

# Growth Management through DRI Review: Learning from the Florida Experience

The "Quiet Revolution" is a name popularly applied to the bundle of innovative land use controls developed since the early 1960s. Two ideas with major implications for the state role in land use policy are embodied in the innovations: concern for the health of environmental systems and assertion of state and regional interests in local land use decisions. Several techniques have been developed to implement these two concepts, including state-wide land use planning, state permitting in sensitive environmental areas, and state review of local plans.

Much of the early impetus for strengthening the state land planning role came from the American Law Institute's *Model Land Development Code*, which was developed during the 1960s and early 1970s. One of the Code's most prominent provisions, review of Developments of Regional Impact (DRIs), has been ignored by all but a few states. In fact, only Florida has faithfully transcribed the DRI process from the Code to legislation.

The slow spread of DRI review may well be due to its novelty; state governments are unwilling to institute a controversial program before its effectiveness has been demonstrated. In the case of Florida, however, a six-year record of DRI cases now exists, providing a sufficient basis for a preliminary evaluation. Using the Florida program as an example, this article discusses the role of DRI review in state growth management, and identifies specific program components that the Florida experience has shown to be crucial to program effectiveness.

## RATIONALE FOR DRI REVIEW

The need for DRI review is based on the premise that certain land uses generate spillover effects reaching beyond the local jurisdiction. Traditional local control over land use tends to ignore such effects, being concerned only with estimation of net benefits to the local jurisdiction.

Recognizing that local control can lead to unwelcome regional externalities, but that the majority of land decisions affect only the local jurisdiction, the ALI Code emphasizes selective state intervention in local decisions. The first half of this strategy involves state review of local land development regulations in Areas of Critical State Concern: geographic areas containing resources, public facilities, or new communities of state interest.

The second half of the strategy, DRI review, is aimed at specific types of development rather than particular land areas. DRI categories are to be defined on the basis of projected impacts on the natural environment, traffic, population, and secondary development. In addition, the categories are to account for the size of the site and for unique qualities of particular areas. The Code also provides that certain public projects not included in the DRI categories, such as public housing, can be declared Developments of Regional Benefit for review as DRIs.

The local Land Development Agency must follow certain procedures in evaluating a permit application for a project qualifying as a DRI. The agency must first weigh the probable net benefits and net detriments generated by the project in the local jurisdiction, as well as in surrounding areas. If the project conforms to local ordinances, the application can be denied only if net detriments exceed net benefits. If the project is not authorized by ordinance, benefits must exceed detriments, the proposal must not interfere with the local or state land development plan, and the departure from the ordinance must be reasonable in light of projected benefits. The State Land Planning Agency is permitted to intervene in the balancing proceedings by submitting its own assessment of the issue, acting either on its own initiative or in response to a local request.

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The ALI Code also allows for appeal of the action taken by a development agency on an application. An appeal may be initiated by the local government, the applicant, the parties to a previous administrative hearing, or neighborhood residents if no hearing has been held. Appeals are heard by an independent, elected State Land Adjudicatory Board.

## THE FLORIDA PROGRAM

The Florida DRI program established by the Environmental Land and Water Management Act of 1972 (the Act) follows the ALI Code, with a few significant exceptions. The goal of the program, as stated in the Act's preamble (Florida State Code ch. 380), is to "facilitate orderly and well-planned development." No mention is made in the Act of limiting growth, DRI review being intended to manage the *quality* of development and not the amount and rate of growth.

The Act directs the state land planning agency to create guidelines and standards for determining whether particular developments exert regional impacts. The criteria spec-

ified in the Act pertaining to design of guidelines are identical to those in the Code for category definition, with the addition of impacts on energy consumption. The Division of State Planning subsequently defined twelve DRI categories and associated thresholds, which are summarized in Figure 1.

