COASTAL CASE LAW UPDATE: RECENT ADMINISTRATIVE AND JUDICIAL DECISIONS RELATING TO FLORIDA BEACHES

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TOWN OF HILLSBORO BEACH V. CITY OF BOCA RATON AND DEPARTMENT OF ENVIRONMENTAL PROTECTION

Town of Hillsboro Beach v. City of Boca Raton and Department of Environmental Protection, OGC Case No. 17-0078 and DOAH Case No. 17-2201. Final Order dated January 30, 2018 (Not appealed).

FDEP Final Order and DOAH Recommended Order can be viewed at: :
https://www.doah.state.fl.us/ROS/2017/17002201_282_01302018_18111731_e.pdf

FDEP issued a proposed Permit Modification to the Joint Coastal Permit for the North Boca Raton Beach Nourishment project to allow the City of Boca Raton ("City") to dredge 70,000 cubic yards of sand from the Boca Raton inlet ebb shoal to place on beaches north of the inlet. The City has beaches south of the inlet, followed by the City of Deerfield Beach, and then the Town of Hillsboro Beach immediately south of Deerfield Beach. All of these areas have been the subject of beach nourishment permits under this and other FDEP permits.

The Town of Hillsboro Beach ("Town") filed a petition contesting the issuance of the permit modification to the City. The Town alleged in its petition that the modification would 1) be inconsistent with the Strategic Beach Management Plan ("SBMP") and the Boca Raton Inlet Management Plan ("IMP"); 2) cause adverse impacts to the Town's beaches; 3) could cause cumulative impacts if future ebb shoal dredge approvals are issued; 4) would be contrary to the provisions of Rule 62B-41.005 regarding net positive benefit and public interest.

Site Background:

- Long-term beach nourishment projects within the City are managed through three permits: the permit for the North Boca Raton project authorized the City nourish 2.8 miles of beach north of the inlet using sand from offshore borrow areas; the Boca Raton Sand Bypassing permit authorizes the City to periodically dredge sand from the inlet and place it on the City's beaches south of the inlet; The South Boca Raton Beach Nourishment Project allows the City to periodically dredge sand from the ebb shoal and place it on the City's beaches south of the inlet.
- The Department's SBMP incorporates the Boca Raton IMP which was approved in 1997. The IMP and the revised SBMP call for a minimum of 83,000 cubic yards of sand per year as an annual average, to be placed on beaches south the inlet to account for the inlet's impact on southerly drift.
- The ebb shoal is subject to continuous accretion and requires periodic dredging to maintain safe navigation in the channel. At the time of the application, the ebb shoal was very much in need of dredging.
- The template for the South Boca Raton Beach Nourishment Project was full and could not receive more sand without risking damage to the nearshore hard bottom community. The City needed to dredge the sand and place it north of the inlet, which

required the modification to the North Beach project permit that only authorized an offshore borrow site.

Key Findings

The SBMP and IMP: Because the SBMP and the City's IMP referred to "nourishment of downdrift beaches using the inlet ebb shoal as a borrow source" the Town claimed that these provisions prohibited the use of sand from the ebb shoal for nourishment of the "updrift" beaches north of the inlet. However, FDEP found this interpretation to be too restrictive. FDEP had previously allowed the placement of sand from the ebb shoal north of the inlet in 2006 and had found that to be consistent with the IMP. Subsequently, the updated SBMP added a reference to that project.

- The SBMP states that nothing in the SBMP precludes the evaluation of alternatives consistent with Chapter 161, Florida Statutes.
- The City has been exceeding the average annual bypass goal of 83,000 cy per year, and the goal was based on a sediment budget that examined natural and artificial sand movement. Beach profile monitoring has shown a net volume of accumulation south of the inlet.
- Both the Recommended Order and the Final Order made factual findings that the modification is reasonable under the IMP and consistent with the SBMP and IMP.

The Legal Effect of the SBMP and IMP on Permitting: Despite making the Findings of Fact of consistency referenced above, in the Recommended Order ("RO") the Administrative Law Judge ("ALJ") reached the Conclusion of Law that the Department could not require consistency with the SBMP and the IMP in making permit determinations since neither document had been adopted as a rule pursuant to Chapter 120, Florida Statutes. The ALJ made these legal conclusions absent an argument to that effect from the parties and absent a challenge to those documents as unadopted rules. Additionally, the legal conclusions were made despite the fact that the Department requires consistency with the SBMP and adopted IMP pursuant to rule 62B-41.008(13)(b) F.A.C. for a joint coastal permit application.

No Department rule adopts the SBMP or an IMP by reference. The ALJ went on to note that section 120.57 F.S. of the Administrative Procedure Act prohibits an agency or an ALJ from basing agency action determining the substantial interest of party on an unadopted rule. The ALJ therefore found that requiring consistency with the SBMP and IMP could not apply in this permitting proceeding.

However, in the adoption of its Final Order, the Department considered the Exception filed by the Town to the ALJ's conclusions of law regarding the IMP and the SBMP as unadopted rules, granted the Town's Exception, and rejected these conclusions of law. FDEP noted in its Final Order that no unadopted rule challenge had been filed, nor had the issue been listed in the Prehearing Stipulation which governs the issues to be decided at the Final Hearing.

Consequently, and based on case citations, FDEP ruled that the issue of the legal status of the SBMP and IMP was not before the ALJ for consideration. The Department found these conclusions of law to be unnecessary to the outcome of the case, as the ALJ had also made fact findings that the permit modification was consistent with the SBMP and IMP apart from the unadopted rule legal issue.

Adverse Impacts: The Town alleged that placing sand from the ebb shoal on the north City beach would reduce the volume of sand reaching the Town's beaches, causing adverse impacts to the Town and would also reduce the amount of sand available for natural bypassing.

- The Order found that 1) sand from the ebb shoal placed on the north beach is still in the shoreline system and contributes to downdrift; 2) the ebb shoal grows rapidly; 3) the one-time removal of 70,000 cy. from the shoal will not prevent the bypassing of 83,000 cy on an average annual basis; 4) the South Boca Raton Beach template is full; 5) the placement of the 70,000 cy on the North Boca Raton Beach would not cause an adverse effect to the Town's beach south of South Boca Raton Beach and Deerfield Beach.

Compliance with Rule 62B-41.005, F.A.C. and Public Interest Requirements: The Final Order found that:

- The application would have a net positive benefit on the coastal system;
- The previous use of the ebb shoal to nourish both north and south of the inlet provided reasonable assurances that that shoal would quickly refill and that there would be no adverse effects on the Town;
- The project met the public interest requirements of s. 373.414, Florida Statutes, especially with regard to navigation safety.

The Department's Final Order ordered the issuance of the permit, but modified the Recommended Order to remove the ALJ's legal conclusion that consistency with the SBMP and IMP, as unadopted rules, was not required. In making this ruling, the Department has left open the question of whether the SBMP and/or IMP should be adopted as rules in order for FDEP to require consistency as contemplated by Chapter 161, F.S. and Chapter 62B-41, F.A.C.

