



The Florida Senate

Interim Report 2012-114

September 2011

Committee on Community Affairs

THE DEVELOPMENT OF REGIONAL IMPACT PROCESS

Issue Description

Section 380.06, F.S., provides for state and regional review of development decisions for large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. These developments, which meet certain specified statutory criteria, are known as developments of regional impact (DRIs). Over the years, the statutory criteria have been changed and numerous exemptions have been created. During the 2011 session, HB 7207 again expanded these exemptions and provided for DRI permit extensions. This interim report proposes to review the DRI process and examine whether it continues to serve its intended purpose or whether it is a regulatory process that the state may want to reduce or eliminate. Ultimately, this report concludes that the exemptions that have been made to the DRI program leave the DRI process in place in those areas that need it most. Although the comprehensive planning process may be strong enough to completely supplant the DRI process, there remains value in ensuring that the rural communities of our state build efficiently and properly consider the infrastructure and resource impacts of large-scale development.

Background

History

The Development of Regional Impact (DRI) process provides for state and regional review of the impacts anticipated by large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.¹ The state land planning agency that administers the DRI process has historically been the Department of Community Affairs' Division of Community Planning, which will now be part of the Department of Economic Opportunity (the "Department"). Unlike other development projects, which are usually reviewed primarily by the relevant local government, the development orders (DOs) for DRIs must be submitted to the regional planning council and the Department. The DO is the primary controlling document for the DRI.

The DRI process was implemented by the Florida Environmental Land and Water Management Act of 1972 and predates the state's current comprehensive planning process. Prior to the adoption of the comprehensive planning process, the DRI process was one of the state's primary growth management tools.² It was viewed as an interim measure "to give the state time to put in place a more comprehensive approach to growth management."³ In 1975, the Legislature enacted the Local Government Comprehensive Planning Act, requiring all local governments to adopt a comprehensive plan to address land use and related issues.⁴ In 1985, the Legislature enacted major amendments to those statutes requiring that all local comprehensive plans be consistent with state goals, objectives, and policies; that each local plan provide that adequate public facilities and services be available to

¹ Section 380.06, F.S.

² See Joseph Van Rooy, *The Development of Regional Impact in Florida's Growth Management Scheme: The Changing Role in Regionalism*, 19 J. LAND USE & ENVTL. L. 255, 282 (2004).

³ Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in GROWTH MANAGEMENT IN FLORIDA: PLANNING FOR PARADISE, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).

⁴ Chapter 75-257, Laws of Fla. (codified as amended at s. 163.3167, F.S.).

meet the demands created by new development; and that each local government adopt certain land development regulations to implement its plan.⁵

Comprehensive plans contain chapters or “elements” that address future land use, housing, transportation, sanitary sewer, solid waste, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. During the 2011 session, the growth management laws were again significantly revised.⁶

Throughout the evolution of the Comprehensive Planning Act, the Development of Regional Impact process has stayed in place. However, the number of developments that would be covered by the DRI process has been reduced.⁷ Revisions to or elimination of the DRI process has been considered a number of times.⁸ The process has been criticized by the business community for the expense, delay, and duplication required by the process.⁹ In the past, it was supported by environmental interests and those concerned about the impacts of growth.¹⁰

The Environmental Land Management Study Committee (ELMS III) issued a 1992 Final Report entitled “Building Successful Communities,” which stated that “the time has come to begin shifting the burden of regulating large land developments in most jurisdictions from the DRI program to the local planning-based processes which Florida has been implementing since 1975.” One of the valuable aspects of the DRI program has been that it considers extrajurisdictional impacts, whereas the comprehensive planning process focuses on planning within a single jurisdiction. As a result, the 1993 Legislature took steps toward removing the DRI process and replacing it with an enhanced intergovernmental coordination element.¹¹ However, the implementation of the enhanced intergovernmental coordination element proved problematic.¹² The provision was repealed and the DRI process was kept in place. Even the development community, who bore the burdens of the DRI process, preferred the DRI process to the new intergovernmental coordination element requirements. Although concerns about the DRI process remained, the participants at least understood the process and felt that it provided a greater level of certainty for those developments that followed the process.¹³

Since the 1993 attempt to phase out the program, the DRI program has been scaled back and alternative large-scale development programs have been created.¹⁴ More exemptions also have been created. The thresholds governing which projects are determined to be DRIs have been increased allowing more developments to avoid the process. Additionally, in practice, some projects have avoided the DRI process by dividing up a large project into smaller projects that do not trigger DRI review. This occurs despite the aggregation rule which states that two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically proximate to one other. Section 380.0651, F.S., and rule 9J-2.0275, F.A.C., specify how this rule is to be applied.

