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PLAN-BASED LAND DEVELOPMENT AND INFRASTRUCTURE CONTROLS: NEW DIRECTIVES FOR GROWTH MANAGEMENT

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Florida's recent legislative responses to the economic[1] and environmental[2] effects of growth[3] emphasize planning as a basis for development management. Through mid-1990,[4] the Local Government Comprehensive Planning and Land Development Regulation

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1. *See* H. FISHKIND & K. DENTON, PUBLIC INFRASTRUCTURE AND GROWTH MANAGEMENT: THE CRUCIAL CONNECTION at 10-14 (1985). This study estimates Florida's existing unfunded backlog of infrastructure (e.g., roads, water and sewer, schools, and other capital facilities) at $29.2 billion, with an additional $17.2 billion to meet expected growth demands to the year 2000. *Id.* at 10-11. *See also* STATE COMPREHENSIVE PLAN COMMITTEE, KEYS TO FLORIDA'S FUTURE: WINNING IN A COMPETITIVE WORLD, 3 (1987). The costs of implementing Florida's State Plan between 1987-1996 is estimated at $52.9 billion: $35 billion at the state level, and $17.9 billion in local revenue needs. *Id.*

2. Over 130,000 acres of Florida's wetlands have been converted to agricultural and developmental uses. *See* Tschinkel, *Environmental Issues*, in STAFF OF FLA. H.R. SELECT COMM. ON GROWTH MANAGEMENT; A GROWTH MANAGEMENT POLICY SEMINAR ON ENVIRONMENTAL AND SOCIAL ISSUES, (R. Rubino ed. 1983). A survey comparison estimated a 31% loss of prime agricultural lands in the state between 1958 and 1977, from 2,056,00 to 1,417,000 acres. *See* STAFF OF FLA. H.R. COMM. ON AGRIC., AGRICULTURAL LANDS WITHIN FLORIDA (1981).

3. Estimates indicate that Florida's population may increase from 11 million to 20 million by the year 2020. *See* Smith, *Projections of Florida Population by County, 1983-2020*, IN STAFF OF FLA. H.R. SELECT COMM. ON GROWTH MANAGEMENT, BASIC POPULATION DATA (1983). *See also* Frank & Connerly, *Florida's Growth Problems: Public Perceptions and State Policy Responses*, 1 FLA. PUB. OPINION 2, 3-4 (1985) [hereinafter Frank & Connerly]; Florida State University Policy Sciences Program, *The 1985 Annual Policy Survey* at 7-12 (documenting public concern with growth issues); DeHaven-Smith, Gatlin, *The Florida Voter*, 12 FLA. ENVTL. AND URB. ISSUES 14 (April 1985) (documenting attitudes toward growth in Florida). Statewide survey results indicated that over 70% of the public supports some form of growth control. Over 45% of the respondents supported growth management restrictions that would raise taxes or fees, or decrease jobs in the community. Frank & Connerly, *supra* at 4.

4. *See* FLA. STAT. § 163.3167(2) (1985) (amended by 1986 Fla. Laws 191, § 6). The revised schedule set out in Department of Community Affairs proposed Rule 9J-12 reflects statutory guidelines that coastal counties and municipalities submit revised or amended plans by deadlines beginning mid-1988. FLA. ADMIN. CODE ANN. r. 9J-12.006(1)(24)(1986). Remaining city and county deadlines begin in mid-1989, with all certification reviews to be initiated by mid-1990. *Id.* r. 9J-12.006. The authorizing section clarifies that local plans may be submitted earlier, FLA. STAT. § 163.3167(2)(b) (1985) (amended by 1986 Fla. Laws 191, § 6); FLA. ADMIN. CODE ANN. r. 9J-12.004 (1986), and provides for discretion to defer local planning review up to mid-1990 where areas of critical state concern are involved. FLA. STAT. § 163.3167(2)(b) (1986) (amended by 1986 Fla. Laws 191, § 6).

Act[5] [Local Planning and Development Regulation Act] mandates state-certified comprehensive plans to guide consistent land development codes[6] and ensure adequate public facilities.[7] The State Comprehensive Plan,[8] supplemented by agency functional plans[9] and regional policy plans,[10] provide a policy context for revised local standards. These strengthened comprehensive planning laws should improve predictability in growth decisions. However, enforceable adherence to plans increases the potential for challenges from those affected by public development choices.

This article discusses elements of local planning, regulation, and service provision in light of statutory and constitutional concerns. Following an overview of the revised growth management framework, part II reviews requirements for local planning as interpreted by state rulemaking and interim legislative review. Parts III and IV consider land development regulations and infrastructure controls as techniques to implement planning directives. The remaining sections discuss potential legal issues in plan-based controls and considerations in adapting planning and management techniques to local needs.

I. FLORIDA'S STATUTORY FRAMEWORK FOR URBAN GROWTH MANAGEMENT

Recent initiatives toward integrated state, regional, and local growth management build on the landmark structure of selective statewide regulation and mandatory local planning.[11] The Florida Environmental Land and Water Management Act of 1972[12] man-

5. FLA. STAT. §§ 163.3161-.3215 (1985) (amended by 1986 Fla. Laws 191, §§ 6-12). The Local Planning and Development Control Act was one of several important substantive land use laws incorporated within the Omnibus Growth Management Act of 1985. The Omnibus Act was adopted from Fla. HB 287, introduced by Rep. Mills, based on proposals arising from the Fla. H.R. Select Comm. on Growth Management. *See* Pelham, Hyde & Banks, *Managing Florida's Growth: Toward an Integrated State, Regional, and Local Comprehensive Planning Process* 13 FLA. ST. U.L. REV. 515, 534-41 (1985) [hereinafter Pelham, Hyde & Banks].

6. *See* note 590 to 95 and accompanying text *infra*.

7. *See* notes 99 to 127 and accompanying text *infra*.

8. *See* note 13 and accompanying text *infra*.

9. *See* note 14 and accompanying text *infra*.

10. *See* note 15 and accompanying text *infra*.

11. *See* J. DEGROVE, LAND GROWTH, AND POLITICS 117-21 (1984); T. PELHAM, STATE PLANNING AND REGULATION: FLORIDA, THE MODEL CODE, AND BEYOND 26-63 (1979); DeGrove, *The Political Dynamics of the Land and Growth Management Movement*, 43 LAW & CONTEMP. PROBS. 11, 117-19 (1979); Finnell, *Coastal Land Management in Florida*, 2 AM. B. FOUND. RES. J. 349 (1980).

