

Local Government Authority to Protect Upland Habitats

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Local governments in Florida have abundant authority to protect upland habitats by virtue of home rule powers and the Growth Management Act. Aside from political limitations, the most significant problem for local governments seeking to protect upland habitats consists of regulatory takings and statutory protections of private property rights.

A. Sources of Specific Authority to Protect Upland Habitats

Florida's Local Government Comprehensive Planning and Land Development Regulation Act

Florida's Local Government Comprehensive Planning and Land Development Regulation Act, often referred to as the "Growth Management Act," Chapter 163, Sections 163.3161 through 163.3217, Florida Statutes, requires each local government in Florida to adopt a comprehensive land use plan¹ for the lands within its jurisdiction², and prohibits local governments from approving or authorizing development, and from enacting land development regulations, except in conformity with the adopted comprehensive plan.³ The Growth Management Act, and implementing rules, give a broad mandate and authorization for local governments to protect upland habitats⁴, as evident from the following provisions (emphasis supplied):

a. Future Land Use Element. Section 163.3177(6)(a), Fla. Stat., requires each comprehensive plan to include a future land use element designating "...proposed future general distribution, location, and extent of the uses of land for...recreation,

¹ Section 163.3167(1)(b) and (2), Fla. Stat.; see also, s.163.3161(8) and 125.01(g)(h), Fla. Stat.

² See Section 163.3171, Fla. Stat.

³ See Sections 163.3161(5), 163.3194(1)(a) and (b), 163.3201, 163.3202(1), and 163.3215, Fla. Stat. For an overview of the Act, see Symposium Article: Florida's Growth Management Act: How Far We Have Come, And How Far We Have Yet To Go, Richard Grosso, 20 Nova L. Rev. 589 (Winter, 1996), and Review of Florida Legislation: Article: Managing Florida's Growth: Toward an Integrated State, Regional, and Local Comprehensive Planning Process, Thomas G. Pelham, William L. Hyde, and Robert P. Banks, 13 Fla. St. U.L. Rev. 515 (Fall, 1985). See also, Machado v. Musgrove, 519 So.2d 629 (Fla. 3d DCA 1987).

⁴ Protecting Threatened Ecosystems and Habitats Through Florida's Growth Management System, Defenders of Wildlife (2001), White Paper prepared by Henry Lee Morgenstern, Esq., with the assistance of Laurie Macdonald, M.S., and Richard Grosso, Esq.

conservation...and other categories of the public and private uses of land... The future land use plan shall be based upon surveys, studies, and data regarding the area, including...the character of undeveloped land...”

Rule 9J-5.006(3), F.A.C., requires the future land use element to be based on “An analysis of the character and magnitude of existing vacant or undeveloped land in order to determine its suitability for use, including...Natural resources”⁵; and to contain objectives and policies which “...Ensure the protection of natural resources...Provision for compatibility of adjacent land uses...Protection of... **environmentally sensitive land...**”⁶

Rule 9J-5.006(5), F.A.C., requires that comprehensive plans control urban sprawl, and establishes the following primary indicator of a failure to control urban sprawl: “As a result of premature or poorly planned conversion of rural land to other uses, fails adequately to protect and conserve natural resources, such as...native **vegetation, environmentally sensitive areas...**and **other significant natural systems.**”

b. Conservation Element. Section 163.3177(6)(d), Fla. Stat., requires each comprehensive plan to include a conservation element for the “...conservation, use, and protection of natural resources in the area, including...**forests...wildlife...and other natural and environmental resources.**”

Rule 9J-5.003(28), F.A.C., defines “conservation uses” as “...activities or conditions within land areas designated for the purpose of conserving or protecting natural resources or environmental quality, including...**protection of vegetative communities or wildlife habitats.**”

Rule 9J-5.013, F.A.C., provides that the purpose of the conservation element is to promote the conservation, use and protection of natural resources; requires analysis of “Areas which are the location of recreationally and commercially important...wildlife,..., and vegetative communities including forests, indicating known dominant species present and **species listed by** federal, state, or **local government** agencies as endangered, threatened or species of special concern,⁷ and requires the adoption of specific objectives and policies which “Conserve, appropriately use and protect...**native vegetative communities including forests...and wildlife, wildlife habitat...**”⁸, and “for the...Protection of native **vegetative communities** from destruction by development activities...Restriction of activities known to adversely affect the survival of **endangered and threatened wildlife...**Protection and conservation of the natural functions

⁵ Rule 9J-5.006(2)(b)4., F.A.C.

