachicola programs demonstrated that the state could take the initiative in a voluntary effort to bring state, regional and local governments and a wide range of private sector interests into a committee structure. The committee may discuss in depth major regional and state issues, evolve a management plan to address those issues, and implement a monitoring effort as a follow-up device. These two programs in northwest and southwest Florida were important in setting precedent for the mandatory use of the RPMC approach in the post-1979 period.

The Florida legislature's adoption of the new critical area legislation in 1979 allowed the RPMC approach to become Florida's leading growth management tool. After redesignating the Charlotte Harbor committee, the new legislation was used to establish the Florida Keys RPMC. This RPMC ultimately documented the weaknesses of the original critical area effort.<sup>87</sup> The use of the RPMC approach continued through 1986, with the establishment of the Apalachicola Bay Area RPMC, and ultimately created ten resource planning and management committees. These ten RPMCs represented geographic regions from extreme northwest Florida to the Everglades area in Dade County (see Map 6). These areas typically involved coastal sections of Florida under heavy growth pressures. Furthermore, the areas all had critical riverine systems.<sup>88</sup> The actors involved in these RPMC's included cities, counties, state and regional agencies (especially regional

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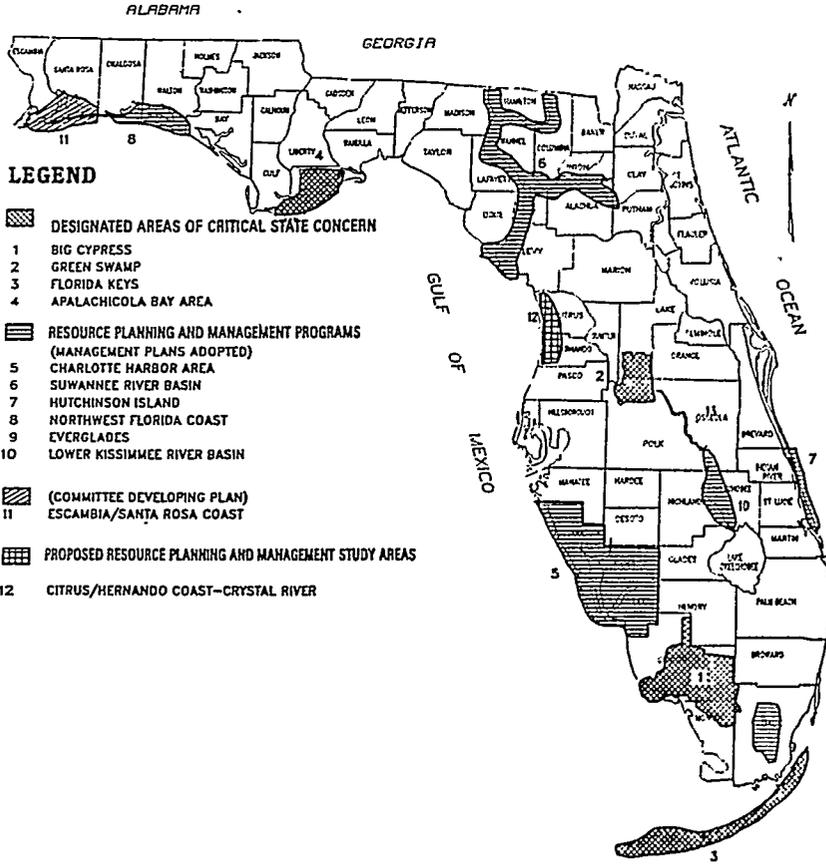
85. *Id.* at iii.

86. CHARLOTTE HARBOR RPMC, CHARLOTTE HARBOR MANAGEMENT PLAN (unnumbered pages) (June 1981).

87. See FLA. KEYS RPMC, FLA. KEYS AREA OF CRITICAL STATE CONCERN: AN ASSESSMENT OF THE COMPREHENSIVE PLANS AND CRITICAL AREA REGULATIONS WITH RECOMMENDATIONS (Feb. 1982).

88. DeGrove and deHaven-Smith, *Resource Planning and Management Committees: A Tool for Intergovernmental Coordination and Conflict Resolution* 15 COASTAL

MAP 6



SOURCE: FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

2-8  
AREAS OF CRITICAL STATE CONCERN

planning councils and regional water management districts), and an equally wide array of private sector interests.

In the order of their establishment, the committees were:

*Charlotte Harbor RPMC.* Appointed 1979; management plan adopted 1981. Major areas of interest: Estuarine protection, water quality protection, land use management (particularly of land adjacent to Charlotte Harbor).

*Florida Keys RPMC.* Appointed 1979, covering the same area as the original critical area designation made in 1975, to assess the effectiveness of the implementation and recommend whether de-designation was appropriate. Recommended redesignation of City of Key West and drastic revision, strengthening, and continuation of the Florida Keys area of critical state concern.

*Green Swamp RPMC.* Appointed 1979, established to review the effectiveness of the 1974 critical area designation and recommend whether removal of designation was timely. Recommended removal of designation in Polk County in 1985, process currently underway. No recommendation in Lake County, which continues as a designated critical area.