⁵ Chapter 85-55, Laws of Fla. (codified at s. 163.3177, F.S.).

⁶ 2011-139, Laws of Fla.

⁷ See, e.g., 2002-296, Laws of Fla.; 2011-139, Laws of Fla.

⁸ FINAL REPORT OF THE ENVIRONMENTAL LAND MANAGEMENT STUDY COMMITTEE, STATE OF FLORIDA, 37 (1984) [hereinafter ELMS II Report]; FINAL REPORT OF THE ENVIRONMENTAL LAND MANAGEMENT STUDY COMMITTEE, STATE OF FLORIDA, (1982) [hereinafter ELMS III Report] A LIVEABLE FLORIDA FOR TODAY AND TOMORROW, FLORIDA'S GROWTH MANAGEMENT STUDY COMMISSION FINAL REPORT, STATE OF FLORIDA, 13 (2001).

⁹ See ELMS II at 37; Tim Chapin, Harrison Higgins, and Evan Rosenberg, COMPARISON OF FLORIDA'S APPROACHES TO LARGE-SCALE PLANNING: DRI, RLSA, OSP, AWDRI, SAP, Prepared for the Florida Department of Community Affairs, 1 (Aug. 2007) available at <http://www.fsu.edu/~fpdl/Projects/RLSA%20Program%20Comparison.pdf> (last visited Aug 15, 2011).

¹⁰ See ELMS II at 37; ELMS III at 77.

¹¹ Chapter 93-206, Laws of Fla.

¹² Van Rooy, *supra* note 2 at 255, 288; David L. Powell, *Growth Management: Florida's Past as Prologue for the Future*, 28 FLA. ST. U. L. REV. 519, 528 (2001).

¹³ *Id.* at 255.

¹⁴ Chapin, et al., *supra* note 8.

DRI Thresholds and Exemptions

The Florida Statutes¹⁵ and rules promulgated by the Administration Commission¹⁶ set thresholds and standards for what types of developments will be considered DRIs. These rules set out the following developments as DRIs:

- Attractions and recreation facilities (except certain additions to sports facilities);¹⁷
 - single performance facilities that
 - provide parking spaces for more than 2,500 cars, or
 - provide more than 10,000 permanent seats for spectators;
 - serial performance facilities that
 - provide parking spaces for more than 1,000 cars, or
 - provide more than 4,000 permanent seats for spectators;
- Office parks that¹⁸
 - encompass more than 300,000 square feet of gross floor area, or
 - encompass more than 600,000 square feet of gross floor area in counties with a population greater than 500,000 and only in geographic areas specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the comprehensive regional policy plan;
- Residential developments;¹⁹
 - in counties with a population of less than 25,000 -- 250 dwelling units,
 - in counties with a population between 25,000 and 50,000 -- 500 dwelling units,
 - in counties with a population between 50,001 and 100,000 -- 750 dwelling units,
 - in counties with a population between 100,001 and 250,000 -- 1,000 dwelling units,
 - in counties with a population between 250,001 and 500,000 -- 2,000 dwelling units,
 - in counties with a population in excess of 500,000 -- 3,000 dwelling units;
- Schools;²⁰
 - any post-secondary educational campus (but not state universities) which provides for a design population of more than 3,000 full-time equivalent students, or
 - the proposed physical expansion of any post-secondary educational campus having such a design population, by at least twenty percent of the design population;
- A retail, service, or wholesale business establishment that²¹
 - encompasses more than 400,000 sq. ft. of gross area,
 - occupies more than forty acres of land, or
 - provides parking spaces for more than 2,500 cars;
- Recreational vehicle development planned to accommodate 500 or more spaces;²²
- Multi-use development with two or more land uses under common ownership, development plan, advertising or management where the sum of the percentages of the appropriate thresholds for each land use in the development is equal to or greater than 145 percent. Multi-use development with three or more land uses under common ownership, development plan, advertising or management where the sum of the percentages of the appropriate thresholds for each land use in the development is equal to or greater than 160 percent.²³

Variations from these thresholds exist for areas such as the Wekiva protection area and certain urban areas.²⁴ Local governments can petition to increase or decrease the thresholds within their jurisdiction.²⁵

¹⁵ Section 380.0651, F.S.

