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IMPLEMENTING GROWTH MANAGEMENT POLICIES: THE ROLE OF THE DRI PROCESS

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The Development of Regional Impact (DRI) program is one of several programs established in the package of landmark environmental and planning laws passed by the Florida legislature in 1972. The DRI program was created to provide a comprehensive mechanism for local governments to review large developments to assist in the planning process in the region. However, in the 1980's, the program has been criticized by government, business and development interests, and citizens' groups for a number of failings and shortcomings, even to the point that some advocate its complete demise.

The most frequently heard complaints include:

†The process takes too long to complete;

†The information requested is not limited to regional issues, as was intended, but includes review of purely local issues as well;

†A developer who goes through the process does not have anything when he finishes;

†Issues addressed in the DRI process are raised and reviewed again in state and regional permitting programs;

†The process captures so few developments (estimates are five percent to ten percent of all development) that it does not provide significant help to the planning process; and

†Citizens' groups and other affected interests cannot participate in the review process.

Given these concerns, two obvious questions come to mind. Does the process serve a function? If so, can some or all of the problems complained of be remedied within the present framework?

The environmental groups which I represent in legislative matters feel that the DRI review does indeed serve a function. It provides a method for a multi-jurisdictional review of the impacts of a large development in a manner not present in any other existing planning or regulatory process. This process allows adjacent local governments the opportunity to review and comment on the project, thereby assisting in regional planning. The DRI review also provides the means for a comprehensive assessment of the impacts of a project while other programs look only at a portion of a

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project.

This type of comprehensive review is becoming increasingly important as our population grows. Local governments are experiencing greater difficulties providing infrastructure. Growth increases the pressure on the same natural resources and open spaces which draw people to this state. Towns and cities grow closer together, and the decisions of one local government increasingly affect the growth patterns and finances of its neighbors.

Some argue that the best way to fix the present problems with the DRI program is to phase it out. However, some changes in the program could make the DRI process more effective while maintaining the regional concept essential to review of large developments in growing areas.

Two good ideas to improve the program have already been adopted by the legislature: Areawide DRIs and the Downtown Development Authority DRI. Both concepts have a similar approach; each allows for review of a multi-use, multi-owner area. Here, the DRI process may review a plan of development, as developed either by a local government or another oversight planner/developer, for a large area covering multiple owners. Both concepts are too new to have experienced full implementation or a history to demonstrate their effectiveness. However, as long as the areas to be reviewed are discrete and carefully chosen, these concepts should improve the planning process. In addition, by alleviating some of the regulatory burden, individual developers will be attracted to building in these preapproved areas. This in turn will reduce "leap-frog" development which is costly to our natural resources and local government budgets.

Area review should be strengthened in two ways. First, the Regional Planning Council or the Department of Community Affairs should be given the authority to require a DRI review for a multi-use project where each activity is under the applicable threshold, but where a common ownership or plan of development which results in regional impacts can be shown. Second, the existing provision which allows for individual landowners to "opt-out" of the area review process should be removed. This provision weakens the planning process and detracts from the purposes of the area review process.

It is no secret that developers divide up projects into smaller segments to avoid DRI review. In order to provide encouragement not to do this, the environmental groups support a series of concepts proposed by the business community to provide incentives to

participate in the program. These include:

†Formalizing into law the present preliminary development agreement process to allow some subthreshold work to be done, at the developer's risk, before the development order is issued;

†Improving the procedures involved in obtaining the development order;

†Providing for a simultaneous "conceptual agency review" of certain types of activities. This would result in an agency statement relating to the "permissibility" of various project components. The statement would not be a permit in itself, but a presumption of correctness which would attach to the findings in the statement, giving the developer more certainty in the regulatory process and reducing duplicative review during the DRI review; and,

†Reducing the review requirements for those projects which are designed to protect natural resources to be consistent with the local government comprehensive plan and to minimize the need for publicly-financed infrastructure. This "short-form" approach, like the areawide concept, should help to steer growth into lower impact areas, as well as to produce better-planned developments.

A more controversial proposal is to provide standing for substantially affected persons to participate as parties in the local government proceedings leading to the issuance of the development order. This proposal would include standing to appeal decisions of the local government to the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission. For those of you who have reservations about this idea, here are some thoughts to keep in mind:

†The DRI process is the only state-created regulatory process which does not allow citizens the opportunity to participate fully in the review process. This produces a great deal of frustration which can result in considerably greater opposition to a project in the later permitting processes in which citizens can participate. Standing before the local government would provide a forum to work out issues early on, thus avoiding potential later adversarial proceedings;

†The standing provision, as proposed by the environmental groups, would be limited to those persons who could show that they are "substantially affected" by the project. The case law interpreting standing for substantially affected persons under the Administrative Procedures Act would then give guidance to standing in this proceeding. This approach would effectively eliminate

the developer's greatest concern — the “gadfly” who is just generally opposed to development. Remember, also, that citizens who can be substantially affected include other businesses or associations.

The possibility of repealing the existing exemption for DRI review in Areas of Critical State Concern (ACSC) also has been raised. In those areas which have been designated as Areas of Critical State Concern, the need to continue to review large projects continues to exist, despite the fact that the ACSC designation is supposed to result in a higher degree of planning. Also, this exemption removes the formal review and comment by adjacent governments. This latter situation may have the unintended result of penalizing a government which has planned carefully while benefiting a government which has been less thoughtful in its approach to development — just the opposite of the stated goal of facilitating better local government planning in Florida.

Another possible way to improve the DRI process is to change the present vested rights provision to eliminate from its application any development which cannot demonstrate significant progress toward completion on or before July 1, 1985. This would occur whether or not the project had previously been the subject of a binding letter of interpretation stating that the project was vested. The vested rights provision was to provide a mechanism for transition so that older projects would not have to stop work and undergo DRI review. Developers should now be finished with, or actively involved in finishing, those early projects. Those developments which have had little or no work done on them since the DRI act was passed thirteen years ago cannot now be considered transitional developments. They now should be subject to DRI review.

In addition, if the Local Government Comprehensive Planning Act is really to work, the local government which undergoes a careful and thorough planning process should be given greater ability to raise issues before adjacent local governments when a proposed DRI would create impacts of a type inconsistent with local plan, or when the impacts of the proposed DRI will create a greater need for publicly-financed infrastructure.

The present law lists a number of changes to a development which are significant enough to be considered substantial deviations requiring additional DRI review. To further improve and increase the certainty of the DRI process, the criteria for what constitutes a substantial deviation should be expanded to include

changes in nonresidential developments.

Lastly, for those few developers who fail to comply with the DRI process or who violate the terms of a development order, the Department of Community Affairs should have the power to impose civil penalties in the same manner as the Department of Environmental Regulation and the Department of Natural Resources.

There you have a rather modest list of proposals for changes in the DRI program. The combination of these changes would result in the following improvements:

- †Present an easier process for those who participate in a DRI review;

- †Include a greater number of projects in the program, thereby improving the local government planning process;

- †Provide citizens and adjacent local governments with more participation and, thereby, more confidence in the program;

- †Preserve and enhance the ability of local governments to respond to their neighbors' decisions which affect them; and

- †Provide fairness by not penalizing a successful company with a recognized name by subjecting its developments to DRI review more often than developments by companies without such name recognition.

The regional review process is of value. Since its inception, both the DRI process and the modern development have become more sophisticated and complex. The present DRI program needs some changes to improve its efficiency and usefulness, but it is a useful planning tool which should be retained.