

RESOURCE PROTECTION TECHNIQUES

This article contains information regarding resource protection techniques that may be available to a byway organization (BO) to help protect byway resources. The BO is encouraged to work with local government officials and planning agencies to better understand these techniques and their applicability to a specific corridor.

I. Comprehensive Plans

In Florida, local government comprehensive plans (comp plans) combine planning and regulatory functions. Consequently, comprehensive plans are the primary mechanism by which local governments both plan for and regulate land use and development within their jurisdictions. One Florida court has described the local comprehensive plan as the “constitution” for land use planning in Florida. Comprehensive plans are legally enforceable documents, and all development and land use are undertaken according to these plans. All proposed development within a local government’s jurisdiction must demonstrate consistency/compatibility with the local comprehensive plan. Whether the area chosen for protection is of cultural, historical, archeological, recreational, natural or scenic significance, such features are subject to a local government’s general powers that may be exercised to protect public health, safety and welfare.

In many cases, BOs have worked with local governments to amend the community’s comprehensive plan to include specific reference to/protection of their byway. Although not currently required as part of the byway designation process, this level of incorporation into local development regulations typically offers the byway enhanced recognition and protection at the local level.

II. Other Possible Protection Techniques

There are a number of other techniques available to the BO and its local government partners to help protect a byway’s resources. The local government’s choice of options will depend upon its objectives and the degree of control necessary to meet those objectives. In some cases, governments may choose to employ a combination of several techniques to assist in implementing scenic highways plans.

The following is a summary and brief description of several protection techniques potentially available through a BO and local government partnership. For organization and clarity, these techniques have been grouped under three headings; *Regulatory Techniques*, *Public and Private Agreements*, and *Acquisition of Interests*.

A. Regulatory Techniques

Land Development Regulations

One manner in which a local government may help protect byway resources is through land development regulations. A local government may offer any number of variations on the techniques listed below, and the list should not be considered exhaustive. These regulatory techniques are presented here in two categories: Zoning and Other Techniques.

Zoning

Traditional Zoning - The starting point for any discussion of land use regulation is traditional zoning which is widely used in Florida. Traditional zoning is based upon division of a jurisdiction into land use districts.

Each community has development standards ranging from permitted land uses to building height, setbacks and fencing requirements. The hallmark of traditional zoning is the uniformity of uses within each district. This characteristic limits the usefulness of traditional zoning for a byway as a corridor may traverse numerous zoning districts. It may be possible for a local government to partner with a BO in the creation of a specialized zoning district solely within and for a byway.

Overlay Zoning - A variation of traditional zoning that may be the most useful for a byway is the overlay zone. As the name implies, an overlay zone is an additional designation that is placed on top of and lies over existing zoning designations. An overlay zone supplements the underlying, existing zoning regulations with additional requirements. An overlay zone could be used to establish additional design standards or other special conditions for a designated corridor beyond what is existing, without changing the underlying land use regulations and where supplementing those regulations would enhance the byways protection.

Other Techniques

Design Guidelines - The most fundamental way to protect or enhance valuable resources is through the preparation of specific guidelines. These guidelines would ensure that a corridor is developed at the highest level of quality, protection, and enhancement desired. Typically design guidelines are defined by at least five basic issue areas:

1. Function - Clearly state the purpose of the corridor
2. Form - Establish unique districts or sub-areas

3. Character - Identify overall intrinsic characteristics
4. Quality - Orient guidelines and standards to ensure quality
5. Success - Establish a system of organization, finance and enforcement

The BO will need to work closely with the local government to assess the practicality of design guidelines, but if implemented these guidelines can be developed to cover specific elements such as architecture, signage, landscaping and site development standards.

Special Permits and Incentive Zoning - Special permits, also referred to as special exceptions or conditional uses, may be used to single out development that requires closer scrutiny to insure that it is compatible with a particular location. A special permit could be required for all development, or certain types of development, proposed to be located along or adjacent to a byway. Such regulation would allow local governments to review individual projects and to impose special conditions, such as increased buffers or access limitations, in order to ensure compatibility along the scenic highway corridor. Local governments could also deny approval if compatibility cannot be ensured.

Special restrictions associated with a byway management plan, such as increased buffers and other tailored design criteria, may also be achieved through incentive zoning. Under incentive zoning, developers are offered incentives, usually increased density or intensity, if they agree to voluntarily comply with certain criteria.

Sign Regulations — Because the viewshed can be an integral part of a scenic highway, managing and regulating the location, appearance and existence of signage, as part of a corridor's visual experience may be considered a protection technique. **Title 23 Section 131 U.S.C** regulates signage (billboards) on the Interstate system and the Federal-aid primary highway system and must be considered on designated corridors that include such roads. This section directs that States make provision for the "effective control" of all signs within 660 feet of the nearest edge of the right-of-way in urban areas and all signs within the limits of visibility in rural areas. "Effective control" means prohibiting the construction of new signs in these identified areas except for directional and official signs; signs advertising the sale or lease of property on which they are located; signs advertising a business located on the property; landmark or historic signs; and signs advertising "free coffee" for travelers.