*Suwannee River RPMC.* Appointed 1980, involving 11 counties bordering on a pristine river system threatened by inappropriate floodplain development. Management plan adopted 1981.

*Hutchinson Island RPMC.* Appointed 1982; management plan adopted 1983. Involved the coastal areas of three counties on the middle east Florida Coast (Indian River, St. Lucie and Martin) and focused on developing growth management systems relating to transportation, hurricane evacuation, and resource protection needs on the barrier islands of these three counties.

*Northwest Florida Coast RPMC.* Appointed 1983; management plan adopted 1985. Involved the coastal areas of Okaloosa and Walton Counties, including barrier island and coastal areas vulnerable to hurricanes and overdevelopment. Addresses water supply, wastewater treatment and other infrastructure needs.

*Everglades National Park/East Everglades RPMC.* Appointed 1984; management plan adopted 1985. Involved a special effort to control land uses in the east Everglades area so as to restore the natural water flow and protect the surface and groundwater resources moving into Everglades National Park.

*Lower Kissimmee River Basin RPMC.* Appointed 1984; management plan adopted 1985. This committee involved five coun-

ties bordering the lower Kissimmee River whose future land management practices will have a critical impact on the effort to restore the river to its pre-dredged condition.

*Escambia-Santa Rosa Coast RPMC.* Appointed 1985; management plan adopted 1985. Located in extreme northwest Florida encompassing the coastal areas and barrier islands included in those two counties and addressing issues almost identical to those faced by the Northwest Florida Coast RPMC just to the south.

*Apalachicola Bay Area RPMC.* Appointed in early 1986 with a special mission as yet uncompleted.<sup>89</sup>

This explosion of activity in establishing, implementing and monitoring RPMCs and management plans has made the RPMC approach an important part of Florida's efforts to manage its growth. The aforementioned RPMC's have certain common characteristics associated with their success.<sup>90</sup> These characteristics range from the involvement of the governor to the degree and nature of the participation of the public and private sector actors.

## VI. KEY INGREDIENTS FOR SUCCESS

The elements which have contributed to the RPMC approach as it has evolved over the past seven years include: (1) the role of the Governor; (2) the role of the chairperson; (3) the State Land Planning Agency staffing role; (4) the mix of actors appointed to and participating on the committees; (5) increasingly specific management plans; (6) stronger monitoring and enforcement followup; and (7) the existence of a "hammer" in the form of a potential designation as an area of critical state concern. Illustrations drawn from RPMC experiences show the importance of each element to the success of the RPMC approach.

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89. Adopted from FLA. DEP'T OF COMMUNITY AFFAIRS, DIV. OF RESOURCE PLANNING AND MANAGEMENT, BUREAU OF STATE RESOURCE PLANNING, FUTURE OPTIONS FOR THE RESOURCE PLANNING AND MANAGEMENT COMMITTEE PROGRAM (Draft) (March 1986) [hereinafter FUTURE OPTIONS]. This report is also a good source for data on the evolution of the committee system.

90. Success is demonstrated by the fact that every RPMC has resulted in the successful adoption of a management plan whose content has become increasingly specific and directed over time. Thus far it has been unnecessary for the State Land Planning Agency to recommend to the Administration Commission a formal critical area designation because no voluntary RPMC has failed to develop and implement a satisfactory management plan. The effectiveness and timeliness of implementation efforts, however, have varied substantially.

### A. *Role of the Governor*

The role of the Governor has been critical to the success of RPMCs from the beginning. The Governor's direct personal involvement in determining the committee's focus has been crucial in keeping committees on track. Former Governor now U.S. Senator Bob Graham has been the key actor in this regard, beginning with the establishment of the Charlotte Harbor Committee. He was personally involved in deciding whether to establish a committee, in determining the substantive issues that the committee should address, and in selecting the membership of the committee and its chairperson. The Governor has personally participated in the selection of a chairperson in each of the ten RPMC's.

The Suwannee River Committee has successfully developed meaningful plans and land development regulations in 11 counties which previously lacked such plans or regulations. The Governor's selection of the chairperson<sup>91</sup> and his continued support of the chairman after selection were major reasons for the success of the effort.

In the Florida Keys Governor Graham appointed a native "conch," Hugh Morgan, a lifelong resident of Key West and a renowned lawyer, because he was respected by diverse interests in the area. Morgan's contacts in the legislature strengthened the influence of the committee, but his major contribution was in critiquing the previous efforts to implement the critical area designation.<sup>92</sup>

In the search for a chair for the Northwest Florida RPMC, the State Land Planning Agency staff recommended several possibilities to its secretary, who in turn discussed the options with the Governor. The aim was to find a person with the reputation and leadership qualities necessary to manage successfully a large group of committee members with different views of the problem and its possible solution. The Governor chose Davage C. "Buddy" Runnels, seen as a "responsible" developer by groups such as environmentalists. The Governor used a similar procedure to select the chairperson of the Escambia-Santa Rosa RPMC.<sup>93</sup> The result was the selection of Fred Donovan, head of a prominent engineering firm and a strong civic leader with a reputation for being concerned with the environment.

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91. The chairperson of the Suwannee River Committee was the clerk of the court for one of the adjacent counties.