¹⁶ Rule 28-24, F.A.C.

¹⁷ Rules 28-24.002, 28-24.016, F.A.C.; s. 380.06(24)(c)(d)(e)(f)(g), F.S.

¹⁸ Rules 28-24.007, 28.020, F.A.C.

¹⁹ Rules 28-24.010, 28-24.023, F.A.C.

²⁰ Rule 28-24.011, F.A.C.

²¹ Rules 28-24.012, 28-24.025, 28-24.031, F.A.C.

²² Rule 28-24.027, F.A.C.

²³ Section 380.0651, F.S.

²⁴ Rule 28-24.014, F.A.C.

²⁵ Section 380.06(3), F.S.

The following uses have been considered DRIs in the past, but are now exempt: airports, power plants and transmission lines, industrial, hotel/motel, mining, petroleum storage facilities, port facilities, marinas, and hospitals.²⁶ A number of these uses are already governed by separate regulatory processes and were removed from the list in order to avoid duplication. Certain job creation projects are exempt from the DRI process.²⁷ Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use is exempt from DRI review.²⁸ Military installations, self-storage warehousing, nursing homes, assisted living facilities, developments within an airport or a campus master plan, and area within a research and education authority are all specifically exempt from the DRI process. Partial statutory exemptions also exist for certain types of development.²⁹ These exemptions exempt the development from all but the transportation portion of the review process. Transportation is generally considered one of the most significant impacts of a DRI, and the extrajurisdictional traffic impacts may not be considered in the comprehensive planning process.

Rural land stewardship areas and development within sector planning areas are exempt as these processes are designed to be alternatives to the DRI process. All development is exempt from the DRI process in “dense urban land areas.” Local governments that meet the statutory density criteria for this exemption include 8 counties (the exemption applies only within their urban service area) and 242 cities. This exemption removes the DRI process from Florida’s urban areas, leaving it in place in the rural areas. It is generally thought that many of Florida’s more sophisticated local governments can handle DRI-sized projects without needing DRI review; whereas smaller or more rural areas can benefit from the assistance of the RPC in ensuring that the large-scale development complies with applicable requirements and mitigates anticipated adverse impacts.

The DRI Process

The DRI process sets up an in-depth, comprehensive process for evaluating certain large developments. The RPC plays the most significant role, guiding the process, “acting in the statutorily provided role of coordinator and information clearinghouse.”³⁰ The following chart illustrates the steps in the DRI process:

²⁶ Section 380.06(24), F.S.

²⁷ Section 380.06(2)(d)1.c., F.S.

²⁸ Section 280.06, (24)(j), F.S.

²⁹ Section 380.06(28), F.S.

³⁰ Chapin, et al., *supra* note 8.



Regional Planning Council (RPC) Preapplication Process and Review

The regional planning councils (RPCs) are charged with multi-agency review of proposed DRIs. The role of the RPCs is to provide a broad-based regional perspective and to enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries.³¹ At least two-thirds of the voting membership of an RPC is made up of elected officials of local general-purpose governments.³² Florida has 11 RPCs. Just as Florida is a state with very different regions, so are the RPCs different from one another. Their level of review of proposed DRIs may be more or less detailed and/or the amount of mitigation the RPC recommends may vary depending on the membership of the RPC and the specific region’s strategic policy plan. The RPCs can charge for the cost of the review, but their fees are capped at \$75,000.³³ The income generally is less than 5% of their budget.³⁴

Before filing an application for development approval, the developer holds a preapplication conference with the RPC that has jurisdiction over the proposed development.³⁵ Upon the request of the developer or the RPC, other affected state and regional agencies may participate in this conference. The conference is designed to identify

³¹ Section 186.502, F.S.

³² Section 186.504, F.S.