THE LIDO KEY BEACH NOURISHMENT CASE

The Siesta Key Association of Sarasota, Inc., et al and Save our Siesta Sands 2, Inc., et al v. City of Sarasota; U.S. Army Corps of Engineers; Department of Environmental Protection; the Board of Trustees of the Internal Improvement Trust Fund, Respondents, and Lido Key Residents Association, Inc. Intervenor, OGC Case Nos. 16-15-1 and 17-0010, DOAH Case Nos. 17-1449 and 17-1456 Consolidated Final Order dated June 18, 2018 (Not appealed).

FDEP Final Order and DOAH Recommended Order can be viewed at:
https://www.doah.state.fl.us/ROS/2017/17001449_282_06182018_15481605_e.pdf

Case Background: These cases were consolidated and challenged the FDEP's 2016 Notice of Intent to issue a Consolidated Joint Coastal Permit to the City of Sarasota and to the Army Corps to renourish Lido Key with sand from Big Sarasota Pass and its ebb shoal.

The proposed Consolidated Joint Coastal Permit allowed issuance of the permit and sovereign submerged lands approvals for the dredging of the ebb shoal in Big Pass, Sarasota County, to provide sand fill to renourish part of Lido Key to the north and to construct two permeable groins at the south end of Lido Key.

Two Siesta Key citizens groups and several individuals from Siesta Key filed petitions challenging the issuance of the joint coastal permit to the City and the Corps based on the use of the ebb shoal as a borrow site, as Big Pass and its shoal had never been dredged. The Petitioners that the project would be contrary to the public interest, would adversely affect fish and wildlife, navigation, seagrasses and endangered species, and mainly alleged that the dredging of the cuts in the shoal would increase wave energy to Siesta Key causing erosion of Siesta Key's beaches.

This case is also significant due to the Army Corps' decision to enter a limited appearance to participate in the case for the limited purpose of obtaining water quality certification pursuant to Section 401 of the federal Clean Water Act and for concurrence with its consistency determination pursuant to Section 307 of the Coastal Zone Management Act. Indeed, the Army Corps presented expert witnesses who testified extensively regarding the Corps' sediment transport budget, the use of the Corps' two-dimensional CMS model, and its review of fish and wildlife impacts and the consistency process.

Lido Key is a manmade barrier island constructed in the 1920's located in Sarasota County in the Gulf of Mexico that is bounded on the north by New Pass between Lido and Longboat Key, and on the south by Big Pass which separates Lido Key from Siesta Key. Lido has a developed and highly erosive shoreline that has been periodically nourished with borrow from New Pass by the City and the Corps since 1964. 2.4 miles of Lido's 2.6 mile shoreline remain designated as critically eroded.

The Big Sarasota Pass ebb shoal has been growing due to the northerly renourishment projects for Longboat and Lido Keys with local transport and drift patterns. Much of Siesta Key's beaches south of Big Pass have experienced substantial accretion in large areas as a result.

Due to the lack of sufficient suitable borrow material in an economically available offshore location, the ebb shoal was chosen by the Corps as the borrow location for the project based on prior inlet management plan studies and studies conducted by the Corps. The three dredge cuts in the Pass were designed to follow a flood marginal channel and to refill with ebb shoal growth over time. The Army Corps used a version of the CMS sediment transport model it had developed to design the cuts and predict sediment transport, which was challenged by the Petitioners.

In addition to sand placement on Lido Key, the permit allows for the construction of two semi-permeable rubble mound groins at the southern end of the Key to stabilize the beach and to lengthen the time between renourishment events.

The Petitioners also claimed that the dredge cut locations contained seagrasses that were close to spawning areas for spotted seatrout and that the dredging would adversely affect fish and wildlife. Sparse seagrasses were observed in some cut areas during the study for the application, and an offsite seagrass mitigation area in the same drainage basin was proposed and accepted by FDEP as mitigation.

Numerous expert witnesses presented testimony in the case, including a number of coastal engineers, hydrographic engineers, coastal geologists and biologists.

Key Findings

Ebb Shoal Equilibrium: The Big Pass ebb shoal had a substantially greater volume than its predicted equilibrium volume; the proposed dredging was less than 6% of its volume, and the use of the shoal as borrow was supported.

The Use of the CMS Sediment Transport Model: The Corps used a combined hydrodynamic and sediment transport model called the Coastal Modeling System Version 4 (CMS) to analyze probable effects of the project. The model was also used to predict transport based on alternative designs for the borrow cuts. CMS is a two dimensional model that was developed to represent tidal inlet processes and model morphological trends.

- The Final Order found that the model had been properly calibrated using LIDAR data from 2004, despite the Petitioners' expert's testimony that his analysis of the LIDAR data when compared to the model did not produce the same degree of correlation; however, the use of the sediment transport model is a recent tool that assists in the decision making process but does not replace other information. The Order found that the model has not advanced to the point that allows it to predict with precision the topography of the sea floor at thousands of LIDAR points in a limited area as the Petitioners insisted was necessary.
- The CMS model replicated known features of the Pass and ebb shoal and was sufficient to demonstrate the effects of alternative borrow areas in the Pass on sediment transport to Siesta Key, and combined with other data was sufficient to show that the proposed dredging and nourishment would not cause significant adverse effects to Siesta Key.

Wave Energy: Petitioners claimed that dredging the shoal would reduce the "buffer" effect of the shoal on Siesta Key and increase erosional wave energy on the Key, but they did not perform any studies. The Order found that the small percentage of dredge volume would not

reduce the shoal's protective effect on Siesta Key and the Petitioners' arguments were not persuasive.

Fish and Wildlife: While the Petitioners did not perform studies or make any persuasive case regarding alleged impacts to fish and wildlife generally, their fisheries expert testified that he had identified spotted seatrout spawning areas in some locations in and near the Pass, and that the nearby seagrass areas are used by post-larval seatrout for refuge. Based on his testimony, the Order found that these spawning sites are not common and are used repeatedly by the spotted seatrout. Impacts to fishing, apart from endangered and threatened species, is one of the public interest considerations for Environmental Resource Permits in s. 373.414, Florida Statutes.

- Although the offsite seagrass mitigation site is appropriate mitigation for the expected impacts to any seagrasses in the Pass, the Order found that it did not mitigate for the potential impacts to spotted seatrout post-larvae using seagrass areas at the eastern edge of Cut C in the Pass.
- The Order also found that Cut B in the Pass is a spotted seatrout spawning location.
- The Order addressed these findings by preventing dredging in Cut B and in the easternmost area of Cut C from April to September during the spawning season.

Design Modifications: The Petitioners alleged throughout the case that the Applicants did not consider the use of offshore borrow areas in lieu of the ebb shoal and therefore did not consider practicable design modifications pursuant to s. 373.414, F.S. or Section 10.2.1 of the Applicants Handbook. However, FDEP held that such modifications must be within the scope of the proposed project and not amount to a different project. This project was to use the ebb shoal and the Pass as the borrow area, not the offshore location, and the only design modifications to be considered for borrow locations were the alternative borrow locations within the ebb shoal and Big Pass, which the Corps had done.