12. FLA. STAT. §§ 380.012-380.12 (1985) (amended by 1986 Fla. Laws 191).

dates regional and state agency review of local regulations for projects above designated thresholds and activities in areas of critical state concern. The statutory State Comprehensive Plan[13] sets out goals, policies, and objectives for a wide range of functional areas. Under present authority, state agency functional plans[14] and comprehensive regional policy plans[15] may give substantive guidance to regulatory and budgetary decisions.

Current authority for local planning and development controls is an amalgam of enabling sources. Following enactment of a local planning and zoning enabling law in 1969,[16] the Legislature in 1975 added a mandatory planning subchapter. The Local Government Comprehensive Planning Act[17] added a plan consistency provision which applied to land development regulations.[18] It also provided for non-binding state review and comment on local plans.[19]

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985[20] expands the scope of the Local Planning Act of 1975, and supercedes the County and Municipal Planning Act of 1969.[21] In repealing the permissive enabling law,

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13. FLA. STAT. §§ 187.101-.201 (1985). The State Plan was mandated by FLA. STAT. §§ 186.007-.008 (State and Regional Planning Act of 1984). Pelham, Hyde & Banks, *supra* note 5, at 521-34.

14. *See* FLA. STAT. §§ 186.021-.022 (1985). The state agency functional plans for land development, water use and transportation implement the growth management portion of the state plan. *See Id.* at § 186.021(5). *See also* FLA. STAT. § 380.032(17)(1985)(defining state land development plan); FLA. STAT. § 373.036 (1985)(state water use plan). All state agencies must prepare functional plans consistent with the statutory state plan within one year of the state plan's adoption. *See* FLA. STAT. §§ 186.021-.022 (1985).

15. FLA. STAT. §§ 186.507-.508 (1985).

16. County and Municipal Planning for Future Development Act, 1969 Fla. Laws 139 (repealed by 1985 Fla. Laws 55).

17. 1975 Fla. Laws 257.

18. *Id.* § 3194.

19. *Id.* § 163.3184(2).

20. FLA. STAT. §§ 163.3161-.3215 (1985) (amended by 1986 Fla. Laws 191, §§ 6-12).

21. Prior to the 1985 amendments, chapter 163, part II enabled both permissive and mandatory planning authority for municipal governments. The County and Municipal Planning for Future Development Act of 1969, 1969 Fla. Laws 139 (repealed by 1985 Fla. Laws 55), provided optional authority for municipalities to adopt comprehensive plans and to amend or revise those comprehensive plans in order to guide growth within the city or in adjacent areas under city jurisdiction. This act also specifically enabled the enactment, enforcement, and judicial review of local government zoning and subdivision regulations, building, plumbing, electrical, gas, fire safety, and sanitary codes. *Id.* § 28.

The repeal of the earlier enabling law leaves some uncertainty about the precedential value of case law interpreting its jurisdictional and substantive provisions. *See, e.g.*, Townley v. Marion County, 343 So. 2d 1312, 1313 (Fla. Dist. Ct. App. 1977) (holding that non-charter county must comply with Chapter 163 zoning requirements); 1985 Fla. Att'y Gen. Ann. Rep. 71 (concerning authority for local Zoning Boards of Adjustment in light of repeal of County and Municipal Planning Act).

the Legislature acknowledges constitutional[22] and statutory[23] powers for local governments to plan and regulate lands uses.[24] However, legislative intent also affirms that the current statute provides the necessary direction and basis for planning and land development regulation powers.[25] Under the consolidated statute,[26] state rules guide local preparation for comprehensive plans and consistent land development regulations. Certification, supplemented by fiscal sanctions,[27] is designed to ensure city and county compliance with new planning and regulatory requirements.

II. REFUELING LOCAL PLANS TO GUIDE LAND USE AND PUBLIC FACILITIES

Revised Rule 9J-5 [filed September 30, 1986] of the Department of Community Affairs,[28] establishes minimum criteria that will guide review of local plans. Beginning with establishment or reference to a data base and/or maps, each planning element now requires analysis and specification of goals, policies, and objectives. To meet certification standards, the local comprehensive plan must indicate both five-year and ten-year perspectives beyond official

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22. The Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes except as otherwise provided by law. FLA. CONST. art. VIII, § 2(b) (1968). It replaces earlier sole reliance on direct state legislative authorization for the exercise of municipal functions. *See* Deal, *Post-Mortem-Home Rule*, 57 FLA. MUN. REC. 50 (1983).

23. The Municipal Home Rule Powers Act, FLA. STAT. §§ 166.011-166.045 (1985), implements constitutional provisions relating to municipalities by providing that they shall have such powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any owner for municipal purposes, except when expressly prohibited by law. *Id.* § 166.021(1). *See* Deal, *supra* note 22, at 52; Morrison, *Home Rule—An Overview*, 57 FLA. MUN. REC. 46 (1983).

24. *See* FLA. STAT. § 163.3161(8) (1985).

25. *Id.*

26. FLA. STAT. §§ 163.3161-.3211 (1985) (amended by 1986 Fla. Laws 191, § 6).

27. FLA. STAT. § 163.3184(8) (1985). The Administration Commission may impose sanctions by withholding selected state assistance programs to no-complying communities. *Id.*

28. *See* 1986 Fla. Laws 191, § 7 (codified at FLA. STAT. §§ 163.3177(10)(a)-(k) (1985)). Revisions to conform Rule 9J-5 to the statutory intent language were exempt from rule challenges until October 1, 1986. Rule challenges under FLA. STAT. § 120.56 based on the scope of legislative delegated authority may be initiated with respect to the modified rule prior to July 1, 1987. All other 9J-5 rule changes will be subject to the full chapter 120 processes. *See* 1986 Fla. Laws 191, § 7 (codified at FLA. STAT. § 163.3177(10)(k) (1985)). Rule 9J-5 clarifies that the minimum criteria are not intended to prohibit local government from exceeding its standards in detail or scope. FLA. ADMIN. CODE ANN. r. 9J-5.001 (1986); FLA. STAT. § 163.3177(9) (1985).

adoption.[29]

To ensure a measure of vertical plan integration, the Local Planning and Development Regulation Act provides for consistency review with the State Comprehensive Plan and the applicable regional policy plan.[30] The revised statute[31] and rule[32] also require internal consistency among plan elements.[33] Once adopted, local land development regulations will be reviewed in relation to the certified plan.[34]

Before revising or amending their planning efforts, cities and counties must establish or refer to land use, transportation, population, economic, housing, and other data sources.[35] The rule does not require original data collection unless the locality chooses to augment professionally accepted existing sources with clearly described or referenced approaches.[36] Following analysis of existing

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29. FLA. ADMIN. CODE ANN. r. 9J-5.005(3)(1986)(planning timeframe). To assist in comparison and review, minimum format requirements are prescribed for the planning document. These include: 1) a table of contents; 2) numbered pages; 3) element headings; 4) section headings within elements; 5) a list of included tables, maps, and figures; 6) titles and sources for all included tables, maps, and figures; 7) a preparation date; and 8) the name of the preparer. FLA. ADMIN. CODE ANN. r. 9J-5.005(d)(1)-(8)(1986). Required plan elements may also be combined. *Id.* at r. 9J-5.005(1)(a).