³³ Section 380.06(23)(d), F.S.

³⁴ The following estimated percent budget revenue from developments of regional impact fees from the RPCs for Fiscal Year 2010-11 by regional planning council: Apalachee 1.5%; Central 5.1%; East Central 4.9%; Northeast 2.2%; North Central 2.4%; South 1.6%; Southwest 4.7%; Tampa Bay 2.9%; Treasure Coast 3.4%; West 0.2%; and Withlacoochee 4.6%.

³⁵ Section 380.06(7), F.S.; r. 9J-2.021, F.A.C.

issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development.³⁶ By bringing together the relevant government entities, the RPC facilitates coordination and helps ensure consistency in assessing the DRI's regulatory and mitigation requirements. The RPC also acts like a planning consultant, assisting the developer at the early stages in understanding and planning for the appropriate regional impacts, which ultimately is designed to result in project designs that are improved relative to the initial submitted proposal. This technical and planning support can be particularly valuable to small and/or rural communities that do not have their own planning staff. The end product of the preapplication conference should set out known outcomes for impact mitigation, which often makes those projects more likely to receive approval by the local government.

The RPC reviews the application for development approval for sufficiency, and may request additional information if the application is deemed insufficient. At each level of sufficiency review (the RPC may require a maximum of 2), the RPC has 30 days to review and provide the developer with comments. The local government then holds a public hearing.

Within 50 days after receipt of the notice of public hearing the RPC prepares and submits to the local government a report and recommendations on the regional impact of the proposed development. Generally the RPC is required to examine whether:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans.
- The development will significantly impact adjacent jurisdictions.
- The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.³⁷

Ultimately, however, the RPC's recommendation is purely advisory. The local government retains the ability to accept or refuse the RPC's recommendations.

The Development Agreement

At the public hearing any amendments necessary to allow compliance of the proposed project with the local comprehensive plan must be considered. Within 30 days of the public hearing, the local government must issue a DO that is consistent with the findings and results of the public hearing. The local government issuing the DO is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments may not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the DO.³⁸ Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, is a substantial deviation and the proposed change is subject to further development-of-regional-impact review.³⁹ DRI projects may be abandoned, but the abandonment process must be in accordance with specified statutory criteria to ensure that the impacts of the abandonment are mitigated.⁴⁰

The DO must at a minimum contain:

- The monitoring procedures and the local official responsible for assuring compliance by the developer with the development order;
- Compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a buildout date that reasonably reflects the time anticipated to complete the development;
- A date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government

³⁶ Section 380.06(7), F.S.

³⁷ Section 380.06(12), F.S.

³⁸ Section 380.06(17), F.S.

³⁹ Section 380.06(19), F.S.

⁴⁰ Section 380.06(26), F.S.

can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare;

- The requirements for a biennial report, which must be sent to the local government, the RPC, the Department, and all affected permit agencies;
- Types of changes to the development which shall require submission for a substantial deviation determination or a notice of proposed change; and
- A legal description of the property.

The Department reviews DRIs for compliance with state law and to identify the regional and state impacts of large-scale developments and makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments. Additionally, the Department has procedural and substantive rules governing the DRI process. In addition to requiring the DO to be consistent with the state, regional, and local plans, the set of uniform rules provides procedures for considering:

- The conservation of listed plant and wildlife resources;⁴¹
- The treatment of archaeological and historical resources;⁴²
- Hazardous material usage, potable water, wastewater, and solid waste;⁴³
- Transportation;⁴⁴
- Air quality;⁴⁵ and
- Adequate housing, including the affordable housing requirement.⁴⁶

A developer or the Department may appeal local government decisions to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission. Aggrieved or adversely affected persons may challenge a development order for consistency with the comprehensive plan under s. 163.3215, F.S.