The administrative structure and procedures of the Florida program are outlined in Figure 2 and are essentially the same as those proposed in the Code. There are, however, four major differences from the Code. First, the affected Regional Planning Council prepares an assessment of regional impacts and recommends a final action to the local agency. Second, the local agency is not required to conduct a balancing of net benefits and detriments, but must merely consider the application's consistency with the state land plan, local development regulations, and the report and recommendation of the regional council. Third, appeals of development orders may be initiated only by the Division of State Planning, the applicant, the land owner, or the Regional Planning Council, although other interested parties may join in the action. Finally, the

FIGURE 1

### THRESHOLD STANDARDS FOR DEVELOPMENTS PRESUMED TO BE OF REGIONAL IMPACT

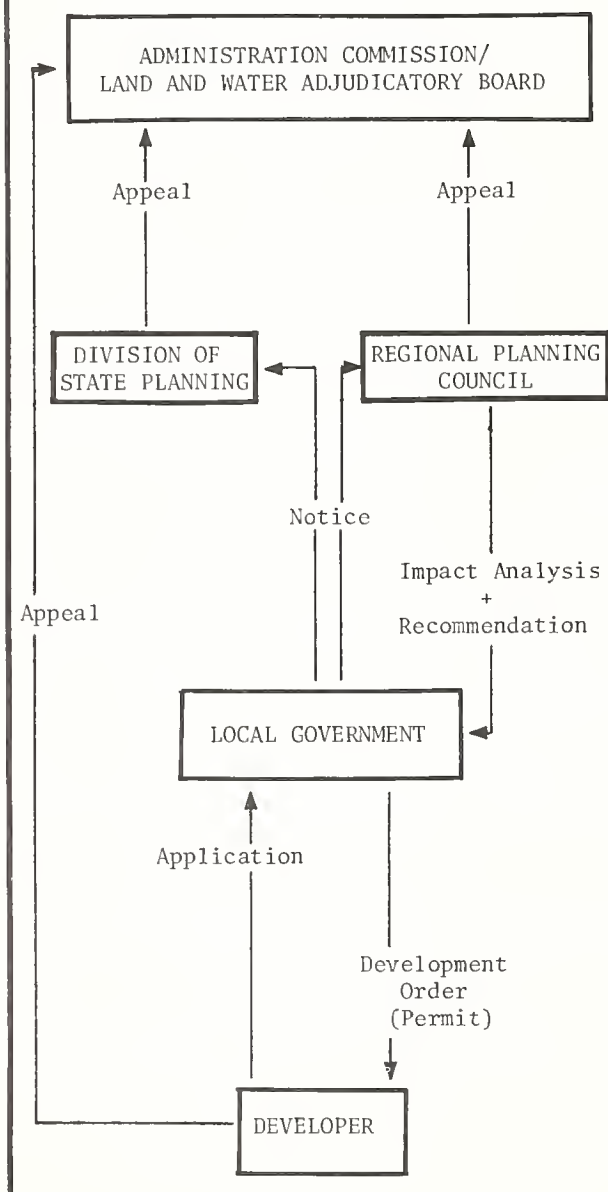
<u>CATEGORY</u>	<u>THRESHOLDS</u>
Airports	construction or extension of one runway
Attractions/Recreation Facilities	
Single Performance	2500 parking spaces or 10,000 seats
Serial Performance	1000 parking spaces or 4,000 seats
Pari-Mutual	any construction or any expansion of 10%
Transmission Lines	230 kv
Hospitals	600 beds
Industrial Parks	1500 parking spaces or 1 square mile of area
Mining Operations	1000 acres/year or 3 MGD of water use
Office Parks	30 acres or 300,000 ft <sup>2</sup> of floor space
Oil Storage	
<1000' from Navigable Water	50,000 barrel capacity
All Others	200,000 barrel capacity
Ports	100 slips for pleasure craft, all freight terminals
Residential	250-3000 units; sliding scale for counties of <25,000 to 300,000+ residents
Schools	3000 post-secondary students
Shopping Centers	40 acres, 400,000 ft <sup>2</sup> of floor space, or 2500 parking spaces

Source: Rules of the Florida Department of Administration, Chapter 22F-2.

appellate body, the Land and Water Adjudicatory Board, is not independently elected, but is instead composed of members of the Florida Cabinet. The Cabinet consists of the Governor, Attorney General, Secretary of State, Treasurer, Comptroller, Commissioner of Agriculture, and Commissioner of Education; each is elected at large and serves primarily as an administrator of a state department. In addition to its appellate role as the Adjudicatory Board, the Cabinet also constitutes the Administration Commission, which must approve proposed changes in the categories and thresholds prior to their submission for legislative review.