⁶ Rule 9J-5.006(3)(b)4. and (c)6., F.A.C.

⁷ Rule 9J-5.013(1)(a)5., F.A.C.

⁸ Rule 9J-5.013(2)(b)3. and 4., F.A.C.

of...**wildlife habitats**...Protection of existing natural reservations identified in the recreation and open space element...Designation of *environmentally sensitive lands for protection based on locally determined criteria* which further the goals and objectives of the conservation element...”⁹

Rule 9J-5.003(41), F.A.C., defines “**environmentally sensitive lands**” as “...areas of land or water which are **determined necessary by the local government, based on locally determined criteria**, to conserve or protect natural habitats and ecological systems.”¹⁰

c. Recreation and Open Space Element. Section 163.3177(6)(e), Fla. Stat., requires a recreation and open space element indicating a comprehensive system of public and private sites for recreation, including...natural reservations...”

d. Land Development Regulations. Section 163.3202, Fla. Stat., requires local governments to adopt land development regulations that “...contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall as a minimum...Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space...and...Ensure the protection of **environmentally sensitive lands** designated in the comprehensive plan...”¹¹

e. State Comprehensive Plan. Local government comprehensive plans are required to be consistent with the state comprehensive plan, the provisions of which are to be considered as a whole and not in isolation.¹² The provisions of the state comprehensive plan include the following “...Florida shall protect and acquire **unique natural habitats and ecological systems**, such as...tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests, and restore degraded natural systems to a functional condition¹³...**Conserve forests...and wildlife** to maintain their environmental,

⁹ Rule 9J-5.013(1)(c)3., and 5-9, F.A.C.

¹⁰ Though not applicable to the determination of comprehensive plan compliance with the Growth Management Act, it is interesting to note that for purposes of land acquisition under the Preservation 2000 Program, Rule 9K-4.002(17), F.A.C., defines “listed species” to mean “...animal species listed as endangered, threatened or of special concern by the Florida Game and Fresh Water Fish Commission in Rules 39-27.003, 39-27.004, and 39-27.005, Florida Administrative Code; plant species listed as endangered or threatened in Sections 581.185(5)(a)-(b), Florida Statutes; or any plant or animal species identified or designated in the comprehensive plan or ordinance by the local government as being of local concern and warranting special protection.”

¹¹ See 163.3202(1) and (2)(b) and (e), Fla. Stat.

¹² See Sections 163.3177(10)(a), (b), 163.3184(1)(b), Fla. Stat.

¹³ Section 187.201(9)(a), Fla. Stat.

economic, aesthetic, and recreational values¹⁴...Acquire, retain, manage, and inventory public lands to provide recreation, conservation, and related public benefits¹⁵...Prohibit the destruction of **endangered species** and **protect their habitats**¹⁶...Maintain, as one of the state's primary economic assets, the environment, including...**forests**...and natural resources¹⁷...”

f. Other Support in the Growth Management Act. Other statements of legislative intent in the Growth Management Act supporting the authority of local governments to protect its natural resources and upland habitats include:

Section 163.3161, Fla. Stat., provides that “It is the intent of this act that its adoption is necessary so that local governments can encourage the most appropriate use of land, water, and resources, consistent with the public interest... preserve, promote, protect, and improve the appearance and general welfare... conserve...and **protect natural resources**¹⁸...The provisions of this act in their interpretation and application are declared to be the **minimum requirements** necessary to accomplish the stated intent, purposes, and objectives of this act; to protect...environmental...resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state¹⁹...”