In response to the economic downturn, the Legislature has granted a series of extensions to existing DRI development orders.⁴⁷ Additionally, the maximum term of a development order was recently increased from 20 years to 30 years.⁴⁸

Vesting Rights

DRIs are large-scale, high-cost, long-term development projects that often occur in phases. Local governments have the right to change their land uses in their comprehensive plan and through zoning restrictions using their local legislative processes. However, for a developer to invest the type of capital it takes to fund the planning and development of a DRI, the developer needs to know that land use restrictions will not change in a way that would prohibit the full build-out of their planned development. Therefore, s. 163.3167(8), F.S., provides that, “Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.” This has been interpreted to mean that “[o]nce a DRI has been approved, the right to develop pursuant to the terms of the DRI vests. Vesting means development rights obtained through a previously approved DRI are not lost by subsequent changes in the law. It does not, and cannot, create entitlement to greater rights than those originally obtained.”⁴⁹ Section 380.06(20), F.S., provides for vesting of developments that received certain approvals prior to 1973 and developers that agree to convey property to the local government or the state as a prerequisite for a zoning change approval. If a developer is in

⁴¹ Rule 9J-2.041, F.A.C.

⁴² Rule 9J-2.043, F.A.C.

⁴³ Rule 9J-2.044, F.A.C.

⁴⁴ Rule 9J-2.045, F.A.C.

⁴⁵ Rule 9J-2.046, F.A.C.

⁴⁶ Rule 9J-2.048, F.A.C.

⁴⁷ Chapters 2009-96, s. 14; 2010-147, s. 46; 2011-139, ss. 54, 73 Laws of Fla.

⁴⁸ Chapter 2011-139, s. 24, Laws of Fla.

⁴⁹ *Bay Point Club, Inc. v. Bay County*, 890 So. 2d 256 (Fla. 1st DCA 2004) (citing s.163.3167(8), F.S.).

doubt about whether they vested under s. 380.06(20), F.S., the developer can request a binding letter of interpretation from the Department.

Alternative Large Scale Planning Mechanisms

Two alternatives to the DRI process, the sector planning process and the rural land stewardship program, were both significantly revised during the 2011 session.⁵⁰ Although there has been some use of the optional sector planning pilot program and the rural land stewardship program, the revisions to these programs are significant enough that we have yet to see whether these programs will be successful large-scale planning programs.

Sector Planning

Sector planning, authorized by s. 163.3245, F.S., is a process in which one or more local governments engage in long-term planning for large areas (at least 15,000 acres). The term includes “optional sector plans,” the label the program had prior to the 2011 revisions.⁵¹ The sector planning process encompasses two levels: adoption in the comprehensive plan of the long-term master plan, and subsequent adoption by local development order of two or more detailed specific area plans that implement the master plan. The long-term master plan may be based on a planning period longer than the generally applicable planning period of the local comprehensive plan. The master plan and the detailed specific area plan must address issues such as:

- allowed land uses and densities;
- water supplies needed including water resource development, water supply development, and water conservation;
- transportation;
- other regionally significant public facilities necessary to support future land uses;
- conservation plans and procedures; and
- intergovernmental coordination to address extrajurisdictional impacts from the future land uses.

At the request of a local government having jurisdiction, the RPC conducts a scoping meeting with affected local government and relevant state agencies prior to preparation of the sector plan. The RPC makes recommendations to the state land planning agency and affected local governments. The scoping meeting is noticed and open to the public.

A landowner, the developer, or the state land planning agency may appeal a local government development order implementing a detailed specific area plan to the Florida Land and Water Adjudicatory Commission.

Upon approval of the long-term master plan:

- the Metropolitan Planning Organization long-range transportation plan must be consistent with the long-term master plan;
- the water supply projects shall be incorporated into the regional water supply plan;
- a landowner may request a consumptive use permit for the long-term planning period; and
- development agreements within the master planning area may exceed the statutory cap of 30 years in s. 163.3229, F.S.

The detailed specific area plan establishes a buildout date until which the approved development is not subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that implementation of the plan is not continuing in good faith based on standards established by the plan policy, that substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred, that the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or that the change is clearly established to be essential to the public health, safety, or welfare. The applicant may also apply to create such a build-out date at the master plan stage by using the DRI master plan development order process.⁵²

⁵⁰ Chapter 2011-139, Laws of Fla.

⁵¹ Section 163.3164, F.S.

⁵² Section 163.3245, F.S. referencing s. 380.06(21), F.S.