92. Author's experience as secretary, Department of Community Affairs, 1983-1985.

93. *Id.*

The selection of the chair of the Lower Kissimmee River Basin RPMC clearly illustrates the importance of the Governor's role in the selection process. The secretary of the State Land Planning Agency, after conferring with key interests in the area and rejecting a number of candidates, recommended a person who had chaired a county commission, headed a gas company in the area, and was a member of the South Florida Water Management District Governing Board. The Governor was enthusiastic about the appointment, but the nominee was reluctant to take on these additional duties without assurance of strong gubernatorial support. After a lengthy interview with the Governor, the candidate accepted the position. In sum, the Governor's commitment of substantial time and energy to the selection and subsequent support of committee chairs was essential to the success of these committees.

### B. *Role of Chairpersons*

The demands on a chairperson are heavy, and much of a committee's success depends on the respect for the chairperson held by a wide range of interests within a particular RPMC's region. These committees bring together for the first time a large number of public and private interests to address very difficult and often controversial growth management problems. Often, committees face land development regulation issues that had not arisen previously. The chairperson must be fair and objective in defining the issues and accommodating wide ranging interests. The ten committees assessed here were fortunate to have had chairpersons supported by all the actors in the process.<sup>94</sup>

Chairpersons are typically drawn from the private sector, but have had important public sector responsibilities at some point in their careers. As noted above, the chairperson of the Lower Kissimmee River Basin RPMC owned and operated a gas company in a small town and served as a governing board member of the powerful South Florida Water Management District. As an RPMC chair, he visited the mayor and other elected officials of each local government within the committee boundaries, explaining at length the charge of the committee and the local governments' key role in meeting the committee objectives. This action alone greatly defused local government hostility toward the plan. This chairperson won the respect and ultimately the support of a

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94. *Id.*

wide variety of public and private sector committee members.<sup>95</sup>

The chair of the Escambia-Santa Rosa Resource Planning and Management Committee was head of one of the area's leading engineering firms with a strong record of service in the chamber of commerce and other civic affairs. Faced with strong development pressures on Florida's fragile Northwest coast, he led disparate environmental, developer, local government, and economic interests to a specific and strong management plan in a record nine months.<sup>96</sup>

The chairperson of the Suwannee River RPMC was the only elected official to lead a committee. He commanded the confidence of a wide variety of interests in the region, including environmental and development concerns, and local governments. As chairperson of the committee, he took an active and aggressive role in developing the plan. He has continued his strong interest in the implementation effort since the plan's adoption in 1981.<sup>97</sup>

### C. *Resource Planning and Management Committee Support Staff*

The success of Resource Planning and Management Committees requires a substantial amount of logistical and technical staff support. One of the difficulties with the early committees was that the State Land Planning Agency (Department of Community Affairs) lacked adequate resources to provide the necessary staff support. The DCA overcame those deficiencies in part by borrowing staff from other sectors of the Agency and from state and regional agencies. Regional agencies have been especially important in this regard. Typically, in a given RPMC area, either a regional planning council or a water management district has taken a lead role in organizing and supporting the committee and in obtaining the necessary background data.

Specifically, in the Hutchinson Island RPMC area, the regional planning council did a substantial amount of work on growth problems in the coastal areas and in the barrier islands. That research provided a data base for identifying many of the issues that the committee faced. In the Suwannee River area, the water management district had collected and analyzed much data. Their findings were the foundation for the committee's work that focused on protecting the broad flood plain

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95. *Id.*

96. FUTURE OPTIONS, *supra* note 89, at 8.

97. FLA. DCA, DIV. OF RESOURCE PLANNING AND MANAGEMENT, BUREAU OF STATE RESOURCE PLANNING, AN EVALUATION OF IMPLEMENTATION OF THE SUWANNEE RIVER MANAGEMENT PLAN, 4 (1985).

of the Suwannee River from inappropriate development. In the Northwest Florida Coast and Escambia-Santa Rosa Coast RPMCs, the regional water management district provided crucial staff support and data, especially with regard to water issues. The committees needed this input for their deliberations to result in defensible management plans.<sup>98</sup>

The staffing role of the Department of Community Affairs is crucial in furthering the successful conflict resolution and intergovernmental roles of the RPMCs. The Department, in its role as the State Land Planning Agency, assigns a minimum of two planners per committee to handle logistical problems, to coordinate data collection and analysis, and to issue reports. Additional resources, supplied by the legislature beginning in 1983, enabled the Department to expand the use of the RPMC approach substantially between 1983 and 1985. Furthermore, a series of background analyses of the issues has been critical to reaching agreements and resolving conflicts among the committee members. In each case thus far, the committee has reached a consensus on the essential issues in the proposed management plan. Experience has shown that when the committee reaches such a consensus, it will gain support for a series of land development regulations and other actions designed to address and solve those issues.<sup>99</sup>

Finally, the secretary of the Department of Community Affairs is important to a successful RPMC program. Both the governor and the secretary have long and demanding agendas. The head of the Department must clearly understand the RPMC process and its role in managing critical state resources. By prioritizing efforts to procure the necessary resources, the secretary of the DCA was able to develop and complete four RPMCs between 1983 and 1985.<sup>100</sup>

#### D. *Appropriate Mix of Interests on RPMCs*

The mix of actors on the RPMCs is another critical factor in their success. Here again the governor's role is crucial. Participation in

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98. See *supra* note 90.