30. *See* FLA. STAT. §§ 163.3177(6)(h) and 163.3177(9)(c) (1985). *See also* FLA. STAT. § 163.3177(10)(a) (1985) (added by 1986 Fla. Laws 191, § 6) (defining standards for evaluating local consistency with regional and state plans); FLA. STAT. § 186.508 (1985) (consistency of regional plans with state plan); FLA. ADMIN. CODE ANN. r. 9J-5.021 (1986). The 1986 amendments create dual standards for evaluating interplan consistency. The first test, "compatible with," is defined as "not in conflict with" the state plan and appropriate regional policy plan. The second consistency standard, "furthers," means to "take action in the direction of realizing goals or policies of the state or appropriate regional policy plan." FLA. STAT. § 163.3177(10)(a) (1986) (added by 1986 Fla.Laws 186-191, § 7).

Statutory intent language also requires vertical consistency determinations to consider the state or regional plan "as a whole" and that "no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans." *Id.* A supplemental intent provision asserts that following local review of all state plan goals and policies, local discretion will control the allocation of funds that further state goals and policies. *Id.* § 163.3177(10)(b) (added by 1986 Fla. Laws 191, § 7).

31. *See* FLA. STAT. § 163.3177(9)(b) (1985).

32. *See* FLA. ADMIN. CODE ANN. r. 9J-5.005(4) (1986).

33. FLA. STAT. § 163.3177(2) (1985); FLA. ADMIN. CODE ANN. r. 9J-5.005(4)(a), (b) (1986).

34. FLA. STAT. § 163.3194 (1985).

35. *See* FLA. ADMIN. CODE ANN. r. 9J-5.005(2)(a)-(c) (1986); FLA. STAT. § 163.3177(6)(a) (1985) (requiring land use studies). *See generally* F. CHAPIN & E. KAISER, URBAN LAND USE PLANNING 109-228 (3d ed. 1979) [hereinafter CHAPIN & KAISER]; Catanese, *Information for Planning* in THE PRACTICE OF LOCAL GOVERNMENT PLANNING 90, 95-98 (F. So. ed., 1979) [hereinafter Catanese].

36. FLA. ADMIN. CODE ANN. r. 9J-5.005(2) (1986) (data requirements). Clarifying intent language affirms that state compliance review of local plans will not extend to support data and summaries, but may evaluate whether planning methodologies are "professionally ac-

conditions, trend projections provide data for estimating demands within each planning element.[37]

Where required by statute or rule, maps indicating general needs are to be incorporated within planning elements. For example, the future land use element includes a map or map series that sets out proposed distribution, location, and extent of various use categories.[38] While the capital improvements element need not include a map, the land use element indicates the general location of existing and proposed public facilities.[39] In transportation, future circulation,[40] mass transit,[41] ports, aviation, and related facilities[42] also require supporting maps.

Once acceptable data bases and projected growth needs are established, formulation of goals, objectives, and policies within each planning element guide implementation strategies. Cities and counties may focus on attaining a particular community pattern through the planing period, or to emphasize goals and policies that will guide implementation measures. A map-based, or "end-state," planning approach would project land use, housing, and urban service demands for the designated planning period, and then map a desired allocation of community land uses and urban service areas.[43] Interim policies and actions would be consistent with these anticipated directions.[44]

Alternatively, policy-oriented plans focus on criteria for evaluating future development choices.[45] The State Comprehensive Plan and projected regional plans follow a "goals and policies" approach. In local plans, however, some illustration of conformance

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cepted." *See* 1986 Fla. Laws 191, § 7 (codified at FLA. STAT. § 163.3177(10)(e) (1985)). However, supporting local materials may be utilized in state review. *Id.*

37. CHAPIN & KAISER, *supra* note 35, at 36-478; Catanese, *supra* note 35, at 100-05.

38. FLA. STAT. § 163.3177 (1985); FLA. ADMIN. CODE ANN. r. 9J-5.006(4) (1986). The presence of a planning map and statutory requirement for consistency of land development regulations with the plan may raise legal concerns. *See* notes 138 to 146 and accompanying text *infra*. *See generally* Livingston, *California General Plan Requirements*, 16 URB. LAW. 1 (1984).

39. *See* FLA. STAT. § 163.3177(3)(a)(2) (1985); FLA. ADMIN. CODE ANN. r. 9J-5.006(1)(a)(9) and 9J-5.006(4)(a)(9) (1986).

40. FLA. ADMIN. CODE ANN. r. 9J-5.007(4) (1986).

41. *Id.* at r. 9J-5.008(4).

42. *Id.* at r. 9J-5.009(4).

43. *See generally* CHAPIN & KAISER, *supra* note 35, at 365-478; T. KENT, THE URBAN GENERAL PLAN at 18 (1964).

44. *See generally* CHAPIN & KAISER, *supra* note 35, at 482-510 (on guidance system design).

45. *See generally* Beal & Hollander, *City Development Plans* in THE PRACTICE OF LOCAL GOVERNMENT PLANNING 153, 165-66 (So, Stollman, Beal, & Arnold, eds., 1979).

between planning objectives and geographic representations would be necessary. For example, the plan's goals, policies, and objectives can encourage development within or contiguous to presently serviced areas, or discourage conversion of flood-prone or other sensitive lands. Representative maps and implementing actions could reflect these objectives.

The future land use element sets out land use patterns that reflect the goals, objectives, and policies in other comprehensive plan elements.[46] Guidelines for future uses are to be based on analyses, including the availability of facilities and services as identified in other elements,[47] vacant lands,[48] and land needed to accommodate projected population.[49] The statute directs future land use provisions to define types of uses and standards for the density or intensity of uses.[50] The future land use map proposes distribution, extent, and location of generalized uses for development, conservation, agricultural, public facility, and other uses.[51]

The capital improvements planning element is intended to determine public facility needs, and to direct fiscal planning for public improvements.[52] This element analyzes deficiencies, replacement costs, and new public facility needs identified for other comprehensive plan elements,[53] and is intended to support the future land use element.[54] Based on these analyses, and on the community's goals and objectives, the element also establishes levels of services for public facilities within the local government's jurisdiction.[55] The provision of public facilities must be consistent with this plan element.[56]

The goals, objectives, and policies in comprehensive plan elements provide the bases for linkage to consistent regulations and

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46. FLA. ADMIN. CODE ANN. r. 9J-5.006 (1986).