Rural Land Stewardship

The rural land stewardship process provides that one or more landowners may request that the local government designate lands as a rural land stewardship area (RLSA). Local governments may adopt a future land use overlay for the RLSA. The overlay should set up a sending and receiving area. This is essentially a transfer of development rights program designed to preserve certain areas for agricultural or environmental purposes (sending areas) while promoting density in a core development area (the receiving area). A local government or one or more property owners may request assistance and participation in the development of a plan for the rural land stewardship area from the state land planning agency, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the regional planning council, private land owners, and stakeholders.

A rural land stewardship area must be at least 10,000 acres, must be located outside of municipalities and established urban service areas, and must be designated by a plan amendment by each local government with jurisdiction over the rural land stewardship area. Plan amendments are subject to review under the State Coordinated Review Process contained in s. 163.3184(4), F.S.

Findings and/or Conclusions

Benefits

Improved Large Scale Development

In practice, the DRI process creates better projects. Developers sit down at the outset and consider how their development will be reviewed in a comprehensive nature. By considering early in the development process the regional interests the development will impact, the developer can more efficiently craft a plan for development and the impacts of that development on regional infrastructure, natural resources, and affordable housing needs. Because these projects can have such a significant effect on the infrastructure, natural resources, and very character of a region for a long time to come, it is important for our state that they are properly planned and implemented. However, the value of the improvements created during the DRI process needs to be considered against the cost and delay it causes the developer. There is concern “that DRIs involve a great deal of oversight and micro-management of what have proven to be the best-capitalized and often most planning friendly developers and projects.”⁵³

Coordination

The RPCs help to coordinate governmental review. Often these large projects must deal with a number of state, regional, and local planning entities. By consolidating the recommendations of these government entities, the RPC can help prevent conflicting or overlapping recommendations from these government entities. For example, if a local government and a Department of Transportation district are recommending conflicting mitigation measures for impacted roadways, the RPC might work to make one coherent recommendation for transportation impacts. In this way, the RPC could be seen as a facilitator, working with the developer to help them incorporate the needs of the region into the plan of development. However, RPCs are different from one another and may recommend different levels of mitigation as a result.

Regional Perspective

The DRI process is “by far the most prevalent and successful of the state’s attempts to promote some form of regional planning.”⁵⁴ Comprehensive planning historically focuses on one jurisdiction at a time. In contrast, the role of the RPC in the DRI process includes consideration of the impact of the development on regional infrastructure and resources. This recommendation can result in extrajurisdictional impact mitigation, but there is

⁵³ Chapin, et al., *supra* note 8.

⁵⁴ Chapin, et al., *supra* note 8. *See also* Van Rooy, *supra* note 2.

no requirement that the local government issuing the development order actually require mitigation of impacts in adjacent jurisdictions.

However, local comprehensive plans do have an intergovernmental coordination element,⁵⁵ and local governments are authorized to enter into intergovernmental agreements on how to handle the impacts. The intergovernmental coordination element should demonstrate consideration of the particular effects of the local plan upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan. The element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas. Local governments must include mechanisms that address the impacts of development proposed in the local comprehensive plan upon development in adjacent municipalities, the county, adjacent counties, the region and the state. The element should also ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

The intergovernmental coordination element should provide for a dispute resolution process designed by the RPC. The statutory criteria requires the dispute resolution process to provide for: voluntary meetings among the disputing parties; if those meetings fail to resolve the dispute, initiation of mandatory mediation or a similar process; if that process fails, initiation of arbitration or administrative or judicial action, where appropriate.⁵⁶

Although the DRI process is viewed as one of the few regionalist growth management processes used in Florida today, local governments do have state direction to deal with extrajurisdictional impacts through the comprehensive planning process. Additionally, they have the tools to come to interlocal agreements on their own without necessarily involving the RPC. However, when the intergovernmental coordination element was strengthened in the past, it proved problematic and developers preferred the certainty associated with the well established DRI process over the uncertainty associated with the more complicated intergovernmental coordination element that Florida attempted to implement in 1993.

Technical and Planning Assistance

Small or rural local governments may not have the planning expertise to know how to handle a DRI-sized project. For those local governments, the role of the RPC's recommendation, made in coordination with other state and local entities, is particularly valuable. Moreover, the recent exemption for dense urban land areas means that the DRI process is really only left in place in these more rural areas. Absent the DRI process, the local government could still request that the RPC review a proposed project, but the statutory procedures and criteria would not necessarily be in place to provide the RPC with direction.