99. *Id.* The DCA has experience with developing and monitoring the implementation of the goals, policies, and standards of Resource Planning and Management Plans by assuring that they are reflected in local comprehensive plans and land development regulations. This will be the DCA's major source of experience when it begins to review local government plans and regulations for consistency under the new growth management legislation adopted in 1985 and reaffirmed in 1986. See *supra* note 12. The first such reviews will take place in 1988.

100. See *supra* note 92.

these committees is not a top priority for most state agencies. In fact, no agency has funds earmarked for this effort. Therefore, solicitation of participation begins with a communication from the governor to the secretary of the particular state agency involved. The governor's involvement is essential to ensuring that the state agency implements the plan. Although state agencies are often unwilling to implement the plans, this reluctance has diminished over time.<sup>101</sup>

The two important regional agencies, Water Management Districts and Regional Planning Councils, are statutory members of the committees.<sup>102</sup> One or both have played a key leadership and data supply role on every committee. Local governments are statutory members, with one elected and one appointed official as required members. The appointed official is usually a planner if the local government has one.

Although state, regional, and local "public" members are important, participants from the private sector are equally crucial to a committee's success. Here, the governor, as the appointing official, plays a pivotal role in the process. The aim is to find the "right" developer, environmentalist, and other private sector representative so that consensus on the management plan is possible. Careless appointments which disregard ability and balance could doom the process before it starts. Only Governor Graham has undertaken this task, and the success of the committees illustrates the quality of his performance.

An example of able and well-established committee membership can be seen in the Kissimmee River Resource Planning and Management Committee, which had a total of 35 members. The local governments had a clear majority on the committee, followed in number by state agencies.<sup>103</sup> This committee's composition was typical except for the

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101. Key state agencies on every committee include: the Department of Environmental Regulation (water quality and wetland protection); the Department of Natural Resources (coastal planning and regulation, public land management and acquisition); the Department of Health and Rehabilitative Services (water quality/septic tank regulation); the Department of Transportation; the Department of Legal Affairs; the Department of Community Affairs (state land planning, housing, community development); the Department of Commerce when economic issues are important; State Game and Fresh Water Fish Commission; and other state agencies on an "as needed" basis.

102. *See supra* note 74.

103. Local government or citizen members included five county commissioners, and two city council members; four county planning staff members and two planning board members; one city planning person; six citizen members; 3 members from regional planning councils; two from the water management district; eight state agency members, and two federal agency members. KISSIMMEE RIVER RPMC, RESOURCE MANAGEMENT PLAN A.I.26-31 (Aug. 1985).

absence of developer interests. There was no need for a developer on this particular committee because potential urban development was not an issue in the lower Kissimmee basin.<sup>104</sup> All relevant interests were represented by persons holding the respect and confidence of their fellow committee members. With a skilled chair, a professional facilitator, and an excellent support staff, (especially those drawn from the State Land Planning Agency and the Water Management District) the success of the committee in defining and solving the issues is hardly surprising.

Depending on the number of local governments involved, committees may be larger or smaller than the Kissimmee River RPMC. Since the membership of all RPMCs encompasses key interests, each committee member is concerned with the committee charge: design a management plan for the area which is binding on local, regional and state governments and agencies and, to the extent allowed by law, federal agencies.

#### E. *Specificity of Management Plans*

The management plans' effectiveness has improved due to a change in the character of the management plans themselves. As the plans became more specific regarding the implementation responsibilities of the particular state, regional, and local agencies, the pressure on state agencies to carry out their assigned roles increased. Again, the governor was important in assuring that state agencies properly performed their assigned roles in the implementation process. Governor Graham made this particular matter one of top priority, and he communicated that fact to state agencies. The results have been clear.<sup>105</sup> The greater specificity in management plans and the stronger monitoring by the DCA and RPMCs has increased the likelihood that RPMCs will meet state and regional concerns.

Two examples of the relation between specificity and the successful implementation of management plans are the Suwannee and the Escambia-Santa Rosa RPMCs. A recent DCA evaluation of the implementation of the Suwannee River RPMC produced mixed findings. Although state and regional agency implementation has been satisfactory, implementation by local governments, including the floodplain

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104. *See id.* at I.4.

105. *See supra* note 92.

management ordinances, has been inconsistent.<sup>106</sup> In addition, the DCA noted a number of other deficiencies in local government implementation of the plan.<sup>107</sup> The DCA report noted, however, that the Suwannee River Water Management District adopted surface water management rules which would alleviate the inconsistencies of the implementation effort.