Coastal Zone Consistency: The Petitioners also claimed that the project was not consistent with Sarasota County's Comprehensive Plan and therefore did not qualify for consistency with the Florida Coastal Zone Management Program. However, the County never made any such claim, and the Order found that the consistency review process had been properly carried out by the FDEP's State Clearinghouse.

Permitted Dredge Volume: Finally, there was an issue as to the total dredge volume to be authorized in the permit, as the cuts shown in the plans included 1.732 million cubic yards of material, but the Corps' numerical modeling only assumed the removal of 1.3 million cubic yards. Therefore, the Order found that only the 1.3 million cubic yards had been reviewed and would be authorized for removal.

The Final Order issued June 18, 2018 ordered the granting of the Consolidated Joint Coastal Permit including the State Lands authorizations subject to the time restriction for dredging the

cut areas during the spotted seatrout spawning season and with the clarification that the Permit only allows the removal of up to 1.3 million cubic yards of sand. The Order was not appealed by the Petitioners.

CITY OF TREASURE ISLAND v. TAHITIAN TREASURE ISLAND, LLC ET AL

City of Treasure Island, Appellant v. Tahitian Treasure Island, LLC, Page Terrace Motel, Inc. Caidan Enterprises, LLC, David King, Arthur Czyszcon and Kevin McInerney, Appellees, Fla. 2nd DCA, Case No. 2D14-5406, October 27, 2017

This was an appellate decision arising from a Pinellas County Circuit Court case where hoteliers on Treasure Island beach had sued the City for an injunction and declaratory judgement that the City's use of the open unvegetated beach area for vehicular access and parking for special City-hosted beach events constituted vehicular traffic on the beach prohibited under s. 161.58(2), Florida Statutes.

Circuit Court Decision: The Circuit Court had held that the movement of *any* vehicles on the beach for these events constitutes "vehicular traffic" prohibited by the statute, and permanently enjoined the City from hosting or allowing any parking and driving on the City's beach. The Court also declared the City's Ordinance relating to vehicular traffic on the beach to be invalid to the extent that it conflicts with s. 161.58, F.S.

Appeal: The City appealed the decision to the Second District Court of Appeal, which affirmed in part, reversed in part, and remanded the Circuit Court's decision for further findings consistent with the District Court's Opinion. In reaching its opinion, the DCA interpreted s. 161.58 F.S. prohibiting vehicular beach traffic in a way to be consistent with Part I of Chapter 161, where Coastal Construction Control Line permits ("CCCL") allow or require vehicular movement on the beach for CCCL permits.

Background: The City had been hosting and allowing temporary civic events on the City's beach, including carnivals, car shows, music festivals and fireworks displays pursuant to CCCL permits issued by FDEP under s. 161.053, Florida Statutes. The City had limited upland parking and had also been allowing an open sandy portion of the beach to be used for public parking during some of these events, with a managed access way running between the dunes from paved parking areas to the flat, unvegetated sandy beach parking location. The beach area used for the events and public parking is unusually wide, from 800 to 900 feet wide from the water line to the paved City walkway near the upland structures and roadway. The beach parking and event areas were partially seaward of the hoteliers who brought suit.

The City also allowed vehicles performing functions related to the events to drive and park on the beach, such as food vendors, trucks hauling carnival rides or temporary staging, and the movement of seating, tents and supplies for the events.

In applying for the FDEP CCCL permits for these events, the City included a site plan for the events that showed the event locations, staging and construction areas, and the public parking area; when FDEP approved these event permits including construction traffic, the permits included standard language that required compliance with s. 161.58, F.S.

Section 161.58(2) Florida Statutes, Vehicular Traffic, provides as follows:

(2) Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, or for the purpose of maintaining existing licensed and permitted traditional commercial fishing activities or existing authorized public accessways, is prohibited on coastal beaches except where a local government with jurisdiction over a coastal beach or portions of a coastal beach has:
(a) Authorized such traffic, by at least a three-fifths vote of its governing body, on all or portions of the beaches under its jurisdiction prior to the effective date of this act; and
(b) Determined, by October 1, 1989, in accordance with the rules of the department, that less than 50 percent of the peak user demand for off-beach parking is available. However, the requirements and department rulemaking authority provided in this paragraph shall not apply to counties that have adopted, prior to January 1, 1988, unified countywide beach regulations pursuant to a county home rule charter.

The City Ordinance:

The City had adopted its Ordinance in 2003 prohibiting vehicular traffic on the beach except for certain purposes, well after the statutory deadline of 1989 for generally allowing driving on the beach. The City's Ordinance allowed vehicular access and movement on the beach for the usual governmental duties of cleanup, police and emergency response, beach maintenance, structure repair, and dune restoration. The Ordinance also allowed driving on the beach for participants and support staff for set-up and break-down of special events.

The City believed that this ordinance allowed the use of the open, sandy beach area for public parking for these events as well as traffic to stage the events themselves, and did not consider the use of this to be "vehicular traffic" or driving on the beach.

The DCA Opinion

The Meaning of "Vehicular Traffic": The City argued on appeal that the use of the open, non-vegetated sandy beach area away from the dunes for event parking did not constitute "vehicular traffic", which it characterized as "Daytona Beach-style driving" on the beach and that it was not prohibited under s. 161.58(2) F.S. In its review of this argument, the DCA relied to some extent on dictionary definitions of the term "vehicular traffic", and reached the conclusion that the term could mean any movement of a vehicle, *or* the movement of a vehicle as in a public thoroughfare, and that the statute was ambiguous since it did not specify which it meant.

This was problematic since Part I of Chapter 161 regulates activities on the beach, such as construction or events, which require vehicular movement in order to transport and deliver construction materials, sand, food, and event equipment, and the legislature did not include an exception for permitted activities in its vehicular traffic ban in s. 161.58 in Part III. Therefore, the DCA had to reconcile the Department's permitting authority with the traffic prohibition to resolve this ambiguity.

The DCA found that it must construe s.161.58 in a manner that does not eliminate FDEP's authority to issue construction and event permits on the beach under s.161.053, noting that Part I of Chapter 161 predated Part III where s. 161.58 is found.

The DCA therefore interpreted "vehicular traffic" to mean the movement of vehicles as along a public road or thoroughfare to be consistent with s. 161.58 as opposed to *any* movement of vehicles, in order to allow for permitted activities and access. The Court found that banning *any movement* of vehicles on the beach as stated in the lower court's order would be inconsistent with the Department's permitting authority under Part I of Chapter 161. Based on this conclusion, the DCA reversed the Circuit Court's holding that s. 161.58, F.S. bans *all* vehicular parking and driving" on the beach.

However, the DCA determined that the City's operation of the public parking area which required the use of access pathways was regulated as though these were public ways or streets. Therefore the access and use of the public parking *did* amount to prohibited vehicular traffic under the statue.