Vesting

With land use regulations subject to change, the vested rights that a developer receives upon receiving a DO help to protect the developer's investment. This is particularly valuable to both the local government and the developer when the DO is for a long time period. If the developer wants to proceed with a substantial part of its development 15 years after it builds the first portion, it knows that it has vested rights to that development too even if the land use regulations change. The local government, however, has the certainty of knowing that the vested rights are limited to the term and conditions laid out in the DO.

Detriments

Duplication

In contrast to when the DRI process was formulated, Florida now has a strong Comprehensive Planning Act. Even in the early stages of the comprehensive planning process, one commentator had this to say about the DRI process:

⁵⁵ Section 163.3177, F.S.

⁵⁶ Section 186.509, F.S.

Once a local government has adopted a comprehensive plan as required by Florida law, the focus of the regional planning agency report should shift from full scale impact analysis to a determination of the consistency of DRI with local, regional, and state comprehensive plans. Since the local comprehensive plan must accommodate, and be coordinated with, state and regional goals, the consistency requirement is a sounder method for promoting regional values than the current ad hoc impact analysis that lacks a firm planning base.⁵⁷

Oftentimes, the factors considered in the comprehensive planning process are the same as the factors considered in the DRI process. However, in the DRI process it is an impact assessment for a specific project not a planning process for a given area. Nevertheless, the impacts of the land use type and density would be considered during the DRI process.

[I]mpact analysis duplicates the work of comprehensive planning. A comprehensive plan considers a broad range of environmental, social, and economic values and makes the necessary trade-offs. Impact analysis, which assesses a specific project in relation to its surroundings, entails consideration of the same factors as a comprehensive plan. But the difference . . . is that under impact analysis, in contrast to comprehensive planning, each individual project must be studied anew.⁵⁸

However, since those comments were made, the role of the RPC was changed to require them to focus on technical assistance. The data and analysis developed as part of the DRI process can be used to support the comprehensive plan amendment that usually accompanies the DRI. Additionally, compliance with the process can help the developer receive ultimate approval from the local government.

Cost and Delay

With the economic downturn, there are significantly fewer DRIs now than just a few years ago. The Department had 41 applications in 2006 and just 4 in 2010. The process often takes over 9 months to complete and in some cases it can take years to get a project through the process. Studies and mitigation expenditures can be costly. “The involvement of all affected local governments, a regional planning council (RPC), and several state agencies often results in significant concessions from the developer before a project receives final approval.”⁵⁹

Thresholds

Some would question whether the DRI thresholds are based on sound evidence or whether they are simply created politically. Moreover, developments can get around the process by creating multiple smaller projects. Some would argue that it would be best to allow the developers to build larger, integrated projects rather than having them subdivide the projects to avoid a regulatory process.

Options and/or Recommendations

An argument can be made that the DRI process has outlived its time. The comprehensive planning process is now a more firm planning foundation, and affected or aggrieved parties would still be able to challenge development orders for consistency with the comprehensive plan even if the DRI process went away. Slightly smaller developments that have an equal amount or greater amount of impacts can avoid DRI review. This can put developers at a disadvantage when they want to undertake a larger, comprehensively-planned development.

However, many people agree that the DRI program helps to improve large-scale developments. The quality of these large developments could affect the State of Florida for many decades to come. Infrastructure and natural resource problems that exist at the beginning of a new project are much more difficult and costly to change at a later date. Many types of DRIs, such as mining and waterports, which were doubly regulated by significant

⁵⁷ Thomas G. Pelham, *Regulating Developments of Regional Impact: Florida and the Model Code*, 29 U. FLA. L. REV. 789, 851-52 (1977).

⁵⁸ *Id.*

⁵⁹ Chapin, et al., *supra* note 8.

environmental permit requirements, have been exempted from the DRI process. Additionally, the program only remains in those communities that do not qualify as dense urban land areas. As a result, the DRI program continues only in Florida's rural areas, the areas that need the technical assistance the most. Although elimination of the DRI process would be feasible, it has been pared back and still adds value. Therefore, professional staff recommends retaining the process at this time.