FIGURE 2

### ADMINISTRATIVE STRUCTURE OF THE FLORIDA DRI REVIEW PROGRAM



In its first five years, the Florida program resulted in local action on 192 DRI applications, including 25 approvals (13%), 152 conditional approvals (79%), and 15 denials (8%). The number of local actions taken declined steadily from 110 in 1973-74 to 8 in 1977-78. Residential developments accounted for the majority of all applications filed (58%), followed by shopping centers (13%). Thirty-nine development orders have been appealed. Regional councils have been party to appeals twenty-three times, the State eleven times, developers eight times, and counties twice. Most of these appeals were settled without going before the Hearing Board (Backenstoss, 1978).

### IMPORTANT PROGRAM CHARACTERISTICS

Florida's experience with DRI review indicates that seven specific program characteristics deserve special consideration from those contemplating establishment of a similar program. These seven major areas are:

1. development categories and thresholds;
2. program flexibility;
3. administrative structure;
4. balancing of varied interests;
5. interjection of citizen concerns;
6. protection of private rights; and
7. enforcement.

### DEVELOPMENT CATEGORIES AND THRESHOLDS

The ALI Code restricts review to those developments falling into the categories defined by the State Land Planning Agency. Hence it is essential that the categories devised cover the spectrum of development types. Political pressure will be brought to bear on the agency to exempt certain public and private projects from the program. In Florida, the political clout of affected interests resulted in legislative exemption of agriculture and forestry operations, as well as construction by highway authorities, railroads, and utilities in existing rights-of-way.

Several additional development types are effectively exempted from review by their omission from the categories developed by the Florida Division of State Planning. The most significant of these omissions are hotel/motel operations and major public facilities, such as highways and sewer extensions. The omission of facilities is especially significant for two reasons: first, these projects often act as strong regional growth stimulants; second, review of public facilities would permit assessment of projected service areas. At present, substantial cumulative regional impacts are generated by neighboring developments that individually do not qualify as DRIs. Should facilities be added as a category, however, all

parcels in the service area need not be owned by one developer or need not be developed simultaneously to come under DRI review.

Threshold determination is perhaps the most difficult problem faced in implementing a DRI program. Whether a state chooses the Florida procedure of category definition or instead adopts a generalized performance standard approach, some type of triggering threshold will be required.

The criticism most frequently made of the Florida thresholds is that they are set too high. This situation can be traced in part to the Act's definition of a DRI as a development affecting the citizens of more than one county. Because many of the state's counties are extremely large, the thresholds must be set high to satisfy the statutory language. Since the thresholds are merely presumptive and the final determination of DRI status rests on identification of extra-county impacts, high thresholds are not intrinsically wrong, but are useless as guidelines. Nevertheless, the absurdity of thresholds such as 3000 residential units in Dade County, and the fact that only one project falling below a threshold has ever been declared a DRI, indicate that the statutory definition of a DRI should be modified and some thresholds lowered.

With any point threshold, some developers will attempt to avoid review by designing projects falling barely below the thresholds. In the case of mining operations, Florida planners have addressed this problem by defining all single-company operations within a one-mile radius as a single development. An attempt to revise the residential thresholds in a similar manner was not successful. The courts however, have been somewhat receptive to the State's

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notion that single-ownership residential developments in proximity to each other can be reasonably defined as a single project (General Development Corporation v. Division of State Planning, 1977). This judicial interpretation does not address the cumulative effects of independent developments on neighboring sites.

The Florida thresholds are primarily aspatial, divorced from site characteristics that determine the consequences of the physical impacts generated. Only in the case of oil storage facilities and residential developments are site factors taken into account. The oil storage thresholds are related to proximity to navigable water while residential thresholds increase with county population. Site char-

acteristics are brought into consideration when the state prepares its binding letter of interpretation, a formal notice as to whether a project exerts multi-county impacts and therefore qualifies as a DRI.