The DCA specifically held that the driving and parking of vehicles and trucks across the beach for construction activities, to set up events, provide staging and food trucks, and to deliver and operate carnival and other equipment was parking and driving that did *not* involve the use of the beach as a public highway and was not prohibited under the statute.

Holding: The DCA therefore found that the injunction against parking and driving on the beach issued by the Circuit Court was overly and unnecessarily broad and remanded the case to the Circuit Court to enter an order consistent with the DCA's opinion. This holding applied to both the injunctive relief and to the validity of the Ordinance. Since this opinion was entered, the Circuit Court has reconsidered the case at least twice on remand and has, so far, entered at least two subsequent Revised Final Orders, one of which is entitled "Corrected". It is expected that other motions or actions may yet be filed at the circuit or appellate level. The Sixth Judicial Circuit Court Case No. in Pinellas County is 13-011287-CI.

2017 WL 4847650
District Court of Appeal of Florida,
Second District.

CITY OF TREASURE ISLAND, a municipality within Pinellas County, Florida, Appellant,
v.
TAHITIAN TREASURE ISLAND, LLC, a Florida limited liability company; Page Terrace Motel, Inc., a Florida corporation; Caidan Enterprises, LLC, a Florida limited liability company; David King; Arthur Czyszczon; and Kevin McInerney, Appellees.

Case No. 2D14–5406
|
Opinion filed October 27, 2017

Synopsis

Background: Hoteliers sued city, seeking an injunction to prohibit the driving and parking on the beach and to require city to strike that provision of its ordinance allowing it, seeking judgment declaring that the driving and parking on the beach violated state law, and seeking judgment declaring that the city had violated a decree in earlier, related litigation between the city and motel association. The Circuit Court, Pinellas County, Pamela A.M. Campbell and Jack Day, JJ., entered summary judgment for hoteliers and permanently enjoined the city from hosting or allowing vehicular parking and driving on beach. City appealed.

Holdings: The District Court of Appeal, Salario, J., held that:

[1] term "vehicular traffic" refers to the movement of vehicles as along a public street or highway, as that term is used in statute prohibiting vehicular traffic on coastal beaches in Florida;

[2] access to parking areas the city operated, along two paths that crossed dunes and beach, involved "vehicular traffic" within meaning of statute, prohibiting vehicular traffic on coastal beaches; and

[3] limiting the scope of vehicular traffic to Daytona Beach-style driving was not a reasonable construction of statute prohibiting vehicular traffic on coastal beaches.

Affirmed in part, reversed in part, and remanded.

Appeal from the Circuit Court for Pinellas County; Pamela A.M. Campbell and Jack Day, Judges.

Attorneys and Law Firms

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Opinion

SALARIO, Judge.

**1 The City of Treasure Island appeals from a final summary judgment in favor of Tahitian Treasure Island, LLC; Page Terrace Motel, Inc.; Caidan Enterprises, LLC; David King; Arthur Czyszczon; and Kevin McInerney (collectively, the Hoteliers). The dispute centers on claims by the Hoteliers that the City allows and hosts driving and parking on Treasure Island Beach in connection with festivals and public events in violation of section 161.58(2), Florida Statutes (2014), which prohibits "[v]ehicular traffic" on "coastal beaches" in Florida. The trial court agreed with the Hoteliers, declared that the "City's activities of hosting and allowing vehicular parking and driving on Treasure Island Beach" violate section 161.58(2), and permanently enjoined the City from hosting or allowing any parking and driving on Treasure Island Beach.

As we explain below, we find no error in the trial court's decision that the manner in which the City hosts public parking at the events that are the subject of the Hoteliers' complaint involves vehicular traffic on a coastal beach and is therefore prohibited by section 161.58(2). However, the trial court also declared illegal and enjoined other conduct that either does not constitute vehicular traffic (e.g., the movement of vehicles across the beach for purposes of event set-up) or is outside the scope of the Hoteliers' complaint and the summary judgment record. That was error. We affirm in part, reverse in part, and remand for further proceedings.

The Parties, The Dispute, And The Summary Judgment

The City is a beach community located on the coast of the Gulf of Mexico. The Hoteliers are the owners of three beachfront hotels in the City. Their properties are located upland of the central beach area of Treasure Island Beach. The area is central because it is located in the middle of Treasure Island and is beach because it fronts the shoreline along the Gulf. The central beach area is uncommonly wide for a Gulf Beach, stretching 800 to 900 feet from the water's edge to a City-owned, paved walkway that meanders around dunes at the landward side of the beach.

The City uses a large, sandy expanse in the middle of the central beach area to host several civic events each year, either on its own or by allowing certain organizations to do so. They range from carnivals to music festivals to car and truck shows to fireworks displays. These events often involve the construction of temporary structures—e.g., a tent, a carnival ride, or a stage—that are removed when the event has ended. The events have happened as often as thirty times a year.

To accommodate the attendees, the City makes temporary public parking areas available for the events. These public parking areas are located on a sandy region of the beach. The public can access them by driving along sandy, unpaved access paths that run from a paved lot near the walkway between the dunes, onto the beach, and into the temporary lots. The City collects a fee for the use of the beach parking areas. The number of cars taking advantage of the City-hosted beach parking varies from event to event, but on our record, it appears to have involved as many as 130 cars in the beach parking areas at past events.

***2** In addition to public parking, the City also allows vehicles performing functions related to the events it hosts to drive and park on the beach. A vendor selling food and drink might drive a food truck onto the beach and park it there for that purpose. Similarly, a truck hauling a carnival attraction might drive over the beach and then park there for purposes of placing the attraction for the event and later removing the attraction after the event has ended. This activity is authorized by the City's ordinance that prohibits parking and driving on the beach, subject to certain exceptions, which include "participants and support staff for set-up and break-down of special events." See Treasure Island, Fla., Code of Ordinances of the City of Treasure Island, Fla. ch. 58, art. II, § 58.38(4) (1985).

Believing that driving and parking on the beach in connection with these events violates state law—including section 161.58(2)'s prohibition of vehicular traffic on coastal beaches—the Hoteliers sued the City in circuit court. Their amended complaint asserted three counts: Count I sought an injunction to prohibit the driving and parking on the beach and to require the City to strike that provision of its ordinance allowing it; Count II sought a judgment declaring that the driving and parking on the beach violates section 161.58(2); and Count III sought a judgment declaring that the City had violated a decree in earlier, related litigation between the City and the Treasure Island Motel Association.