Rule 9J-5.001(4), F.A.C., states “As **minimum criteria**, these criteria are **not intended to prohibit a local government** from...adopting...a comprehensive plan which is more **specific, detailed, strict, or which covers additional subject areas**...as long as the comprehensive plan is in compliance with Chapter 9J-5, F.A.C., Chapter 163, F.S., and any other applicable laws or rules.”²⁰

¹⁴ Section 187.201(9)(b)1., Fla. Stat.

¹⁵ Section 187.201(9)(b)2., Fla. Stat.

¹⁶ Section 187.201(9)(b)3., Fla. Stat.

¹⁷ Section 187.201(21)(b)3., Fla. Stat.

¹⁸ Section 163.3161(3), Fla. Stat.

¹⁹ Section 163.3161(7), Fla. Stat.

²⁰ The phrase “and any other applicable laws or rules” is not to be read to broaden the bases for a compliance challenge beyond those specified in the definition of “In compliance” in Section 163.3184(1)(b), Fla. Stat.; see p. 47 of Rec. Order in Robbins v. Dept. of Comm. Affairs and City of Miami Beach, DOAH Case No. 97-0754GM (Dept. Comm. Affairs Final Order, Dec. 9, 1997) (allegations concerning inconsistency with city charter rejected as not a compliance issue); and Preserving Rural Property Values, Inc. v. Dept. of Comm. Affairs and Alachua County, DOAH Case No. 02-2676GM (DOAH Order on Motions, Sept. 10, 2002) (allegations of inconsistency with Florida Right to

Section 163.3177(10)(d), Fla. Stat., provides that “Chapter 9J-5, Florida Administrative Code, **does not mandate the...limitation, or elimination of regulatory authority**, nor does it authorize the adoption or require the repeal of any rules, criteria, or standards of any local...agency.”²¹

The authority of local governments to protect upland habitats is further recognized in agency final orders on challenges to comprehensive plans²², in administrative and judicial challenges to development orders²³, and agency action approving land development regulations.²⁴

Farm Act, common law riparian rights, and state regulations on local pollution programs and wetland mitigation stricken as non-jurisdictional).

²¹ See also Rule 9J-5.005(9), F.A.C., and The Link Between Comprehensive Planning and Environmental Permitting, Terrell K. Arline, Esq., 1000 Friends of Florida (1999).

²² See Dept. Comm. Aff. v. Collier County, ER FALR 99:259 (Ad. Comm., June 22, 1999) (explicitly recognizing the county’s role in providing crucial habitat to listed species; policies that only encouraged and did not require preservation, and did not specify minimum area to be preserved, were not in compliance); Heartland Environmental Council v Highlands County, ER FALR 96:185, 1996 WL 1059751 (Dept. Comm. Aff., Nov. 25, 1996) (Growth Management Act does not limit requirements for protection of natural resources to threatened and endangered species; existence of federal and state permitting processes do not preempt local governments with respect to protecting natural resources on lands used for agricultural purposes and is not dispositive of whether min. requirements of Act have been met for protection of wildlife); St. Marks River Protection Association v. Wakulla County, 17 FALR 4541, 4542-3, ER FALR 95:047 (Dept. Comm. Aff., April 28, 1995) (any inference that existence of state regulatory program for **gopher tortoises** allows a local government to abdicate its duty to address natural resource issues in its comprehensive plan is rejected, as it would ignore the clear distinction between regulatory permitting and land use planning). Upland protection policies are also the subject of the following decisions: Dubin v. Lee County, ER FALR 00:088 (Dept. Comm. Aff., February 4, 2000) (comprehensive policy for **off-site mitigation of gopher tortoises**, if unavailable conflicts make on-site protection infeasible); Growth and Environmental Organization v. Sarasota County, ER FALR 97:108 (Dept. Comm. Aff., April 18, 1997) (policies for protection of native habitats); Royal Professional Builders v. Village of Royal Palm Beach and Crestwood Lake Associates, ER FALR 97:144 (Dept. Comm. Aff., July 31, 1997) (policies on protection of environmentally sensitive lands); Geraci v. Hillsborough County, 99:046 (Dept. Comm. Aff., Jan. 12, 1999) (protections for significant wildlife habitat).