An alternative approach would be to tie thresholds more closely to site considerations. For example, residential development thresholds could be based directly on the amount of unused

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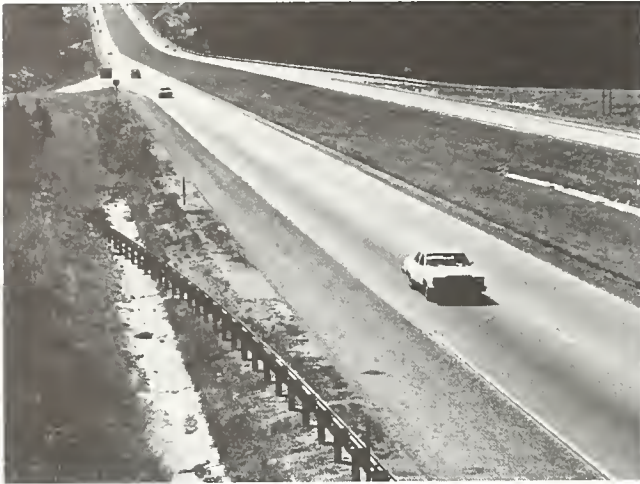
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sewer capacity, proximity to surface water, or ecosystem type. This approach would be especially appropriate were the thresholds intended to be binding in and of themselves. In Florida, where "regional" is statutorily defined as meaning "multi-county" and the thresholds represent project scales at which regional impacts are only presumed to be involved, each case must be examined individually and site factors cannot readily be encased in rigid thresholds. The separation of site factors from the thresholds gives a state the flexibility to consider a great variety of impacts and site factors in its search for multi-county impacts, if indeed a DRI program is structured to require multi-county impacts as a project characteristic for DRI review.

#### PROGRAM FLEXIBILITY

In any state-wide regulatory program with major economic and environmental consequences, it is important that the administering agency adjust its procedures to meet changing market conditions and to address unforeseen problems. Under a DRI program, the procedures most likely to require revision over time are the development categories and thresholds. In the Florida program, revision of these administrative rules requires approval by the Administration Commission and the legislature, assent which has been very difficult to achieve (Backenstoss, 1978).

The problem of rallying political support for each proposed revision could be avoided by statutorily delegating authority over such matters to either the state land planning agency or its overseeing committee. Such delegation must be accompanied by specific statutory guidelines for design of the categories and thresholds if the program is to survive a constitutional challenge of improper delegation of power. Florida's critical areas program was recently invalidated on similar grounds (Cross Keys Waterways v. Askew, 1978).



In Florida, major highway construction is exempt from DRI review.

#### ADMINISTRATIVE STRUCTURE

In the interest of efficiency and austerity, a DRI program should avoid creation of an elaborate bureaucracy. The ALI version relies solely on local governments, the State Land Planning Agency, and the State Land Adjudicatory Board. Except for the Board, every state has an existing bureaucracy that could administer the program with only a modest expansion in technical personnel. Reliance on local governments for final decision making enhances local acceptance and meshes neatly with local review procedures for minor developments.

The Code advocates creation of an independent, elected Land Adjudicatory Board. The Florida Adjudicatory Board is such a body, being composed of the Governor and the Cabinet. However, because the principal interests and expertise of the Board members lie elsewhere, the arrangement has proven unsatisfactory. Due to the Board members' busy schedules, appeals are brought before a hearing officer and a recommendation is forwarded to the Board. Final decisions are typically arrived at ad hoc, without the benefit of systematic land use evaluation criteria (Pelham, 1977). This situation is decidedly inferior to a Board comprised of land use experts with the time to weigh appeals carefully and systematically. However, establishment of an elective process, unless accompanied by membership restrictions, will not guarantee the Board's expertise and objectivity.

The Florida program also relies heavily on the Regional Planning Councils as sources of recommendations and as initiators of appeals. The Councils exhibit considerable staff expertise in their project assessments, but their policy decisions are often the product of political bargaining among the local officials who serve as Council members. The decision to appeal is especially vulnerable to political

considerations as it is much easier for a local official to vote to challenge the development order of a small jurisdiction than that of a populous, influential locality. If it seems necessary to delegate appeal and recommendation authority to bodies such as Regional Councils, it may be advisable to require a written statement justifying the action taken as a means of enforcing accountability to citizens and staff.