47. FLA. STAT. § 163.3177(6)(a) (1985); FLA. ADMIN. CODE ANN. r. 9J-5.006(2)(a) (1986).

48. FLA. ADMIN. CODE ANN. r. 9J-5.006(2)(c) (1986).

49. *Id.* at r. 9J-5.006(2)(a).

50. FLA. STAT. § 163.3177(6)(a) (1985).

51. *See* FLA. ADMIN. CODE ANN. r. 9J-5.006(1)(a) (1986).

52. *See* FLA. ADMIN. CODE ANN. r. 9J-5.016 (1986). *See generally* J. GETZELS & C. THUROW, LOCAL CAPITAL IMPROVEMENTS AND DEVELOPMENT MANAGEMENT: ANALYSIS AND CASE STUDIES (1980); Deutch, *Capital Improvement Controls as Land Use Control Devices*, 9 ENVTL. L. 61 (1978); So, *Planning and Urban Development* in URBAN PUBLIC WORKS ADMINISTRATION (W. Korbitz ed. 1976).

53. FLA. ADMIN. CODE ANN. r. 9J-5.016(2)(c) (1986).

54. *Id.* at r. 9J-5.016(1)(a).

55. FLA. STAT. § 163.3177(1)(f) (1985).

56. FLA. STAT. § 163.3177(3)(b) (1985).

community infrastructure.[57] Prevention of urban sprawl[58] and encouragement of redevelopment[59] are objectives directed toward efficient land use patterns in developed areas. The minimum criteria rule incorporates intent language added by the Senate's Select Committee on Rule 9J-5, affirming that development orders and permits be issued "in accordance with" locally-established levels of service for public facilities in their comprehensive plans.[60] Pending adoption of a consistent land development code, the certified plan will control over prior inconsistent land use regulations.[61]

III. Looking Ahead to Local Land Development Regulations

In the second phase of adoption, the Local Planning and Development Regulation Act requires localities to prepare and adopt an integrated land development code consistent with the certified local plan.[62] The act prescribes state rulemaking comparable to the adoption procedures for the minimum criteria planning rule that defines elements for local land development regulations.[63] While

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57. Rule 9J-5 indicates that goals, objectives, and policies in the plan must describe "how the local government's programs, activities, and land development regulations will be initiated, modified or continued to implement the comprehensive plan in a consistent manner." Fla. Admin. Code Ann. r. 9J-5.005(5) (1986).

58. *Id.* at § 9J-5.006(b)(7). *See generally* J. Davidson, S. Bissonette, D. Eastman, N. Fisher, & S. Lembesis, Managing Florida's Urban Growth: A Guidebook for Local Planning and Development Officials 2-3 (1984).

59. Fla. Admin Code Ann. r. 9J-5.006(b)(2) (1986).

60. Fla. Stat. § 163.3177(1)(f) (1985); Fla. Admin. Code Ann. r. 9J-5.016(3)(c)(6) (1986). *See also* Fla. Stat. §§ 163.3177(3)(a)(2) and 163.3202(2)(g) (1985). Fla. Admin. Code Ann. r. 9J-5.016(3)(c)(6) (1986). The phasing of either development approval or the provision of public facilities must be consistent with the local plan's capital improvements element, or pursuant to a development order or local development agreement under chapter 380 Fla. Stat. § 163.3177(1)(h) (1985) (added by 1986 Fla. Laws 191 § 6).

See also Fla. Admin Code Ann. r. 9J-5.006(3)(b)(8)(j)-9J-5.006(3)(c)(3) (1986). The revised local planning rule reflects legislative intentions that adequate infrastructure be present to serve development. This intent language establishes a sufficiency standard permitting phasing of public facilities and services, or phasing of the development, "so that the public facilities and those related services which are deemed necessitated by that development, are available concurrent with the impacts of the development." 1986 Fla. Laws 191, § 7 (adding Fla. Stat. § 163.3177(10)(h) (1985)).

61. Fla. Stat. § 163.3194(1)(b) (1985).

62. *See* Fla. Stat. § 163.3202(3) (1985). Land development regulations are widely accepted tools for plan implementation. *See generally* D. Godschalk, D. Brower, L. McBennett, B. Vestal, and D. Herr, Constitutional Issues of Growth Management 406-13 (1979). In a survey regarding the present or anticipated adoption of various growth management techniques, over 90% of the respondents indicated current use of conventional zoning and subdivision regulations. *Id.* at 409.

63. Fla. Stat. § 163.3202(5) (1985).

zoning ordinances and maps are not required,[64] the law does specify the inclusion of subdivision regulations, protection of "flood prone" and environmentally sensitive areas, sign controls, and adequate public facility requirements.[65] The Act also encourages innovative regulatory approaches to be combined and compiled into the single code.[66] This section reviews immediate and longer-term land development regulations that may be considered in plan implementation.

A. *Interim Development Controls*

The Local Planning and Development Control Act's requirements for data, maps, analyses, and formulation of goals, objectives, and policies could support adoption of interim controls pending plan preparation, adoption, or amendment. Interim measures, such as moratoria, can respond to immediate health or safety concerns, and provide time sufficient to re-plan for future development. The duration of such measures is governed by a criterion of "reasonableness."[67]

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64. FLA. STAT. § 163.3202(3) (1985). "A general zoning code shall not be required if a local government's adopted land development regulations meet the requirements of this section." *Id.*

65. FLA. STAT. § 163.3202(2) (1985).

66. *See* FLA. STAT. § 163.3202(3) (1985), which provides:

> This section shall be construed to encourage the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning. These and all other regulations shall be combined and compiled into a single land development code for the jurisdiction.