²³ See Department of Community Affairs v. Young, ER FALR 95:040 (FLWAC April 11, 1995), Rec. Order par. 29 (permits violated land clearing code intended to promote and encourage the protection of unique and biologically important natural resources,

g. Limitations or Qualifications in the Growth Management Act Impacting Local Authority.

(1) Data and Analysis: Comprehensive plan elements are required to be based upon the best available data that are relevant and appropriate to the element involved.²⁵ A local comprehensive plan providing for protection of upland habitat could be challenged for lack of reliable data to support the mapping or establishment of the habitat boundaries²⁶ or on the basis that the habitat protections are not justified by the needs of

including pinelands and Key Deer); Harbor Course Club, Inc. v. Department of Community Affairs, 510 So.2d 915 (Fla. 3d DCA 1987) (indiscriminate clearing of tropical hardwood hammock and wildlife habitat held to be inconsistent with comprehensive plan and land development regulations; Department of Community Affairs v. Holzinger, (Final Order Dec. 17, 1993) (development order rejected for failure to comply with open space requirements for various habitat types; to obtain valid permits, applicants must substantially reduce the footprint of the house); Dept. Comm. Aff. v. Charlotte County and MRP Land Trust, ER FALR 98:285 (FLWAC, Nov. 24, 1998) (to overcome presumption that developer is entitled to proceed under less stringent Notice of Proposed Change process, rather than Development of Regional Impact review, developer would have been required to show area was no longer bald eagle “habitat,” which covers more than just nesting activities; County’s determination of no substantial deviation was rejected).

²⁴ While a special situation, as part of the Florida Keys Area of Critical State Concern established by pursuant to Section 380.0552, Fla. Stat., the Governor and Cabinet sitting as the Administration Commission adopted Rule 28-20.025(8)(R), amended the Monroe County land development regulations to define “regionally important plant species” to be those native plant species identified as endemic, uncommon, or rare in the county’s regionally important plant species...or as identified by the Center for Plant Conservation, the Florida Natural Areas Inventory, or the Florida Committee on Rare and Endangered Plants and Animals.” See Section 380.0552(7)(c), Fla. Stat., providing as a principle for guiding development, with which comprehensive plan amendments must be consistent, “To protect upland resources...tropical biological communities...native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and...wildlife, and their habitat.”

²⁵ See Section 163.3177(6)(a), (8), and (10)(e) and (i), Fla. Stat., and Rules 9J-5.005(2), 9J-5.006(2)(b)4., and 9J-5.013(1)(a)5., F.A.C.

²⁶ See Florida Wildlife Federation v. Collier County, ER FALR 01:111, 01:056 (Dept. Comm. Aff., March 6, 2001), affirmed, 27 Fla. L. Weekly D1305 (Fla. 1st DCA 2002) (Closing the Gaps report was recognized as a good general document when used on a large scale, but was rejected for establishing land cover on the small scale required for local planning purposes, in this case the establishment of Natural Resource Protection Areas for panthers).

the species.²⁷ But, as addressed above, given the broad discretion of local governments to define environmentally sensitive lands, protect and maintain natural resources and the character of the community, and to curb urban sprawl, and given that the compliance criteria are only minimum criteria, local governments may protect upland habitats based more generally on data concerning the value of the ecological or vegetative communities as a whole, rather than on just the limited basis of the needs of a particular species.

(2) Vagueness: Comprehensive Plan goals, objectives, and policies must establish meaningful guidelines to guide the implementing land development regulations. Depending on how the upland habitats and the associated protections are defined and drafted, they may be susceptible to compliance challenges on the basis of vagueness.