#### BALANCING OF INTERESTS

In theory, the DRI process forces two types of accommodation: balancing the interests of the several levels of government and balancing the various substantive concerns generated by development proposals.

The balancing of state, regional, and local interests is achieved by requiring that elements of each be considered in local application review. A natural tendency exists, however, for the local government to weight its interests most heavily. This tendency is addressed in Florida by requiring a written justification of the application's final disposition. Such a record illuminates the weights placed on various factors, and is available to all the actors in making their decisions to appeal.

The written justification also reveals weights placed on substantive concerns such as social, economic, and environmental issues. Nothing in the Code or the Florida program, however, is designed to ensure that different substantive concerns will be balanced. In Florida, the Regional Councils can use a state-produced guidebook in analyzing project data.

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The combination and interpretation of the data are, however, left to the discretion of the region. This approach may permit undervaluing of certain factors, but it allows greater consideration of those factors most important to the region, which could include, for example, housing costs. The Regional Council's recommendation is also required by law to address impacts on five areas: the natural environment, regional economy, public facilities, transportation, and housing. In addition, the state may prepare its own assessment, thus making it unlikely that the process will permit neglect of broad areas of concern.

It has been argued (Pelham, 1977) that, unlike the Code's net balancing technique, Florida's impact assessment approach is anti-developmental in that one detriment can block

a project that on the whole conveys net benefits. This contention is theoretically valid but irrelevant from a practical standpoint. Because of the political bargaining performed at the regional and local levels, the statutory requirements for regional reports and local public hearings, and the opportunity for negotiation afforded by the appeals process, Florida's impact approach appears to lead to bargaining among actors rather than to narrowly-focused rejections of applications. The very low rate of denials in the Florida program would seem to corroborate this assessment of the process.

One final means of forcing a balance among competing interests, the ALI Code's Development of Regional Benefit (DRB), has not been adopted in Florida. Intended as a device to circumvent local exclusionary practices, this measure would force localities to accept projects providing net regional benefit and complying with relevant development plans. Compounding the program's lack of a DRB provision is the State's contention that DRI zoning questions are separate from the review process and are therefore not subject to administrative appeal. Local exclusion based in zoning can only be appealed in the courts where the local ordinance has the weight of assumed validity.

The exclusion issue involves conflicts between levels of government, as in prison siting, and conflicts within communities, as

in disputes over public housing. The Florida program protects the position of the local government in both situations. In 1975, the Division of State Planning proposed a new DRI category for government-assisted housing, but the amendment failed to win approval of the Administration Commission needed for legislative action (Backenstoss, 1978). The implication of this experience is that it may be prudent to seek a generalized DRB provision at program inception rather than to list controversial categories individually, which can create a convenient focus for opposition.

#### CITIZEN CONCERNS

It is generally accepted in planning circles that the participation of citizens in the planning process is highly desirable, yet the DRI program as envisioned and practiced is principally a staff exercise. Beyond the public notice and hearing requirements and the Code's general provisions for citizen participation at the local level, no mechanisms for public involvement are proposed. The limitation on public participation is, as always, based on the need to expedite the review process. It would not be inconsistent with program efficiency, however, to provide access points in the process where citizens could become involved in decision-making rather than to mandate more forums for public reaction to decisions already made. Local and regional



In evaluating a DRI permit, the local development agency must weigh the expected regional benefits, such as power generation, against unwanted local costs. *Photo courtesy of Duke Power Co.*

authorities could be motivated to expand their participation efforts if the state required that citizen advisory committee recommendations be included in both the regional recommendations and the local dispensation reports. This requirement could be incorporated either in the enabling legislation or in administrative rule.

In order to reduce expensive and time-consuming litigation, affected individuals should have the right to appeal a development order either independently or through a political or municipal organization. Standing to appeal is relatively universal under the ALI provisions, but in Florida the individual is dependent on the state or region to initiate an appeal. Especially when local governments may initiate appeals only through regional organizations and where public participation is meager, standing must be defined liberally if the rights of individuals are to be protected.