The issues the City raises on appeal were decided on multiple motions for summary judgment filed by both the plaintiffs and the defendant. That led to some convoluted proceedings, but the procedural play-by-play is not relevant to the issues we decide. The bottom line is that the Hoteliers voluntarily dismissed Count III, and the parties proceeded to a decision on Counts I and II based on undisputed facts. The Hoteliers argued that the beach parking and driving involved in the civic events on Treasure Island Beach violate section 161.58(2) because (1) the events occur on coastal beaches within the meaning of the statute and (2) the movement and parking at those events constitutes vehicular traffic that is prohibited within the meaning of the statute. The City disputed both points, arguing that (1) the portion of Treasure Island Beach on which its events are held is not a "coastal beach" under section 161.58 because it is not technically a "beach" as that term is defined within chapter 161 and that even if it is a coastal beach, (2) the statute's term "[v]ehicular traffic" contemplates the movement of vehicles as though it were occurring along a public street or highway and is limited to "Daytona Beach-style driving," a characterization the City says cannot be applied to the movement and parking of vehicles at the events that are the subject of the Hoteliers' complaint.

The trial court denied the City's motions for summary judgment and granted the Hoteliers' motions. It entered a judgment that declared "that the City's activities of hosting and allowing vehicular parking and driving on Treasure Island Beach are in violation of Fla. Stat. § 161.58" and that the City Ordinance "is null and void

to the extent that it conflicts with Fla. Stat. § 161.58 and purports to allow vehicular parking and driving on Treasure Island Beach." Based on its summary judgment determination that the City's activities violate section 161.58, the trial court's judgment further permanently enjoined the City "from hosting or allowing vehicular parking and driving on Treasure Island Beach." The City timely appealed.

The Issues On Appeal

There is one significant argument that the City raised in the trial court that it has not raised on appeal—that the events at issue do not occur on a "coastal beach" within the meaning of section 161.58(2). Accordingly, we assume for purposes of this opinion that they do occur on a coastal beach and express no judgment on that legal question. The City does, however, argue that the driving and parking of vehicles in connection with the subject events do not constitute "[v]ehicular traffic" as used in the statute and, further, that the relief the trial court ordered is overbroad. We address those issues below. [1]

Beach And Shore Regulation And The Activities The City Hosts

***3** Understanding the City's arguments requires understanding the statutory context in which section 161.58 resides—chapter 161, which governs beach and shore preservation—and how the activities involved in this case relate to it. Two parts of chapter 161 are implicated here: part I governs construction and other activity seaward of a coastal construction control line, and part III adds protections for parts of coastal areas deemed especially sensitive.

Coastal construction control line permitting under part I. First adopted in 1965, part I—which, taken together with part II, is called the Dennis L. Jones Beach and Shore Preservation Act—limits construction and physical activity in coastal areas, regulates how that construction and activity can occur, and provides enforcement mechanisms for violations. In the 1970s, the legislature added provisions to part I to regulate construction seaward of a "coastal construction control line" to be established by the Department of Environmental Protection. See generally § 161.053, Fla. Stat. (1971). The legislature's stated purpose in adopting these provisions was to protect beaches and coastal barrier dunes from imprudent construction. § 161.053(1)(a).

In current form, these statutory provisions require the department to establish coastal construction control lines on a county-by-county basis along the coasts of the state. § 161.053(1)(a), Fla. Stat. (2014). In general, those control lines are to "be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on 100-year storm surge, storm waves, or other predictable weather conditions." Id.; see also § 161.053(2)(a) (describing process required for establishing coastal construction control lines). Once a control line is established, it is unlawful to "construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; [or] drive any vehile on, over, or across any sand dune" unless one has a permit issued by the department. § 161.053(2)(a). A coastal construction control line permit can be issued only if certain statutory criteria related to the effect of the proposed activity on the land seaward of the control line are established. See § 161.053(2)(a), (4)(a).

The department has established a control line for Pinellas County that runs through Treasure Island. The beach events the City hosts occur seaward of that line. Before hosting those events, therefore, the City has applied for and obtained coastal construction control line permits from the department. Prior to January 2014, it received field permits—which are issued for minor structures and activities—for all but two of its events. See Fla. Admin. Code R. 62B-33.008(10) (2014). Those field permits approved the events specified on a site plan submitted by the City and authorized the City to conduct them.

For the two events that did not receive field permits and for every event the City has hosted since January 2014, the department has required that the City obtain individual coastal construction control line permits. The City has filed permit applications on a form provided by the department in accord with regulations promulgated by the department. See generally id. R. 62B-33.008. Those applications describe the event and activities to take place and include a site plan. The department has approved each of the City's applications, subject to general conditions included in every permit and sometimes special conditions specific to the event being permitted.

*4 As an example, the City applied for a permit for "The Greatest Show on Surf" to be held in March 2014. The application for the permit described the event as including "carnival rides, food & non-food vendors, stage for live entertainment, and parking on the beach." It specified the dates of the event, as well as the dates for set up and break down, and included a site plan. After reviewing the application, the department advised the City that its permit application was approved and then issued a notice to proceed stating that the City "is authorized to arrange carnival rides, food and non-food vendors, stage live entertainments and parking." The event was permitted to be held on the nonvegetated beach and to be located 290 feet seaward of the coastal construction control line. It was subject to the general conditions, among others, that "[c]onstruction traffic shall not occur ... on vegetated areas seaward of the coastal construction control line unless specifically authorized by the permit."

Part III and the regulation of vehicular traffic on coastal beaches. In 1985, the legislature added part III to chapter 161, which is known as the Coastal Zone Protection Act of 1985. § 161.52, Fla. Stat. (1985). In passing it, the legislature recognized that coastal areas serve important aesthetic, ecological, and public health, safety, and welfare functions and have become subject to increasing growth pressures. See generally § 161.53(1)–(5). Its stated intent is "that the most sensitive portion of the coastal area shall be managed through the imposition of strict construction standards in order to minimize damage to the natural environment, private property, and life." § 161.53(5), Fla. Stat. (2014).

Part III serves that objective by establishing minimum standards governing the location of construction in coastal areas and mandating that any such construction produce the "minimum adverse impact" on the "beach" and "dune system." See § 161.55(1). Part III provides that these minimum construction standards do not "limit or abrogate the right and power of the department to require permits or to adopt and enforce standards pursuant to [part I] for construction seaward of the coastal construction control line that are as restrictive as, or more restrictive than" the minimum construction standards in part III. § 161.56(1). It also provides for enforcement of those minimum standards and requires sellers of coastal properties subject to part III to make disclosure to buyers of the regulations governing them. See §§ 161.56(2), .57.