(3) Property Rights: While administrative challenges to comprehensive plans based upon State Comprehensive Plan and Growth Management Act²⁸ provisions for protection of private property rights have consistently failed²⁹, the specter of property

²⁷ For cases involving carrying capacity approaches to land planning, see Department of Community Affairs v. Monroe County and 1000 Friends of Florida, ER FALR 95:148 (Ad.Com. 12/12/95), affirmed, 703 So.2d 480 (Fla. 1st DCA 1997) (the greater the potential harm to an environmental feature, the greater the extent of action a professional planner would recommend); Responsible Growth Management Coalition v. Lee County, ER FALR 99:192 (Dept. Comm. Aff., Jan. 12, 1999) (Panther Habitat Protection Plan suggests that south Florida may be nearing its carrying capacity for panthers); , so that further habitat loss means further panther loss; Department of Community Affairs v. Monroe County and 1000 Friends of Florida, ER FALR 95:148 (Ad.Com., Dec. 12, 1995), affirmed, 703 So.2d 480 (Fla. 1st DCA 1997) (allowing additional development on Big Pine Key and No Name Key is inconsistent with data and analysis and expert testimony indicating that Key deer population has reached its carrying capacity).

²⁸ Section 163.3161(9), Fla. Stat., which is not a “compliance” provision pursuant to Section 163.3184(1)(b), Fla. Stat., and Rule 9J-5.005(8), F.A.C., express legislative and agency intent that constitutionally protected private property rights should be respected, but recognize that takings claims may only be tried in judicial actions.

²⁹ See Lost Tree Village Corp. v. Indian River Shores, City of Vero Beach, and DCA, ER FALR 01:200 (Policy and rules did not absolutely prohibit development on offshore island, and thus did not conflict with State Comprehensive Plan goal on private property rights; consideration was given to transferable development rights; the claim bordered on a determination of inverse condemnation, which was beyond the factual record and jurisdiction of the proceeding); Monroe County Chowder and Marching Society, Inc. v. Administration Commission, ER FALR 97:151 (DOAH May 21, 1997), affirmed, 703 So.2d 480 (Fla. 1st DCA 1997) (both property rights and the environment have been weighed and considered); Department of Community Affairs v. Monroe County and 1000 Friends of Florida, ER FALR 95:148 (Ad. Com., Dec. 12, 1995), affirmed, 703 So.2d 480 (Fla. 1st DCA 1997) (policy was consistent with takings law; notably this is a Comprehensive Plan and not a zoning ordinance, and further the policies concerning land

rights challenges in the judicial arena should be a much greater concern for local governments regulating upland habitats.

(4) Agricultural Exemption: Though the future general distribution, location, and extent of agricultural land uses must be designated and mapped in local comprehensive plans, and include density and intensity standards³⁰, the Growth Management Act also excludes agriculture and silviculture from the definition of “development.”³¹ There are conflicting decisions and opinions on whether the statute mandates, or merely authorizes, local governments to exempt agriculture from the development approval process.³²

acquisition, transferable development rights, opportunities to increase a project score under the Permit Allocation System, mitigation options, and other mechanisms are designed to avoid “as applied” takings in the future); Plan commits to purchase of lands rendered unbuildable; the Permit Allocation System does not impose a development ban, nor deprives constitutionally protected rights: it allocates permits); Rossignol v. Islamorada and Dept. Comm. Aff., ER FALR 02:022 (Dec. 6, 2001) (the community envisioned by the city is not required to achieve the highest and best use for the greatest number of property owners within the city’s planning jurisdiction.; Geraci v. Hillsborough County, 99:046 (Dept. Comm. Aff., Jan. 12, 1999) (an administrative agency cannot rule on a takings claim).

³⁰ Section 163.3177(6)(a), Fla. Stat.

³¹ See Section 380.04(2)(e), Fla. Stat., which is incorporated into the Growth Management Act by Section 163.3164(6), Fla. Stat.