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#### PRIVATE RIGHTS

As individual rights are highly cherished in this society, it is essential that a DRI program not run roughshod over the rights of property owners. Because DRIs are by definition large, rather unusual developments, a very small segment of property owners will be directly affected by the program. Additionally, as denial of a DRI permit is not equivalent to a ban on property use, allegations of uncompensated takings are likely to be rare. Where the quality of development is emphasized, as in the Florida program, denials will likely be relatively few and taking litigation even more improbable.

It has been effectively argued, however, that the costs imposed by DRI review infringe on the rights of developers (Healy, 1976). For a small developer, the representative cost of the required data, \$3,000-\$10,000, could indeed be substantial, especially in the event of a denial. The low rate of denials in Florida reduces the impact of this contention, although it does not refute it.

The time delay involved in the review process can also be considerable. The Florida Division of State Planning estimates that a typical case lasts five and one-half months from application to final disposition. The state planners are currently considering means of speeding up the process by streamlining administrative procedures.



Large employers inducing secondary growth qualify as DRIs.

#### ENFORCEMENT

For a DRI program to be effective, developers and local governments must adhere to the conditions attached to the development permit. Reliance on local implementation is a bonus in terms of administrative simplicity, but can be detrimental where the local government is understaffed or not enthusiastic. In these cases, it will be necessary for the state to monitor compliance. In large, rapidly growing states, such as Florida and North Carolina, it may not be possible to fund a state-wide systematic monitoring program. Such states may instead choose to maintain a small monitoring staff to spot-check areas with notoriously lax enforcement and those local governments which have suffered a reversal on appeal. In most areas, however, effective monitoring can be accomplished by relying on local governments and on information obtained through informal contacts with the regional council staffs and local citizen groups.

#### CONCLUSION

The Florida experiment with DRI review has been a qualified success. The program has reviewed 200 projects, in most cases imposing conditions on the development proposal. This has resulted in improved development quality, but has had little effect on the rate and amount of growth in the state.

The program has significant gaps in its coverage due to legislative exemptions, the omission of public facilities from the DRI categories, and the lack of anti-exclusionary tools. Finally, the thresholds appear to be too high and may have contributed to the drastic decline in applications over the first five years.

Florida's experience with DRI review highlights several features necessary for program effectiveness. The development categories should provide broad coverage of potential construction types, and should include public facilities in order to deal effectively with cumulative effects of small developments. Thresholds for the categories (or for a performance standard approach) should relate to characteristics of the site such as natural features, service capacity, or surrounding population density. It is also important to provide channels for amending the categories and thresholds, preferably avoiding pre-requisite legislative approval.

The program's administrative structure should be kept simple, utilizing existing institutions to the maximum extent possible; however, as a qualified, independent adjudicatory board is absolutely necessary for effective program implementation, the desire to minimize bureaucratic costs should not preempt its establishment.

In establishing opportunities for balancing varied interests, development of regional benefit status should be available for use in combatting exclusionary local practices. It may also be desirable to specify in detail the concerns to be addressed regionally and locally, and to require written justifications of decisions made at these levels. Specification of access points for citizen recommendations at each of these governmental levels would also allow consideration of a wider variety of interests.

Finally, the DRI program should include a procedure for monitoring compliance with development conditions. At a minimum, spot-checks should be made in those localities and for those projects in which previous behavior foreshadows unsatisfactory local enforcement.

Establishing a DRI review program is a difficult political proposition. Obviously, this strategy will face strong opposition from development interests as well as from traditional champions of private property rights. In rapidly growing states, however, preservation of environmental quality also enjoys a large, politically effective constituency. This is particularly true in Sunbelt states with large resort and retirement communities.

Sponsors of DRI legislation need not rely totally on environmental protection arguments. The experience in Florida has shown that DRI is quality, rather than quantity, controlling and can be directed at improving the efficiency of energy use, assuring a sufficient housing supply, and balancing the demand for and capacity of public services. By exploiting the current interest in energy and government

efficiency, as well as the more established environmental movement, generating the necessary political support for program adoption is quite conceivable.

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