Part III also contains the provision at issue here—section 161.58. That statute provides as follows:

> (1) Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, and except for traffic upon authorized local or state dune crossovers, is prohibited on the dunes or native stabilizing vegetation of the dune system of coastal beaches. Except as otherwise provided in this section, any person driving any vehicle on, over, or across any dune or native stabilizing vegetation of the dune system shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
>
> (2) Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, or for the purpose of maintaining existing licensed and permitted traditional commercial fishing activities or existing authorized public accessways, is prohibited on coastal beaches except where a local government with jurisdiction over a coastal beach or portions of a coastal beach has:
>
> (a) Authorized such traffic, by at least a three-fifths vote of its governing body, on all or portions of the beaches under its jurisdiction prior to the effective date of this act; and
>
> (b) Determined, by October 1, 1989, in accordance with the rules of the department, that less than 50 percent of the peak user demand for off-beach parking is available....
>
> (3) A local government authorizing such vehicular traffic on all or portions of its beaches pursuant to subsection (2) may later prohibit, by a vote of at least three-fifths of its governing body, such vehicular traffic on all or portions of the beaches under its jurisdiction. Any such local government shall be authorized by a three-fifths vote of its governing body to charge a reasonable fee for vehicular traffic access. The revenues from any such fees shall be used only for beach maintenance; beach-related traffic management and parking; beach-related law enforcement and liability insurance; or beach-related sanitation, lifeguard, or other staff purposes. Except where authorized by the local government, any person driving any vehicle on, over, or across the beach shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

***5** (Emphasis added.) As we describe in greater detail below, the Hoteliers' assertion that the beach driving and parking taking place in connection with the City-sponsored activities at issue requires that we consider whether activities permitted by the department under part I are restricted by prohibition on vehicular traffic in part III.

The Movement Of Vehicles Incident To Department–Permitted Construction And Activities Does Not Involve Vehicular Traffic; The Movement Of Vehicles Incident To City–Operated Public Parking Areas Does

[1] The final judgment invalidates and prohibits any "vehicular parking and driving" on Treasure Island Beach, except as authorized by section 161.58. That implies a definition of "vehicular traffic" that reaches any movement of vehicles across Treasure Island Beach. The City, however, contends that the term "[v]ehicular traffic" as used in section 161.58 refers only to "Daytona Beach-style driving" and that the City's events and the associated public parking do not involve that kind of activity.[2] The City does not define its term "Daytona Beach-style driving," but its argument implies a condition in which a local government allows the public to use the beach as a public street, cars drive on the beach using established lanes for everyday use, and cars are also permitted to park on the beach. We agree that the statutory term "[v]ehicular traffic" is limited to the movement of vehicles as along a public street, but we disagree that it is also limited to the unique features of Daytona Beach-style driving.

In interpreting a statute, we look first to "the plain meaning of the actual language" contained in the statutory text. Diamond Aircraft Indus., Inc. v. Horowitch, 107 So.3d 362, 367 (Fla. 2013). If that language is unambiguous, there is no need for further construction; the plain meaning of the statute controls. See Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984). If the statutory language is ambiguous, however, we turn to rules of statutory construction to determine its meaning. English v. State, 191 So.3d 448, 450 (Fla. 2016). We regard statutory language as ambiguous when it is reasonably susceptible of more than one interpretation. See License Acquisitions, LLC v. Debary Real Estate Holdings, LLC, 155 So.3d 1137, 1146 (Fla. 2014).

We begin by noting that the term "[v]ehicular traffic" is not statutorily defined and that nothing in section 161.58 or the related statutes indicates that it carries particular, specialized meaning. We must therefore try to give the term the meaning it has in ordinary, everyday discourse. See Donato v. Am. Tel. & Tel. Co., 767 So.2d 1146, 1154 (Fla. 2000); Am. Heritage Window Fashions, LLC v. Dep't of Revenue, 191 So.3d 516, 520 (Fla. 2d DCA 2016). For our purposes, the word "vehicular" is plain enough: It means involving vehicles. Here we are talking about cars and trucks, and everyone in this case agrees that those are types of vehicles. The interpretive problem we must address hinges on the word "traffic."

Sources that convey the ordinary meaning of the term "traffic" support both the notion that as used in section 161.58, traffic involves any movement of vehicles in an area and the notion that traffic means the movement of vehicles as along a street or highway. See Webster's Third New International Dictionary 2423 (1986) (defining "traffic" variously as "the circulation (as of vehicles or pedestrians) through an area" and "the flow of vehicles, pedestrians, ships, or planes (as along a street or sidewalk or sea lane)); *Traffic*, Black's Law Dictionary (5th ed. 1979) (defining "traffic" as "the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, highway, etc."); see also Dictionary.com, Dictionary.com Unabridged, http://www.dictionary.com/browse/traffic (last visited Oct. 25, 2017) (defining "traffic" as "the movement of vehicles, ships, persons, etc., in an area, along a street, through an air lane, over a water route, etc."). To the extent the term "traffic" refers to movement as along a street or highway, those sources also support the notion that it refers to the movement of vehicles as along a way that is open for use by the public. See Webster's Third New International Dictionary 1069, 2259 (1986) (defining "street" as "a public thoroughfare" or "the strip of a public thoroughfare reserved for vehicular traffic" and defining "highway" as "a road or way ... that is open to public use").[3]

***6** In terms of ordinary meaning, then, the term "vehicular traffic" could reasonably be understood to mean any movement of vehicles or the movement of vehicles as along a public thoroughfare. Both meanings are facially consistent with the purpose of section 161.58 conveyed by its text—the protection of the beach, dunes, and stabilizing vegetation from harm caused by vehicles

—and nothing in that text indicates which meaning was the one adopted by the legislature. The statute is therefore ambiguous, and we must turn to rules of statutory construction to resolve which of these two interpretations of the term is the one the legislature meant.

We are confident that vehicular traffic denotes the movement of vehicles as though it were happening along a public street or highway. We reach that conclusion because the alternative—the interpretation that vehicular traffic reaches any movement of vehicles—would put section 161.58's regulation of vehicular traffic on coastal beaches in substantial conflict with the authority granted the department in part I to authorize by permit construction and other activity on those same beaches.

As we have described, part I of chapter 161 was the first-adopted set of statutes bearing on beach and shore protection, and it prohibited construction and other activities seaward of the coastal construction control line without a permit, which it in turn authorized the department to grant. See § 161.053(2)(a), (4)(a). Thus, if the City wants to host a carnival on Treasure Island Beach, it must apply for a permit authorizing those activities and any construction they involve, and the department enjoys the statutory authority to grant that permit if it makes the required determinations.

[2] Section 161.58 was enacted years after part I as one section of part III and operates, among other things, as a limit on the department's permitting authority. Whatever construction and activities the department might be authorized to permit seaward of the coastal construction control line in part I, it cannot permit vehicular traffic on the dunes and native stabilizing vegetation of coastal beaches or the coastal beaches themselves because section 161.58 bans those activities subject to a handful of exceptions. Because the legislature did not include "as permitted by the department" as an exception to section 161.58's prohibitions on vehicular traffic on the beaches and dunes, we must conclude that the statute contains no such exception. See Hayes v. State, 750 So.2d 1, 4 (Fla. 1999) ("We are not at liberty to add words to statutes that were not placed there by the [l]egislature.").