³² See Florida Wildlife Federation v. Collier County, ER FALR 01:111 (Dept. Comm. Aff., March 6, 2001), affirmed, 27 Fla. L. Weekly 1305 (Fla. 1st DCA 2002) (impacts of agriculture are exempt from Chapter 163, Fla. Stat., but not the requirement to depict on future land use map; Environmental Confederation of S.W. Fla. v. Dept. Com. Aff. and Collier County, (Dept. Comm. Aff., 1998), affirmed 727 So. 916 (Fla. 1st DCA) (Comprehensive plan amendment that reinstated the agricultural exemption was permissible because they apply to specific development activities of site alteration, drainage, and land clearing and are limited in application to agricultural activities; local government is entitled to avail itself of the statutory exemption without data and analysis); Environmental Confederation, ER FALR 97:219 (Rec. Order, not incorporated in Order of Remand) (blanket exemption for agriculture was not supported by data and analysis); Corkran v. Administration Commission, ER FALR 97:118 (DOAH, April 21, 1997) and Heartland Environmental Council v Highlands County, ER FALR 96:185, 1996 WL 1059751 (Dept. Comm. Aff., Nov. 25, 1996) (Dept. Comm. Aff. has no authority to regulate agriculture; local governments, however, may institute land development regulations relating to agriculture; Dept. interpreted that agricultural exemption rule and rule for Big Cypress Area of Critical State Concern limiting site alteration to 10% of the site are complementary, and that if land is exempt for agricultural purposes and is later altered for development, alteration would be limited to 10%); see also Charles River Laboratories v. Monroe County, ER FALR 97:152 (DOAH 1997) (fences and other building activity are not excluded from the definition of development,

Either way, the result is that a local government's ability to adopt and enforce comprehensive plans and land development regulations directed at protecting upland habitats from agricultural impacts is limited or complicated by the statutory definition of "development."

B. Limitations on Local Authority

1. General Limitations

Local governments must exercise their powers for a valid public purpose.³³ Furthermore, the means chosen to serve the public purpose must not be arbitrary or unreasonable.³⁴

2. Wildlife Regulation Preemption: The Florida Constitution vests the Florida Fish and Wildlife Conservation Commission with authority for regulating hunting and wild animal life.³⁵ The principle of state wildlife primacy over local regulation is well established.³⁶ Courts will invalidate local ordinances in clear conflict with state authority on hunting and wildlife.³⁷ On the other hand, courts will often seek to interpret local regulations and state law harmoniously, in effort to uphold local regulation where not clearly in conflict with state law.³⁸ In contrast to regulation of wildlife species,

even if primarily for agricultural purposes; that monkeys bred for medical research are "livestock" is not at all clear); see also Section 163.3177(10)(g), Fla. Stat., and Hunt v. Marion County, ER FALR 95:122 (Dept. Comm. Aff., Sept. 21, 1995) (definitions in Rule 9J-5.003 are not mandatory, they merely provide clarification, and the local government is free to use other definitions in its CP so long as they generally conform with the codified definition); see also Compatible Planning of Land Use Intensities With Wildlife and Wildlife Habitat, Thomas W. Reese, Esq.

³³ State v. City of Sunrise, 354 So.2d 1206, 1209 (Fla. 1978).

³⁴ Carter v. Town of Palm Beach, 327 So.2d 130 (Fla. 1970).

³⁵ Article IV, Section 9, Florida Constitution.

³⁶ Local Government Protection of Biodiversity: What Is Its Niche?, A. Dan Tarlock, 60 U. Chi. L. Rev. 555, 603-605 (Spring, 1993).

³⁷ See New York v. County of Suffolk, 531 N.Y.S.2d 180 (N.Y. 1988) (ordinance prohibiting leg hold animal traps invalidated); Miller v. Manchester, 834 S.W.2d 905 (Mo. App. E.D. 1992) (ordinance precluding steel animal traps invalidated).

³⁸ See Miramar v. Bain, 429 So.2d 40 (Fla. 4th DCA 1983) (upholding a local ordinance banning front yard fencing, where a state regulation for possession of cougars allowed for alternate means of animal fencing); Miller v. City of Town and Country, 62 S.W. 3d 431 (Mo. App. E.D. 2001) (upholding an ordinance requiring hunters on government land to seek permission from government landholder first).

biodiversity is not yet an organizing concept for federal or state regulatory programs, so local governments have considerable authority and discretion to define their regulatory niche.³⁹ It follows, then, that a local regulation prescribing gopher tortoise protection or mitigation in a manner that conflicts with state regulations will be invalidated on preemption grounds; a local regulation directed more generally to gopher tortoise habitat might survive such a challenge; and a local regulation directed even more broadly to protection of entire natural vegetative community types or ecosystems would certainly not be preempted.