The regulation discussed above may not apply to all roads on a designated scenic highway. For local roads that are part of a designated byway the BO is encouraged to work with the local government(s) to understand their sign regulations and how they might impact a byway.

Regulating signage along a designated byway is complex. The BO should work closely with their District Scenic Highway Coordinator and local government representative to understand the challenges and complexities of the issue.

Historic Preservation — Historic preservation laws and ordinances have been enacted at the Federal, State, and local levels. The **National Historic Preservation Act of 1966** sets forth the federal guidelines for preservation of historic places. The Florida Legislature enacted **Chapter 267, Florida Statutes (F.S.)**, as the State's mechanism for ensuring the integrity and continued existence of historic sites. The Legislature also enacted **Chapter 266, F.S.**, which establishes historic preservation boards in designated areas of the State. Lastly, many local governments have enacted historic preservation ordinances to help protect valued historical resources.

The basic purpose of historic preservation is reflected in its name: that is, to preserve historic properties and resources for present and future generations. Historic properties and resources may include buildings, sites, engineering works, and other objects with intrinsic historical or archeological value. Pursuant to state and federal law, agencies are directed to take into account such properties and resources as part of a state or federal action that will impact historic resource and to avoid or mitigate unavoidable impacts to the greatest degree feasible.

Where an identifiable area contains a number of historic properties, an area may be designated at either the local or federal level as an historic district. Such a district may be subject to more stringent zoning and land use designation in order to preserve the character of the area.

To better understand possible linkages between a scenic highway designation and historic preservation, the BO should coordinate closely with the DCHC who can help identify historic preservation resources at the state and local levels.

B. Acquisition of Interests

Another technique that a local government may employ in establishing and protecting byways is the acquisition of interests. This technique has the local government becoming the owner of land or interests in land along the corridor, and has a number of variations. Likewise, a private nonprofit land trust, working in partnership with the local government, may acquire interests in land along the corridor.

Scenic or Conservation Easements (Section 704.06, F.S.) -This technique sets forth procedures for the acquisition, creation, and enforcement of conservation

easements. Conservation easements can be used to retain land in its natural, scenic state, thereby protecting its physical appearance.

Fee Simple Acquisition of the Scenic Corridor - The local government may also acquire, in fee simple, the corridor, or portions thereof, adjacent to the byway in order to protect the designated corridor.

Land Trusts - Land trusts and land banks could be used to protect a byway. Both techniques involve, at the outset, a local government obtaining fee simple to a tract of land. For a byway, this technique would have the advantage of the local government having a considerable amount of control over all of the land within that trust.

Land Exchanges - Land trades are quite similar to transferable development rights. In a land trade, a developer trades one parcel of land for another. For a byway, this would involve a developer trading land along a designated corridor for land in another location.

C. Public and Private Agreements

In addition to regulatory techniques that may be available as a protection technique for a byway, agreements among and between private and public entities may also be available. These agreements can be complex and take various forms. It will be important for the BO to work closely with their local and regional planning partners to ensure they are implemented correctly.

Interlocal Agreements - Pursuant to **Section 163.01, F.S.**, local governments are permitted to enter into contracts with other local governments that allow themselves to exercise jointly any power, privilege, or authority that all of the governments share in common and might exercise separately. Interlocal agreements are meant to coordinate the most efficient use of services and facilities between and among adjoining jurisdictions.

Interlocal agreements could be particularly important and useful to a BO as a corridor will more than likely traverse two or more adjoining jurisdictions. An interlocal agreement would allow the governments of these jurisdictions to work jointly and cooperatively in exercising any of the powers granted to each individually.

Special Districts - A special district is a local unit of special-purpose within a limited boundary (local government). Special districts provide a funding and maintenance mechanism for a limited number of services or functions. Such

districts are governed by **Chapter 189, F.S.**, which provides uniform provisions for the creation and operation of special districts.

A special district for a BO would be useful if created pursuant to an interlocal agreement. In this manner, an independent special district (composed of multiple local governments) with certain funding abilities could oversee the protection of a byway. An “independent district”, since it has its own “governmental powers,” may be the preferred form of special districts for a BO. Such a district may more effectively implement the various other techniques for a byway’s protection and enhancement. Although complex in nature a special district could offer a BO with certain advantages. It is best to discuss these types of special districts with the local and regional planning organizations along the designated corridor.

KEY POINTS

The following key points were presented in this article:

- **Local Comprehensive Plans** are the primary controlling laws by which local governments plan and regulate their land uses.
- **Regulatory Protection Techniques**, such as zoning, transferable development rights and historic preservation allow a local government to regulate land development and uses.
- **Public and Private Agreements** permit government agencies and other entities to work together toward a shared goal or outcome.
- **Acquisition** involves the direct ownership, through easements, trusts, or purchase of land by the local government.