The local government deficiencies were not so critical as to warrant a recommendation for an area of critical state concern designation. In order to avoid such a designation, however, the DCA report made a number of recommendations to strengthen local government efforts to implement the management plan.<sup>108</sup> The DCA delayed critical area designation because it anticipated that local government plans and implementation capacity would substantially increase when the participating 11 counties complied with the new state planning and regulatory mandates. These new regulatory laws were part of legislation passed by the 1985 session of the Florida Legislature. The report emphasized that it was important for the North Central Florida and Withlacoochee Regional Planning Councils to incorporate strong management plan recommendations into the comprehensive regional policy plans required to be adopted by July 1, 1987.<sup>109</sup>

The Suwannee River Committee's implementation record illustrates that the program's initial management plans lacked specificity and focus. The record also showed that follow-up monitoring and assessment are essential to protecting the regional and state resources in an area such as the Suwannee River. In addition, the Suwannee committee indicates the capacity of the State Land Planning Agency to conduct such an evaluation and to make specific recommendations to improve the situation.

One or more counties in the Suwannee River Basin may still need to be designated a critical area. In the meantime, the State Land Plan-

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106. The DCA report notes: "The ordinances have been effective in protecting structures from flood damage; however, control of erosion causing and floodplain displacing activity such as filling and vegetation removal has been inconsistent due to deficiencies in model ordinance, failure to fully implement the ordinances and a shortage of staff and technical resources in the local governments." FLA. DCA, DIV. OF RESOURCE PLANNING AND MANAGEMENT, BUREAU OF STATE RESOURCE PLANNING, AN EVALUATION OF THE IMPLEMENTATION OF THE SUWANNEE RIVER MANAGEMENT PLAN 1 (1985).

107. *Id.* at 52-54.

108. *Id.* at 2-3.

109. *Id.* at 53.

ning Agency will continue to monitor the implementation of the management plan. The governor has supported and, on occasion, urged the DCA to continue close monitoring of the plan. The chairperson of the Suwannee River Committee has continued to demonstrate his commitment to enforcement by involving himself with the water management districts, the counties and the DCA.<sup>110</sup>

The Escambia-Santa Rosa RPMC was headed by Fred Donovan and included 34 additional members.<sup>111</sup> Seven members represented state agencies and three came from a federal agency. The remaining committee members were developers, environmentalists and professionals of both regional and local government ranks. The committee functioned largely through four subcommittees that reflected the issues set forth in the governor's charge letter: (a) environmental resource planning and management; (b) land use management; (c) public facilities planning; and (d) economic development planning.<sup>112</sup> The governor's charge letter required the committee to evaluate the implementation of its plan, and, within twelve months of the plan's adoption, recommend to the governor and cabinet any necessary additional steps, including a recommendation for a critical state concern area designation.<sup>113</sup> The committee's unanimous adoption of the resource management plan reflected the specificity of the governor's charge letter.<sup>114</sup>

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110. *See supra* note 92.

111. ESCAMBIA/SANTA ROSA COAST RPMC, RESOURCE MANAGEMENT PLAN, at unnumbered page title "Committee Members."

112. In his charge letter the Governor stated, "I am assigning the Committee the task of reviewing natural resources, land use, and public facilities problems," and went on to indicate what he expected in each area, including economic development. *Id.* at 120. The charge letter stated that the "land use management recommendations should include, but not be limited to, the adequacy of local government plans and the implementation of development regulations." *Id.*

113. *Id.* at 121.

114. For Santa Rosa County the Report stated: Santa Rosa County shall initiate and complete a program, with full public participation, of comprehensive land use planning for the entire county land area within the committee study area, including the establishment of a special zoning district using land use categories and densities and a land use map, for the Gulf Breeze Peninsula from the City of Gulf Breeze to the Okaloosa County line. A comprehensive land use plan, including appropriate land use controls, shall also be developed for the remainder of the study area within Santa Rosa County.

*Id.* at 25.

For Escambia County, the Report stated:

Escambia County shall initiate and adopt a program, with full public participation, of comprehensive land use planning and zoning, including land use categories, land use densities, and a zoning map, for the urban unincorporated area of the County,

The unanimous approval of these recommendations for stronger and more specific comprehensive plans and land development regulations is surprising given the conservative northwest Florida environment. Historically, that region considered zoning and other land use controls to be a modified communist plot.<sup>115</sup>

After its unanimous adoption by the Committee, the secretary of DCA transmitted the report to the governor and the cabinet, sitting as the Administration Commission. That administrative body adopted the resource management plan unanimously on February 4, 1986, and charged all state and regional agencies to "cooperate with the affected local governments to the maximum extent possible to ensure the plan's effectiveness."<sup>116</sup>

The management plan included a strong monitoring and enforcement section which required the committee to meet quarterly during the one year implementation period and to meet with a steering committee meeting more often. The DCA issued "compliance reports" at three and six month intervals after the adoption of the plan (May and August 1986).<sup>117</sup> In February 1987, DCA presented a report to the governor and cabinet (Administration Commission) noting considerable progress, but noted problems in fully implementing the management plan by Escambia and Santa Rosa counties. In October, 1987, the Escambia-Santa Rosa Committee suggested to DCA and the Administration Commission that no local government be recommended an area of critical state concern. The DCA later concurred in the committee's recommendation.<sup>118</sup>

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specifically those areas within the committee study area but with the exception of the City of Pensacola and the barrier islands within the County's jurisdiction. However, these excepted areas and all other jurisdictions in the study area shall comply with the applicable state growth management plans and regulations.