3. Right to Farm Act: Section 823.14(6), Fla. Stat., an amendment to the Florida Right to Farm Act, preempts local governments from adopting regulations that restrict or limit an activity of a bona fide farm operation, with an agricultural classification for ad valorem property tax purposes, where such activity is regulated through implemented best management practices formally adopted by rule by the State Dept. of Environmental Protection, Dept. of Agriculture and Consumer Services, or water management district.⁴⁰

4. Other Legal Challenges: Local regulations to protect upland habitats may generate challenges for lack of authority, substantive due process (ex., arbitrary and capricious, or lack of rational nexus between the regulation and a legitimate government objective), vagueness, vested rights, regulatory takings, Bert Harris Act,⁴¹ invalid exactions, and equal protection.⁴²

5. Strategies: Local government strategies for upland habitat protection may include, among other things, land acquisition programs, biodiversity or mitigation impact

³⁹ A. Dan Tarlock, *supra* at 555, 561, 603-605.

⁴⁰ For discussions and varying interpretations of the scope of application of the Right to Farm Act, see The Florida Right to Farm Act Amendment – A Local Government Perspective, Jon Van Arnam; Collier County’s Authority to Regulate Agricultural Uses: Florida’s Right to Farm Act, Thomas W. Reese (Memorandum, February 11, 2002), and identically titled memorandum by Martha H. Chumbler (February 14, 2002); see also Comment: "Right to Farm" Statutes – The Newest Tool in Agricultural Land Preservation, Randall W. Hanna, 10 Fla. St. U.L. Rev. 415 (Fall 1982); see also the Florida Rural Land Stewardship program codified in Section 163.3177(11), Fla. Stat.

⁴¹ See Chapter 70, Fla. Stat., the Bert J. Harris, Jr. Private Property Rights Protection Act; see also Property Rights – 2000 Update, Ronald L. Weaver & Andrew D. McNamee, Fla. Bar Course No. 4972R, p.15.23-15.39, and Article: Florida's Private Property Rights Protection Act: Does It Inordinately Burden the Public Interest?, Julian C. Juergensmeyer, 48 Fla. L. Rev. 695 (September, 1996).

⁴² A. Dan Tarlock, at 583-598.

fees,⁴³ Habitat Conservation Plans authorized under 10 of the Endangered Species Act⁴⁴, ecological design standards and guidelines for land development⁴⁵, clustering, open space⁴⁶, and transferable development rights⁴⁷ programs and regulations.

⁴³ A. Dan Tarlock, at 598-602; Local Government Environmental Mitigation Fees: Development Exactions, The Next Generation, Thomas W. Ledman, 45 Fla. L. Rev. 835.

⁴⁴ A. Dan Tarlock, at 605-612.

⁴⁵ See the Ecological Design Manual for Lake County, at <http://www.ecfrpc.org/EcoDesignManual.htm>.

⁴⁶ See Sumter Citizens Against Irresponsible Development v. Dept. And Sumter County, ER FALR 01-209 (DCA May 23, 2001), affirmed, ER FALR 02:123, (Fla. 5th DCA 2002) (upholding comprehensive plan policy requiring approximately 90% of land area to be maintained in land uses such as agriculture, conservation, and open space).

⁴⁷ See Transfer of Development Rights Revisited, American Planning Association (Feb. 9, 2000); Glisson v. Alachua County, 558 So. 2d 1030, 1037 (Fla. 1st DCA 1990); Successful Growth Management Techniques: Observations from the Monkey Cage, Charles L. Simon, *The Urban Lawyer*, Vol. 29, No. 2 (Spring 1997).