67. *See, e.g.*, Collura v. Town of Arlington, 367 Mass. 881, 329 N.E.2d 733 (1975) (sustaining two-year moratorium pending review of the town's comprehensive plan); Almquist v. Town of Marshan, 308 Minn. 52, 245 N.W.2d 819 (1976)(sustaining a seven-month moratorium while plan was developed); Beck v. Town of Raymond, 118 N.H. 793, 394 A.2d 847, 852 (1978) (sustaining town's slow growth ordinance as a temporary emergency measure only, in order to develop a comprehensive plan to provide for growth); CAL. GOV'T CODE §§ 65858 and 65859 (West 1985) (setting two-year maximum time period for interim ordinances). *See generally* A. RATHKOPF & D. RATHKOPF, 1 THE LAW OF ZONING AND PLANNING §§ 11.01-11.03 (1975 & 1986 Supp. 1986) ("Interim or Stop-Gap Zoning"); J. JUERGENSMEYER & J. WADLEY, 2 FLORIDA LAND USE RESTRICTIONS §§ 20.04 to 20.06 (1976 & Supp. 1983); D. MANDELKER, LAND USE LAW §§ 6.5-6.10 (1982); Freilich, *Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning*, 49 J. URB. L. 65, 66-67 (1971); Greenbaum, *Land Use Interim Zoning Controls and Planning Moratoria: An Analysis Update*, 18 URB. LAW. 246, 247-48 (1986).

Note that the limited duration of interim restrictions generally deflects a due process taking challenge based on property rights deprivation. However, the potential effect of "interim damages" awards proposed in Justice Brennan's dissent in San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621, 647-53 (1981), should be considered in this context. *See* notes 138 to 146 and accompanying text *infra*.

Moratorium enactments create tension between the need to act in exigent circumstances and the procedural safeguards in planning and zoning enabling laws. Florida courts have sustained moratoria adopted in accordance with applicable planning and zoning provisions.[68] In a decision interpreting the Local Government Comprehensive Planning Act (prior to 1985 amendments), the First District Court of Appeal sustained a local moratorium on further multi-family development during preparation of a plan. The decision in *Franklin County v. Leisure Properties, Ltd.*[69] noted that local government "may be confronted with the need to amend its current plan prior to the adoption of a new plan in order to prevent the establishment of undesirable construction which would be inconsistent with the goals of the new plan."[70] The Court found that the statutory provision on the legal status of the prior comprehensive plan did not prohibit adoption of such a moratorium.[71]

Other Florida decisions on moratoria underlie the significance of adhering to applicable planning and zoning procedures.[72] In contrast to *Franklin County*, the appellate decision in *City of Gainesville v. GNV Investments, Inc.*[73] sustained the lower court's invalidation of a moratorium resolution on land zoned for "shopping centers." The actions, passed without notice, were held to violate procedures for suspending and amending the City's existing zoning

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68. *See* Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475 (Fla. Dist. Ct. App. 1983)(holding that Local Government Planning Act does not prevent enactment of moratoria), *petition for review denied*, 440 So. 2d 352 (Fla. 1983); City of Sanibel v. Buntrock, 409 So. 2d 1073, 1075 (Fla. Dist. Ct. App. 1981), *petition for review denied*, 417 So. 2d 328 (1982); Epifano v. Town of Indian River Shores, 379 So. 2d 966, 966 (Fla. Dist. Ct. App. 1979); Metropolitan Dade County v. Rosell Constr. Corp., 297 So. 2d 46, 47 (Fla. Dist. Ct. App. 1974); Jason v. Dade County, 37 Fla. Supp. 190 (Fla. Cir. Ct. 1972) (sustaining building permit moratorium during comprehensive study of zoning ordinances and related supporting services), *aff'd*, Dade County v. Jason, 278 So. 2d 311 (Fla. Dist. Ct. App. 1973). *Cf.* City of Gainesville v. GNV Investments, Inc., 413 So. 2d 770, 771-72 (Fla. Dist. Ct. App. 1982)(invalidating moratorium adopted by resolution); City National Bank of Miami v. City of Coral Springs, 475 So. 2d 984 (Fla. Dist. Ct. App. 1985)(invalidating condition applied to individual parcel as not meeting formal requirements for building moratorium). *See generally* Greenbaum, *supra* note 67, at 247-48.

69. 430 So. 2d 475 (Fla. Dist. Ct. App. 1983).

70. *Id.* at 481.

71. *Id.* at 480-81. *See* FLA. STAT. § 163.3197 (1985). The relevant language remains intact following 1985 and 1986 amendments.

72. *See* City of Sanibel v. Buntrock, 409 So. 2d 1073, 1074 (Fla. Dist. Ct. App. 1981), *petition for review denied*, 417 So. 2d 328 (1982) (enactment of a moratorium pending adoption of comprehensive plan held to same procedural standards as zoning or rezoning); Epifano v. Town of Indian River Shores, 379 So. 2d 966 (Fla. Dist. Ct. App. 1979) (sustaining zoning moratorium ordinance where record indicated proper adoption procedures).

73. 413 So. 2d 770, 771-72 (Fla. Dist. Ct. App. 1982).

ordinances.[74] The appellate court applied the Municipal Home Rule Powers Act provision concerning procedures for rezoning or change in permitted use of specific parcels, which includes specific notice and hearing requirements.[75]

Procedural requirements for interim development controls also include consideration of potential "vested rights" for developments approved prior to ordinance adoption.[76] In *Franklin County*, the appellate court decision affirmed the developer's vested rights claim based on uncontested evidence of $800,000 in expenditures for a water system based on a reliance on existing zoning.[77] However, in *Metropolitan Dade County v. Rosell Construction Corp.*[78] the district court of appeal rejected a property owner's challenge to a building permit moratorium on developments connecting to the North Miami Ocean Outfall System in light of the County's showing that substantial health impacts could result from approving construction at that time.[79] These rulings underlie the relevance of adequate public findings and notice prior to the enactment of interim controls.

B. Land Development Regulations for Growth Management

Zoning, subdivision, and planned unit development regulations may be adapted to implement growth management objectives. Downzoning in outlying areas can promote infill development and more efficient provision of municipal services and improvements within urban use classifications. Timing controls on rezoning decisions at the developing urban fringe can encourage new development with planned service extensions. Performance-based controls, planned unit developments, and transferable development rights are identified in the Local Planning and Development Regulation Act as innovative regulatory approaches to plan implementation.[80]

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74. 413 So. 2d at 771.

75. *Id. See* FLA. STAT. § 166.041(3)(c) (1985).

76. *See, e.g.*, Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475, 479 (Fla. Dist. Ct. App. 1983), *petition for review denied*, 440 So. 2d 352 (Fla. 1983); Metropolitan Dade County v. Rosell Constr. Corp., 297 So. 2d 46, 47 (Fla. Dist. Ct. App. 1974). *See generally* Rhodes, Hauser, & DeMer, *Vested Rights: Establishing Predictability in a Changing Regulatory System*, 13 STETSON L. REV. 1 (1983); Taub & Rydberg, *Current Battlegrounds* § 5.21 in THE FLORIDA BAR, CONTINUING LEGAL EDUCATION, FLORIDA ZONING AND LAND USE PLANNING (1983).

77. 430 So. 2d at 479.