*Id.* at 26.

115. *See supra* note 92.

116. Resolution of the governor and cabinet (sitting as the Administration Commission)(Feb. 4, 1986).

117. FLA. DCA, DIV. OF RESOURCE PLANNING AND MANAGEMENT, BUREAU OF STATE RESOURCE PLANNING, COMPLIANCE ASSESSMENTS #1 AND #2: IMPLEMENTATION OF THE ESCAMBIA/SANTA ROSA COAST RESOURCE MANAGEMENT PLAN (1986).

118. The committee is continuing its monitoring efforts, since Santa Rosa and Escambia County still had some committee recommendations to implement. *Id.*, ONE YEAR COMPLIANCE ASSESSMENT REPORT (Feb. 18, 1987). Compliance evaluation charts within the REPORT indicated that Santa Rosa and Escambia Counties had taken insufficient actions in implementing sign and landscape ordinances.

### F. *The Carrot and The Stick*

The success of the RPMCs in devising balanced growth management approaches in specific geographic areas of the state involves the "hammer" principle. RPMCs are voluntary—no law requires local governments to participate. Thus far, no city or county has declined to participate once the governor established the committee. This is because if a local government fails to participate, the committee still devises a management plan for the non-participating jurisdiction. If a local government is unable or unwilling to implement the management plan, the State Land Planning Agency must recommend to the Administration Commission (the governor and the cabinet) that the local jurisdiction be designated an area of critical state concern.<sup>119</sup> This action is known as the "hammer principle." Although the governor and the cabinet have yet to use the hammer, its existence has influenced participation efforts in several counties including the Suwannee River area, Hutchinson Island area, and most recently, the two counties in the Northwest Florida RPMC area.

### G. *Stronger Monitoring and Enforcement*

Examination of the Escambia-Santa Rosa RPMC implementation strategy illustrates the growing practice of more recent committees to recommend a continuation of the monitoring and enforcement phase after a committee adopts a management plan. Such supervision ensures that local governments make the changes necessary to implement the management plan. This may include making changes in local government comprehensive plans, land development regulations and other local ordinances and ensuring that activities assigned to regional and state agencies are carried out. This practice began with the Everglades National Park/East Everglades RPMC<sup>120</sup> and has continued with the Kissimmee River RPMC.<sup>121</sup> It is likely that this monitoring and enforcement will be informally, and perhaps formally, incorporated into the system.

Interestingly, the use of RPMCs has emerged as a device by which state and regional goals can infiltrate the local level. The goals and policies are reflected in required changes in local government compre-

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119. FLA. STAT. § 380.045(5) (1985).

120. EVERGLADES NAT'L PARK/EAST EVERGLADES RPMC, RESOURCE PLANNING AND MANAGEMENT IMPLEMENTATION PLAN 3-4 (April 1985).

121. KISSIMMEE RIVER RPMC, RESOURCE MANAGEMENT PLAN I.6 (Aug. 1985).

hensive plans and implementing regulations. The inevitable negative reaction to this state intervention has been considerably softened by local governments' continuous participation in the process. Since local government representatives and other key local actors play a big role in crafting the management plan, there is a greater possibility that the affected communities will support the plan. This process subtly allows state review and approval of local plans. Despite some local resentment and hostility, the committees have found it unnecessary to recommend a critical area designation.<sup>122</sup>

The RPMC approach, as evidenced in the ten efforts through 1986, illustrates the great significance of this technique to growth management in Florida.<sup>123</sup> Experience with the approach has clarified its strengths and weaknesses. The committees have received stronger technical staff support, and worked towards developing management plans with a clear assignment of responsibilities to local, regional and state agencies.

## VII. DIRECT LEGISLATIVE DESIGNATION AREAS

### A. *Apalachicola Bay*

During the 1985-1986 period, two new approaches, or at least variations on old approaches, have further expanded the critical area concept in Florida. The first approach involves the direct designation by the legislature of an area of critical state concern and incorporating into the legislation the principles for guiding development that will govern the local government's comprehensive plan and land development regulations. This approach goes even further than the 1973 legislative designation of the Big Cypress as an area of critical state concern. At that time, the legislature simply designated the area and left the State Land Planning Agency to devise the principles for guiding development, to select the exact boundaries, and to work out the land development regulations and comprehensive plan changes with local governments. In the 1985 legislative session, the legislature designated the Apalachicola Bay area as an area of critical state concern, focusing on Franklin County and three small surrounding urban areas

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122. See *supra* note 92.

123. The way in which RPMCs may fit into the new growth management legislation approved by the 1985 session of the Legislature is discussed in a concluding section of this paper. See *infra* section IX of this Article.

including the city of Apalachicola.<sup>124</sup>

This direct designation effort came about because of some critical water quality problems in Apalachicola Bay partially caused by land use that threatened the region's vital shellfish industry. During its 1984 session, the legislature addressed the problem of implementing the wastewater treatment systems needed to reduce the pollutants entering the Bay through untreated or inadequately treated sewage and through the inappropriate use of septic tanks. The governor established a task force to consider the environmental, economic and social well being of the citizens of Apalachicola Bay, and that task force recommended, among other things, major state funding of the local share required for wastewater treatment. This sort of state funding was unprecedented.