[3] Interpreting section 161.58's prohibitions on vehicular traffic to reach any movement of vehicles on the dunes or beach, however, would effectively repeal much of the statutory authority granted to the department in part I to permit construction and other activities seaward of the coastal construction control line. The department's authority to permit construction and activity on beaches and dunes seaward of the control line necessarily includes the authority to permit the movement of vehicles necessary to enable that construction or activity because "[a] statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete." Brock v. Bd. of Cty. Comm'rs of Collier Cty., 21 So.3d 844, 847 (Fla. 2d DCA 2009) (quoting Deltona Corp. v. Fla. Pub. Serv. Comm'n, 220 So.2d 905, 908 (Fla. 1969)); see also McNeill v. Pace, 69 Fla. 349, 68 So. 177, 178 (1915) ("Statutory powers expressly conferred carry with them by implication of law all consistent powers that are necessary to the effectual execution of the powers expressly conferred.").

*7 This makes perfect sense. The department's authority to permit a carnival on the beach seaward of the control line, for example, is meaningless if it does not also include the power to allow vehicles to move onto that area of the beach for purposes of carrying tents and rides, moving equipment, providing concessions, and all other things that go into hosting a carnival. If the term "[v]ehicular traffic" in section 161.58 reaches any movement of vehicles, however, the department's authority to permit construction seaward of the control line will be substantially eliminated.

Established principles of statutory construction counsel strongly against that result. "[I]t is an accepted maxim of statutory construction that a law should be construed together and in harmony with any other statute relating to the same purpose, even though the statutes were not enacted at the same time." Wakulla Cty. v. Davis, 395 So.2d 540, 542 (Fla. 1981); see also McDougall v. Van House, 801 So.2d 118, 121 (Fla. 2d DCA 2001). For that reason, "[c]ourts should avoid a construction which places in conflict statutes which cover the same general field." City of Boca Raton v. Gidman, 440 So.2d 1277, 1282 (Fla. 1983); McDougall, 801 So.2d at 121.

[4] [5] Relatedly, it is also "presumed that statutes are passed with the knowledge of existing statutes, so courts must favor a construction that gives effect to both statutes rather than construe one statute as being meaningless or repealed by implication." Butler v. State, 838 So.2d 554, 556 (Fla. 2003). Thus, "[w]hile it is true that a prior Act may be repealed in part, or in toto by implication through

the passage of a subsequent Act, such repeals are not favored and there must be a positive repugnancy between the two or a clear intent to repeal must be apparent." Wade v. Janney, 150 Fla. 440, 7 So.2d 797, 798 (1942) (citation omitted); see also Alvarez v. Bd. of Trs. of City Pension Fund for Firefighters & Police Officers in City of Tampa, 580 So.2d 151, 153 (Fla. 1991).

Here, we are presented with two enactments related to the same subject matter—the protection of Florida's coastal areas. Some conflict between the two may be inevitable because section 161.58 prohibits vehicular traffic on coastal beaches and the dunes and native stabilizing vegetation regardless of how far the department's coastal construction permitting authority might reach. But construing the term "vehicular traffic" to mean the movement of vehicles as along a public road or highway, as opposed to merely any movement of vehicles, is both consistent with the ordinary meaning of the term "traffic" and limits the conflict between part I and section 161.58 to a minimum. It gives meaningful effect to both statutes and allows both to exist harmoniously to the maximum extent possible consistent with the ordinary meaning of the term "vehicular traffic."

This interpretation also makes sense of section 161.58 within the overall context of part III of chapter 161. See Cepcot Corp. v. Dep't of Bus. & Prof'l Regulation, 658 So.2d 1092, 1095 (Fla. 2d DCA 1995) ("A statute should be construed in its entirety and within the context provided by the related statutes within the same act."). Part III establishes minimum standards for certain coastal construction and provides that nothing in those standards—including section 161.58's prohibition on vehicular traffic—provides for the department to continue to issue coastal construction control line permits on terms as or more restrictive than those minimum standards. Thus, the Act allows construction seaward of the coastal construction line, and it preserves the department's permitting authority under part I so long as it is exercised in a manner consistent with the minimum standards the act establishes. When it passed section 161.58, therefore, the legislature was aware that coastal construction would continue and that the department would retain its permitting authority. An understanding of the term "vehicular traffic" that would ban all movement of vehicles on the dunes and beach—even movement of vehicles necessary to the construction part III itself allows—is inconsistent with the other provisions of part III. Instead, vehicular traffic should be understood as referring to the movement of vehicles as along a public street or highway.

*8 [6] Applying that understanding, the trial court erred in declaring that any "vehicular parking and driving" on Treasure Island Beach violates section 161.58, in declaring that the City's ordinance governing driving and parking on the beach is invalid, and in enjoining any parking or driving on the beach. It is clear beyond dispute that many aspects of the events the City hosts involve "vehicular parking and driving" on the beach that is limited to a defined category of people far narrower than the public, that is limited to the pursuit of activities permitted by the department, and that cannot be said to involve the use of the beach as though it were a public thoroughfare. The driving of vehicles across the beach to move and set up a stage for a concert, the driving and parking of a food truck to provide food and drink at an event, or the driving of a vehicle to haul away a carnival tent are all examples of "vehicular parking and driving" that do not involve the use of a beach as a public highway. To the extent the trial court's ban on "vehicular parking and driving" reaches these kinds of activities, it must be reversed.

[7] The City's operation of public parking areas presents a different matter. We agree with the City that parking a vehicle—leaving it stationary for a period of time—does not alone constitute vehicular traffic because parking in and of itself does not involve the movement of a vehicle. However, access to the parking areas the City operates is along two paths that cross the dunes and beach and that are open to the public for purposes of reaching the beach parking areas and are regulated as though they were public ways. That activity does involve the use of a portion of beach as though it were a public street—members of the public drive across it for purposes of getting from point A to point B on the beach—and thus does involve vehicular traffic.

[8] [9] The City argues that section 161.58 was intended only to reach "Daytona Beach-style driving," a characterization it says does not apply to cars driving over access paths to use parking areas. Limiting the scope of vehicular traffic to Daytona Beach-style driving is not a reasonable construction of section 161.58. There are a number of atypical aspects to Daytona Beach-style driving —for example, the large number of cars, the regularity of the use of the beach as a roadway, the existence of

established lanes of traffic, and routinized enforcement. Yet, there is nothing in the text of section 161.58, the ordinary meaning of the term "vehicular traffic," or the context of the Coastal Zone Protection Act to support the notion that the vehicular traffic prohibited by the statute exists only when one or more of the conditions descriptive of Daytona Beach-style driving exists. On the contrary, the purpose that the text of the section 161.58 quite plainly evinces (a purpose to avoid harm to dunes and beaches as a consequence of vehicles being driven over them) implies that we should not narrow the scope of its term "[v]ehicular traffic" from the scope that its ordinary meaning (the movement of vehicles as though the beach or a portion of it was a public street) establishes.[4]

*9 Additionally, when read in the context of section 161.58 as a whole, as we must when interpreting a statute, the City's proposed limitation on the scope of the term "[v]ehicular traffic" does not make sense. See Ratliff v. State, 56 So.3d 918, 919 (Fla. 2d DCA 2011) ("Further, each statute 'must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.' " (quoting Lamar Outdoor Advert.–Lakeland v. Dep't of Transp., 17 So.3d 799, 802 (Fla. 1st DCA 2009))). The statute both prohibits vehicular traffic on coastal beaches and dunes and native stabilizing vegetation and subjects to prosecution for a second-degree misdemeanor "any person driving any vehicle on, over, or across" them. § 161.58(1), (2), (3). Given their placement in the same statute regulating the same activity, we should interpret the statutory prohibition on vehicular traffic as being coterminous with these criminal enforcement mechanisms. Cf. Payne v. State, 873 So.2d 621, 622 (Fla. 2d DCA 2004) ("In construing two subsections of the same statute, we read the subsections in pari materia.").