78. 297 So. 2d 46 (Fla. Dist. Ct. App. 1974).

79. 297 So. 2d at 47.

80. *See supra* note 66.

These techniques add flexibility to land use controls; however, consideration of adoption should account for the necessary costs and expertise to administer them.

Downzoning, or lowering permitted development densities,[81] may be a response to a recognized overcommitment of present service capacity, or to meet environmental protection planning objectives. Courts may uphold the technique if applied consistently with the plan, even though it may cause substantial diminution in property values.[82] Many communities zone undeveloped areas at lower densities, and permit case-by-case rezoning at the urban fringe. This "wait-and-see" zoning is subject to criticism when rezonings do not relate to the purposes and criteria of the comprehensive plan.[83]

Phased zoning combines the zoning elements of bulk, use, and density control with a timing element.[84] One method for implementing phasing criteria is to include a point system in the zoning or subdivision provisions that reflect the goals articulated in the comprehensive plan. For example, a locality can award points for the proximity to the existing infrastructure, the protection of environmentally sensitive areas or open space, the private provisions of an infrastructure, or the provision of low income housing within the development.[85] Accrual of a specified number of points would then be required to gain development approval.

Performance zoning overlays or replaces Euclidean zoning's preset, district-wide limits on permissible height, bulk, and density

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81. *See generally* Williamson, *Constitutional and Judicial Limitations on the Community's Power to Downzone*, 12 URB. LAW. 157, 158-63 (1980). In some states, downzoning may also be successfully challenged in light of its exclusionary effect on regional housing opportunities for low and moderate-income persons. *See, e.g.*, S. Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390, 445-51 (1983).

82. *See, e.g.*, Taco Bell v. City of Mission, 234 Kan. 879, 678 P.2d 133 (1984); Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 254 A.2d 700 (1969).

83. *See* D. MANDELKER, *supra* note 67, at §§ 6.31-.33 (1982).

84. This technique works by separating urban from rural or agricultural uses in the zoning ordinance or comprehensive plan. The ordinance then establishes schedules covering fringe area developments either by designating theme as "development zones" or by referencing rezoning decisions to the development guidance criteria set out in the comprehensive plan. *See e.g.*, Golden v. Planning Bd. of Ramapo, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), *appeal dismissed*, 409 U.S. 1003 (1972)(ordinance repealed, 1983). *See generally* P. ROHAN, 1 ZONING AND LAND USE CONTROLS §§4.01-.06 (1978 & Supp. 1986)("Time Controlled Zoning"); Childs, *Constitutionality of Phased Growth Zoning Ordinances*, 8 URB. LAW. 512 (1976); Note, *Time Controls on Land Use: Prophylactic Law for Planners*, 57 CORNELL L. REV. 827 (1972); Note, *Controlled Growth Zoning: Confronting the Inevitable*, 66 KY. L.J. 99 (1977); Note, *Phased Zoning: Regulation of the Tempo and Sequence of Land Development*, 26 STAN. L. REV. 585 (1974).

85. *See, e.g.*, Golden, 39 N.Y. 2d at 363-64, 285 N.E.2d at 295-96.

with flexible standards based on a site's developmental capability.[86] These standards may set overall limits on density, impervious surface coverage, minimum open space, or other environmental and community-based factors.[87] This approach allows large areas of a site to be set aside to meet environmental or neighborhood protection standards, while permitting flexible layouts that meet performance criteria.

In the growth management context, performance zones can maintain high open space ratios in undeveloped areas to protect lands from premature development. Development districts may be designated to coincide with various planned urban service provisions, thus letting specific uses be determined by applying the district's performance standards to each development proposal. Administration of this process requires substantial expertise by developers and planning officials, and specific standards and procedures in the controlling ordinance.

Planned unit development (PUD) regulation combines elements of zoning and subdivision controls, by permitting large scale developments (generally five acres or more) to be planned and built as a unit within a flexible design.[88] PUD projects may be staged over a multi-year period, with development approvals referring back to the initial agreement.[89] This process provides a mechanism for flexible on-site regulation, and for relating each stage of the project to the comprehensive plan's urban development objectives.

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86. *See* L. KENDIG, PERFORMANCE ZONING 279-88 (1980); Fredland, *Environmental Performance Zoning: An Emerging Trend?*, 12 URB. LAW. 678 (1980). The classification of lands into zoning districts to promote local health, safety, and welfare (police power) objectives was sustained by the United States Supreme Court in Village of Euclid v. Ambler Realty Company, 272 U.S. 365 (1926). Euclidean zoning accomplishes its police power objectives by dividing the governmental jurisdiction into districts within which a set of uniform restrictions are applied to properties. Some localities have adopted variations on Euclidean districting that replace prior specification of height, bulk, and density with performance-based standards that are adapted to individual site characteristics.

87. *See* KENDIG, *supra* note 86, at 281-82.

88. *See* C. MOORE & C. SISKIN, PUDS IN PRACTICE, 5-6 (1985) F. So, D. MOSENA & F. BANGS, JR., PLANNED UNIT DEVELOPMENT ORDINANCES (1973); Brindell, Aron & Layman, *Planned Unit Developments* in THE FLORIDA BAR, CONTINUING LEGAL EDUCATION, FLORIDA ZONING AND LAND USE PLANNING 297 (1983) [hereinafter Brindell, Aron & Layman]; Burchell & Hughes, *Issues in Planned Unit Development* in NEW DIMENSIONS IN URBAN PLANNING: GROWTH CONTROLS (J. Hughes ed. 1974); Mandelker, *PUDs and Growth Control: Procedures and Effects*, 3 MANAGEMENT AND CONTROL OF GROWTH 40 (R. Scott ed. 1976).

Proposed developments may also be subject to state regulation as a development of regional impact if they are within the statutory range established in FLA. STAT. ch. 380 (1985). *See* FLA. STAT. § 380.0651 (1985) (amended by 1986 Fla. Laws 191).

89. *See* Brindell, Aron & Layman, *supra* note 88, at 323-27.

PUD controls relate to the management concerns of urban growth through negotiation of on-site and off-site effects. Within a proposed development, flexible controls can allow a clustering of units, while protecting natural features of the site.[90] The development's off-site effects can be controlled through agreements to buffer the use from incompatible surrounding area uses. Compatibility with the public infrastructure and service levels can be coordinated through requirements for adequate public and private facilities and by referencing the PUD application to the comprehensive plan.

Transferable development rights (TDR), as a land use control, is used primarily for the preservation of historic landmark or agricultural lands preservation.[91] The technique utilizes the principle that development rights can be severed from other rights of property ownership, and transferred as a marketable commodity to properties designated for more intensive development. On a single site, the local government accepts density transfers within a relatively large development such as a subdivision or planned unit development.