In legislative discussions just prior to and during the 1985 session of the Florida Legislature, the House Committee on Community Affairs led the support for an extraordinary state effort to assist Apalachicola Bay. At the same time, the legislature asked DCA to assure that the land use practices of Franklin County and its municipalities would not negate the improvements brought about by the upgraded wastewater treatment facilities. The DCA indicated that the critical area approach was the only extant statutory authority that could assure that the county's land development practices would not undermine the wastewater treatment improvements. The DCA further elucidated that it was possible to enforce those needed comprehensive plan and land development regulation provisions only if the legislature designated the county and cities as an area of critical state concern, included principles for guiding development, and specifically incorporated the kind of comprehensive plan and land development regulations required of the county and its municipalities.<sup>125</sup>

Upon the request of the Committee on Community Affairs, the DCA drafted these regulations. In an unprecedented move, the 1985 session of the legislature designated most of Franklin County and all of the municipalities within the county as an area of critical state concern.<sup>126</sup> The DCA subsequently established a field office in the city of Apalachicola and began to monitor and enforce land development decisions of the county and the cities within the designated area. This

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124. Apalachicola Bay Area Protection Act, 1985 Fla. Laws 2202 (codified at FLA. STAT. § 380.055(5) (1985)).

125. *See supra* note 92.

126. *See supra* note 124.

unusual action was fully supported, after some hesitation, by the cities and counties involved.

These local governments agreed to support the critical area designation in exchange for a substantial amount of state assistance in solving the threat to their shellfish industry.<sup>127</sup> The state made it very clear that it would provide the \$5 million needed for the local share of matching funds for wastewater treatment only if the local governments accepted the critical area designation. The legislation required the formation of a RPMC to assist the local governments in revising their comprehensive plans and land development regulations. In the meantime, the principles for guiding development embodied in the legislation allow the State Land Planning Agency to protect the state's interest in the area while the new plans and implementing regulations are being put in place.<sup>128</sup>

### B. *The Florida Keys*

The 1986 session of the Florida legislature continued to give special help to selected areas of critical state concern by appropriating \$11.4 million to assist Monroe County in implementing the comprehensive plan and land development regulations required by the original designation in 1975.<sup>129</sup> The experience with the Florida Keys critical area designation illustrates the early weaknesses of implementation efforts. This effort also reflects the difficult struggle to establish a meaningful state-local partnership to assure growth management in the Keys to protect critical environmental values such as wetlands and tropical hardwood hammocks, including endangered species habitats, to provide infrastructure such as roads, solid waste, and wastewater treatment facilities and to promote a healthy economy.

The weakness of the original critical area designation in the Keys was first fully revealed by the intensive evaluations of the Florida Keys RPMC established by the governor in 1979.<sup>130</sup> Headed by a native "Conch," this group produced a highly critical assessment of the implementation effort. Key West had been removed from designation as an area of critical state concern because of the actions of the 1979 legis-

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127. See *supra* note 92.

128. *Id.* See FLA. STAT. § 380.0555(8) (1985).

129. Resolution No. 331-1986 between DCA and Monroe County, Fla. (Nov. 7, 1986).

130. For a detailed report on the work of the Florida Keys RPMC, see J. DEGROVE, *supra* note 2, at 139-51.

lature and the implementation of special provisions by DCA and the Administration Commission. In evaluating conditions in the City of Key West, the RPMC found a consistent pattern of failure to implement the policies of the local plan and the regulations to implement those plans. When the Florida Keys RPMC delivered its scathing critique of the city's failure to act responsibly, it also recommended to DCA and the Administration Commission that Key West be redesignated. The Administration Commission accepted that recommendation, and by the end of 1982 Key West was again a designated area of critical state concern.<sup>131</sup>

Since 1981, and especially since special funding was provided to Monroe County by the state in 1984 and 1985 to support a new local government comprehensive plan and land development regulations, DCA has vigorously monitored Monroe County and the City of Key West under the critical area designation. A special DCA field office was established in the Keys to allow the Department to give more effective technical assistance and to track the local governments' efforts toward full compliance with critical area requirements. As of the end of 1987, that special effort continues, though at a reduced level.<sup>132</sup> The purpose here is not to treat developments in the Keys in any detail, but to illustrate the important role of the RPMC in strengthening the effort to carry out the original intent of the designation.<sup>133</sup>

An important question is whether this kind of trade-off, in which a local government actively supports a critical area designation in return for special assistance from the state in solving its problems, will be carried out in other areas of the state. If so, it is an important development in the future use of the critical area approach as a balanced growth system in Florida.

#### VIII. CHAPTER 380 GROWTH MANAGEMENT AGREEMENTS

A final new approach to the critical area technique involves the use of Chapter 380 growth management agreements. Only one such agreement has been consummated, involving Citrus and Hernando Counties and the city of Crystal River on the north central Florida coast. This

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131. For a complete and current (1986) review of developments under the critical area designation in the Florida Keys, see Pattison and Siemon, *Monroe County Comprehensive Plan: A Close Encounter of a Very Strange Kind* 14 FLA. ENVTL. AND URB. ISSUES 10, (No. 1 1986).