When vehicular traffic is understood as moving a vehicle on the beach or a portion thereof as though it was a public way, both the general prohibition and criminal provisions easily make sense as a unified whole: The statute generally prohibits using the beach as though it was a public street, and someone driving on the beach in that manner is subject to prosecution. Limiting the term to Daytona Beach-style driving, however, makes a muck of the criminal enforcement provisions. It is nearly impossible to consider Daytona Beach-style driving as an offense that can be committed by an individual driver because Daytona Beach-style driving does not connote individual conduct; it connotes a state of affairs marked by the characteristics of the movement of vehicles along Daytona Beach. And even if the concept could be understood to refer to the conduct of an individual as distinguished from a state of affairs, the offense seems just as impossible to define. Try as we might, for example, we cannot conceive of what a jury would have to find to convict a defendant of Daytona Beach-style driving.

For these reasons, limiting the reach of section 161.58 to Daytona Beach-style driving is not a reasonable construction of the statute.[5] As used in that statute, "[v]ehicular traffic" means the movement of vehicles as along a public street or highway.

The Injunction Is Overbroad In Other Respects

[10] In addition to prohibiting the movement and parking of vehicles that does not constitute vehicular traffic within the meaning of section 161.58, the final judgment's categorical ban on hosting or allowing any vehicular driving and parking on the beach reaches potential activity (or, in the case of "allowing," mere inactivity) that is unrelated to the civic events that are the subject of this litigation and that may well be legal. Such relief is also well beyond the scope of the operative complaint, the Hoteliers' summary judgment motions, and the summary judgment record—all of which are focused on the legality or illegality of parking and driving on the central beach area of Treasure Island Beach in connection with the civic events about which the Hoteliers complain. Apart from declaring illegal and enjoining activities that do not constitute vehicular traffic, then, the trial court also erred in awarding the Hoteliers a substantially overbroad injunction. See, e.g., Smith v. Wiker, 192 So.3d 603, 604 (Fla. 2d DCA 2016) ("[A] court should not issue an injunction broader than necessary to protect the injured party under the particular circumstances."); see also Brower v. Hubbard, 643 So.2d 28, 30 (Fla. 4th DCA 1994) ("Injunctions must be specifically tailored to each case; they should not infringe upon conduct that does not produce the harm sought to be avoided."); Clark v. Allied Assocs., Inc., 477 So.2d 656, 657 (Fla. 5th DCA 1985) ("An injunctive order should never be broader than is necessary to secure the injured party ... relief warranted by the circumstances of the particular case.").

Conclusion

***10** **[11]** We find no error in the trial court's determination that the City's actions in hosting vehicular traffic across the beach for purposes of reaching the parking areas associated with the civic events on the central beach area of Treasure Island Beach violate section 161.58(2).[6] The trial court went too far, however, to the extent it declared any additional conduct illegal, declared the City's ordinance invalid, and enjoined the City from "hosting or allowing" any "vehicular parking and driving on Treasure Island Beach." We reverse the final judgment to that extent, affirm it in all other respects, and remand the case for further proceedings consistent with this opinion. To the extent those proceedings are directed only toward modifying the final judgment to conform to our holdings today, any declaratory and injunctive provisions of that judgment should extend no further than declaring illegal and enjoining the conduct identified by this opinion as vehicular traffic on the central beach area of Treasure Island Beach in connection with the events that are the subject of the Hoteliers' complaint.

Affirmed in part; reversed in part; remanded.

KELLY and WALLACE, JJ., Concur.

All Citations

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Footnotes

1 We reject without comment the City's remaining appellate arguments. In addition, we note that the Hoteliers did not plead a violation of section 161.58(1) concerning vehicular traffic on the dunes and native stabilizing vegetation of the dune system of coastal beaches in their complaint. Accordingly, we express no opinion on whether or to what extent that subsection is implicated by the facts here.

2 These are questions of statutory construction resolved by way of motions for summary judgment. Our review is de novo. See Dep't of Transp. v. United Capital Funding Corp., 219 So.3d 126, 129 (Fla. 2d DCA 2017).

3 We recognize that dictionaries are only one permissible indicator of the ordinary meaning of a term. See Green v. State, 604 So.2d 471, 473 (Fla. 1992). Here, we have no reason to believe that the term "traffic" bears some other relevant ordinary meaning that is not revealed by these dictionary definitions. See, e.g., § 316.003(57), Fla. Stat. (2014) (similarly defining the word "traffic" within the chapters on motor vehicles).

4 The City argues that the legislature must have meant vehicular traffic to mean "Daytona Beach-style driving" because a supreme court decision shortly before section 161.58 was adopted described Daytona Beach-style driving using the term "vehicular traffic." But the context there—a tort claim against the City of Daytona Beach by an injured sunbather—was so different that it would be speculation to say that the legislature plucked the term "vehicular traffic" from that case and intended it to have that and only that meaning. See Ralph v. City of Daytona Beach, 471 So.2d 1, 3 (Fla. 1983) ("While the fact of vehicular traffic on the beach was widely-known, it was not readily apparent to sunbathers ... that this lethal mixture of cars and reclining persons was inadequately supervised."). The City also points to a staff analysis underlying the Coastal Zone Protection Act that noted in one place that section 161.58 sought a "tightening of criteria allowing driving on the beach" and in another that beach driving was allowed in certain northeast Florida counties. See Fla. H.R. Comm. Nat. Res., HB 118 (1988) Staff Analysis 2 (July 1, 1988). We do not need to resort to staff analyses to reach our conclusion here. See Kasischke v. State, 991 So.2d 803, 810 (Fla. 2008) (questioning utility of staff analyses for this purpose). Even if we were to rely on this staff analysis to determine the meaning of a statutory term, the language to which the City points does not command an inference that the legislature intended to limit the scope of the term "vehicular traffic" to Daytona Beach-style driving.

5 Accordingly, we reject the City's argument that because section 161.58 contains penal provisions, the rule of lenity requires that it be construed in its favor. See Paul v. State, 129 So.3d 1058, 1064 (Fla. 2013) ("This rule of lenity is a canon of last resort and only applies if the statute remains ambiguous after consulting traditional canons of statutory construction.").

6 We have not considered whether there is any way in which the City could host parking on the beach in a manner that would not involve vehicular traffic in violation of section 161.58. Our opinion should not be understood as expressing any view on that question.

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