In *City of Hollywood v. Hollywood, Inc.*,[92] the Fourth District Court of Appeal sustained the City's transfer of density rights within a single tract.[93] The court found that the transfer at issue offered the developer "fair compensation" in light of exchanging the right to build seventy-nine single-family units for an increase of three hundred and sixty-eight multi-family units on another parcel under the same ownership.[94]

The TDR concept can also be applied to transfers between properties, or by establishing a full-scale system with structured sending and receiving zones. In site-to-site transfers, the locality may reach an agreement with a property owner to preserve an agricultural or open space use on one site in exchange for density bo-

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90. *See* C. MOORE & C. SISKIN, PUD'S IN PRACTICE, *supra* note 88, at 13-15.

91. *See generally* Carmichael, *Transferable Development Rights as a Basis for Land Use Control*, 2 FLA. ST. U.L. REV. 35 (1974); Delaney, Kominers, & Gordon, *TDR Redux: A Second Generation of Practical Legal Concerns*, 15 URB. LAW. 593 (1983); Marcus, *A Comparative Look at TDR, Subdivision Exactions, and Zoning as Environmental Preservation Panaceas: The Search for Dr. Jekyll Without Mr. Hyde*, 20 URB. L. ANN. 3 (1980); Rose, *Psychological, Legal, and Administrative Problems of the Proposal to Use Transfer of Development Rights (TDR) to Preserve Open Space*, 6 URB. LAW. 919 (1974); Note, *Transferable Development Rights: An Innovative Concept Faces an Uncertain Future in South Florida*, 8 NOVA L.J. 201 (1983).

92. 432 So. 2d 1332 (Fla. Dist. Ct. App. 1983).

93. *Id.* at 1337-38.

94. *Id.*

nuses on another site. A jurisdiction-wide TDR program can be established allowing rights to be transfered from a protected area or class of properties to receiving sites designed for higher-density use.

The delineation of sending zones and receiving zones is an essential component of transferring rights in a community-wide program. These zones may be established pursuant to criteria in a comprehensive plan and set out on the plan's land use map. The conservation zone may protect agricultural or environmentally sensitive lands, historic landmarks, or other lands for the public good. The receiving zone typically is an area that is undergoing rapid development, where increased density is desirable and a "market" for the transferable development rights can be created.[95] Establishment of such a program involves substantial planning, management, and economic analysis.

IV. Ensuring Adequate Infrastructure for Planned Development

Providing for public facilities and services for present and anticipated populations emerges as a priority concern in Florida's revised planning laws. The required state capital improvements plan[96] identifies the long-term infrastructure and capital outlays needed to implement state planning goals and policies. The session law enacting the State Plan also creates the State Comprehensive Plan Committee to recommend methods to improve local[97] and state[98] financing for infrastructure and services. The local comprehensive plan's capital improvements element provides the standards for consistent and adequate facilities regulations in the land development code.[99]

In the planning context, the providing of public infrastructure

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95. *See* Heeter, *TDR and the Comprehensive Planning Process: A Critic's Choice* in Transferable Development Rights at 43-45 (Co. American Society of Planning Officials 1975).

96. Fla. Stat. §§ 186.007(5)(a)-(c) and §§ 216.015-216.031 (1985)(Capital Facilities Planning and Budgeting Act). *See also,* Meier, *Capital Facilities Planning and Budgeting: Is a State CIP Possible*?, 12 Fla. Envtl. & Urb. Issues 19 (April 1985).

97. *See* 1985 Fla. Laws 57, §§ 3(2)(a), (b).

98. *Id.* §§ 3(2)(c), (d). The Committee's Final Report, issued February 1987, includes a range of proposals for state and local governmental finance. State Comprehensive Plan Committee, Keys to Florida's Future: Winning in a Competitive World, *supra* note 1, at 33-42.

99. Fla. Stat. § 163.3202(2)(g) (added by 1985 Fla. Laws 55).

can be integrated with various development review processes.[100] Zoning, subdivision, and building regulations may include a determination that adequate facilities will be provided to serve a proposed development. Urban service areas may prescribe interim limits for utility extension consistent with future land use and the capital improvement comprehensive plan elements. Infrastructure financing can also be adapted to effect growth management purposes. Impact fees require developers or initial end-users to pay the estimated costs of demands on governmental services (e.g. roads, park and recreation facilities). Such fees, however, may only be applied to a new development which creates a demand for alternative financing methods to address existing needs and backlogs.[101]

A. Adequate Public Facilities Provisions

An adequate public facilities provision controls the development process by conditioning development approval upon a showing that sufficient infrastructure and services are present or will be provided.[102] The Local Planning and Development Regulation Act requires land development codes to include an adequate public facilities element based on the level of service standards in the comprehensive plan's capital improvements element. Section

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100. *See* P. GETZELS & C. THUROW, LOCAL CAPITAL IMPROVEMENTS AND DEVELOPMENT MANAGEMENT: ANALYSIS AND CASE STUDIES, *supra* note 52 at 27-34; Stone, *The Prevention of Urban Sprawl Through Utility Extension Control*, 14 URB. LAW. 357 (1982) [hereinafter Stone].

101. The State Comprehensive Plan Committee estimated that concerning a local government's revenue capactiy to implement State Plan directives:

> [O]nly 31 percent, or about $5.5 billion, can come from impact and other user fees and from other anticipated payments by private enterprise. Florida's municipalities already rely more heavily on user fees than municipalities in other states. Likewise, Florida's counties also rely heavily on user fees . . . . *See* State Comprehensive Plan Committee, Keys To Florida's Future, *supra* note 1 at 38.

102. *See, e.g.*, Associated Homebuilders v. Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976)(residential building permit approval contingent upon the developer's showing that adequate educational sewage disposal, and water supply facilities met locally specified standards); Twain Harte Homeowners Ass'n v. County of Toulomne, 138 Cal. App. 3d 664, 188 Cal. Rptr. 233, 238 (Cal. Ct. App. 1982)(requirement that water be provided to new development); District Land Corp. v. Washington Suburban Sanitary Comm'n, 266 Md. 301, 292 A.2d 695, 699 (1972)(finding water and sewerage requirements tied to capital facilities program to be prospective); *Cf.* P-W Investments, Inc. v. City of Westminster, 655 P.2d 1365, 1369 (Colo. 1982)(Sustaining growth management plan and regulations limiting the issuance of building permits based on availability of water and sewer service). *See generally* L. BURROWS, GROWTH MANAGEMENT: ISSUES, TECHNIQUES, AND POLICY IMPLICATIONS 93-113 (1978) [hereinafter L. BURROWS]; D. GODSCHALK & D. BROWER, CONSTITUTIONAL ISSUES OF GROWTH MANAGEMENT *supra* note 62 at 309-28 (1979); Davidson, *Using Infrastructure Controls to Guide Development*, 8 ZON. & PLAN. L. REP. 169, 170-71 (1985).