132. See *supra* note 92.

133. See *supra* note 130.

particular approach is an extension of the DCA's practice of using its Chapter 380 authority to enter into special agreements with developers with regard to a particular project.<sup>134</sup>

In deciding whether to recommend to the governor a RPMC for the area, the DCA considered whether the Department's and the state's objectives could be reached more efficiently by working with the three local governments to devise Chapter 380 agreements with regard to changes in their comprehensive plan and land development regulations. The major issues involved water quality and the protection of endangered species, especially the manatee. In addition, the state of Florida, through its environmentally endangered land acquisition program, invested millions of dollars in land acquisition in the coastal areas of these counties to protect land and water resources from the impacts of ill-planned and inappropriate development. The DCA's cooperative approach was an attempt to give the local governments a choice as to whether they wished to enter into the somewhat less complex agreement with the DCA or to be included in a RPMC area. The two counties enjoyed a healthy distrust of each other, and both were eager to avoid being fully included in the same agreement.<sup>135</sup>

The three local governments, two counties and one city, ultimately consented to agreements that included rather specific analyses of the critical water quality and other resource issues in the area. The governments agreed to address these issues in specific ways through their comprehensive plans and land development regulations. In return, the DCA agreed to provide technical assistance to the counties and the city and to organize additional technical support from regional and state agencies. Thus, both sides committed to participate in the improvement of the growth management systems for the two counties and the city.<sup>136</sup>

Whether this approach, which is somewhat simpler and faster in achieving certain limited objectives than the RPMC approach, will be used again depends on its success in this first experiment. If it is used in the future, it will be part of a mix of approaches that have now evolved as Florida enters its second decade of using the critical area technique to establish balanced growth systems. The more traditional critical area designation as an administrative procedure, the direct

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134. FLA. STAT. § 380.032(3) (1985).

135. Author's experience in negotiating the agreements as secretary, DCA.

136. Fla. DCA, *Growth Management Agreement*, Citrus County, Hernando County, and City of Crystal River, three documents, all executed Nov. 1, 1985.

designation by the legislature, the use of RPMC's which result in management plans that may or may not lead to a formal critical area designation, and finally the use of Chapter 380 agreements are all variations on the theme of using the Critical Area approach to improve growth management systems in Florida.

## IX. CONCLUSION

The adoption of new and far-reaching growth management legislation by the Florida legislature in the 1984-86 period raises important questions about the use of both the development of regional impact and the critical area sections of Chapter 380. The new legislation establishes an integrated policy framework for managing growth by mandating: (a) the adoption of a state plan comprising a set of goals and policies aimed at charting the course for Florida's future; (b) state agency functional plans required to be consistent internally and with the state plan; (c) comprehensive regional policy plans, also required to be consistent with the state plan; and (d) local plans, which must be consistent with both the regional and state comprehensive plans.<sup>137</sup> The implementation of this system is well underway. In 1985 the legislature adopted the state comprehensive plan. All state agency functional plans have been completed and reviewed for consistency with the state plan. All comprehensive regional policy plans have been completed and submitted to the Office of Planning and Budgeting for consistency review, and formally adopted. And finally, local plans are being prepared and will be submitted to the state for consistency review beginning in July 1988.<sup>138</sup>

Successful implementation of Florida's new growth management system will strain the fiscal, administrative and political capacity of the state. The central question is how the state will utilize both the critical area section of Chapter 380 and the RPMCs as conflict resolution and intergovernmental coordination devices in the future.

Even in optimal circumstances there will be areas of the state where local governments are unwilling or unable to complete and implement plans and land development regulations in accordance with state law. The state anticipates that complex regional problems involving natural

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137. *See supra* notes 11, 12 and 13.

138. FLA. ADMIN. CODE ch. 9J-12 (1987) (sets the schedule for submission of local comprehensive plans to DCA for consistency review).

systems, such as estuarine and riverine areas, will prove especially difficult for local governments.

To remedy local reluctance, the growth management legislation has a "hammer" in the form of withholding state funds if local plans are inconsistent with state and regional goals and policies. The use of the Critical Area/RPMC approach, however, may be a more positive method of overcoming local inability to comply fully with the new growth management system. The conflict resolution and intergovernmental capacities of RPMCs are structured to overcome a local government's limitations in implementing effective plans and land development regulations. Furthermore, the ability to formally designate an area as critical provides protection for important state and regional interests and assures the adoption and implementation of local plans and land development regulations consistent with state goals and policies.

Other ideas for the continued use of the critical area/RPMC approach to growth management have been reviewed in a draft memorandum by the DCA (the State Land Planning Agency).<sup>139</sup> Included in the list of possible uses of section 380.05 was special economic development planning; planning for growth "hotspots" where extreme growth pressures demand extraordinary coordinated action by all levels of government and the private sector; and conflict resolution when local and regional efforts have reached a stalemate.<sup>140</sup> The best assessment is that the critical area/RPMC program has been a bright spot in Florida's growth management efforts in the past and will continue to play an important role in the state's future land regulatory schemes.

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139. See *supra* note 89.

140. *Id.* at 10-11.