163.3202(2)(g) of the Act prescribes:

> that public facilities and services *meet or exceed the standards established in the capital improvements element* required by § 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. *No development order or permit may be issued which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the government.*[103](emphasis added)

This approach offers an alternative of using either direct infrastructure controls or adapting land development review processes to implement phased development policies. It also affirms the linkage between the regulations and local fiscal capacity to support current and planned development.

Florida appellate decisions support local adequate facilities requirements.[104] In *Chase Manhattan Mortgage and Realty Co. v. Wacha*,[105] the Fourth District Court of Appeal sustained Martin County's denial of a site plan for a 160-unit development. Applicable county code provisions required site plans and construction plans to make preliminary proposals for water supply and sanitary waste treatment.[106] The County Commissioner relied on these provisions, and on the County Engineer's report showing that the existence of a viable water supply had not been established.[107]

Adequate transportation facilities may also be a basis for conditioning development. The City of Hollywood's imposition of a density cap for its North Beach area was sustained in part on its findings of inadequate traffic capacity of coastal roads.[108] A subsequent appellate decision by the Fourth District Court of Appeal in *City National Bank of Miami v. City of Coral Springs*[109] sustained con-

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103. FLA. STAT. § 163.3202(2)(g) (1985) (emphasis added).

104. *See* City of Hollywood v. Hollywood, Inc., 432 So. 2d at 1334-36 (traffic demands, water and sewer capacity, fire and police protection); City Nat'l Bank v. City of Coral Springs, 475. So. 2d 954 (Fla. Dist Ct. App. 1985); Chase Manhattan Mortgage and Realty Co. v. Wacha, 402 So. 2d 61 (Fla. Dist. Ct. App. 1981); Wolf, *Local Land Use Permitting*, Vol. 59, No. 10 FLA. MUN. REC. 2, 3 (April 1986).

105. 402 So. 2d 61 (Fla. Dist. Ct. App. 1981).

106. *See* 402 So. 2d at 62-63.

107. 402 So. 2d at 63.

108. 432 So. 2d 1332, 1335-36 (Fla. Dist. Ct. App. 1983).

109. 475 So. 2d 984 (Fla. Dist. Ct. App. 1985).

ditions including a "Right Turn Out Only" requirement on approval of a convenience store. The conditions were based on municipal ordinance standards requiring subdividers to demonstrate safe and adequate access to the area sought to be platted.[110] These decisions indicate judicial acceptance of adequate facility requirements based on local ordinance standards.

B. Utility Extension Policies

As an element in a local strategy to direct urban growth, utility extension controls can be linked to the comprehensive plan and capital improvements allocation process.[111] These controls can be effective in areas where local government intends to "hold out" as a service provider.[112] Judicial review may focus on whether a "utility related" reason[113] supports the extension or withholding of public services.

Delineation of urban service areas based on established levels of service may also clarify the infrastructure extension policies.[114] Acknowledged service areas indicate where the locality is holding itself out as the provider of utilities, and provides landowners with a demarcation of interim boundaries for urban-density development.[115]

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110. *Id.* at 985-86. An additional condition requiring improvement of an adjoining road was overturned. *Id.* at 986.

111. *See generally* Stone, *supra* note 102, at 373-77; Note, *Public Utility Land Use Control on the Urban Fringe*, 63 IOWA L. REV. 339 (1978); Note, *Control of the Timing and Location of Government Utility Extensions*, 26 STAN. L. REV. 445 (1974).

112. *See, e.g.*, Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976); Mayor and Council of Rockville v. Goldberg, 257 M.D. 563, 264 A.2d 113 (1970); Crownhill Homes, Inc. v. City of San Antonio, 433 S.W.2d 448 (Tex. Civ. App. 1968); Town of Beloit v. Public Service Comm'n, 34 Wis. 2d 145, 148 N.W. 2d 661 (1967); Stone, *supra* note 111, at 362-63.

113. *See, e.g.*, Edris v. Sebring Utils. Comm'n, 237 So. 2d 585, 587 (Fla. Dist. Ct. App. 1970); Reid Dev. Corp. v. Parsippany-Troy Hills Township, 31 N.J. Super. 459, 107 A.2d 20 (N.J. Super. Ct. App. Div. 1954); Svenningsen v. Passidomo, 62 N.Y.2d 967, 468 N.E.2d 290, 479 N.Y.S.2d 335 (1984); Town of Beloit v. Public Serv. Comm'n, 34 Wis. 2d 145, 148 N.W.2d 661 (1967); Stone, *supra* note 111, at 362-63. "The general rule is that a public utility corporation cannot refuse to render the service which it is authorized by its charger (or by law) to furnish, because of some collateral matter not related to that service." *Edris*, 237 So. 2d at 587.

114. *See, e.g.*, Town of Beloit v. Public Serv. Comm'n, 34 Wis. 2d 145, 148 N.W.2d 661 (1967); Stone, *supra* note 111, at 375. *But see* Dateline Builders v. City of Santa Rosa, 146 Cal. App. 3d 520, 194 Cal. Rptr. 258, 261-62 (Cal. Ct. App. 1983)(sustaining City denial of water and sewer hook-up to developer's property based on anti-sprawl policies in the joint city-county plan).

115. *See generally* L. BURROWS, *supra* note 104, at 73-77. Some cities and counties attempt to bound the quantity of land available for development uses by delineating urban growth boundaries. This technique establishes geographic limits for urbanizable land, which

A related utility policy pertains to a mandating hook-up to the public system. While many jurisdictions permit cities and counties to require developers to integrate private facilities with municipal and county services,[116] there is appellate authority for the principle that developers may utilize alternatives to public water and sewer systems.[117] In *Fischer v. Board of County Commissioners*, the Fifth District Court of Appeal invalidated mandatory sewer hook-up policy as applied. The court concluded that the county's refusal to serve a residentially zoned property, combined with the denial of a special exception permitting a package treatment plant, constituted a taking.[118]

But, the factual context of *Fischer* may distinguish it from other mandatory facility connection cases. Regarding *Fischer*, Orange County in October 1980 approved residential use for the site in issue that was consistent with the county's Growth Management Policy. In December 1980, the County Sewer and Water Board approved preliminary plans for a water and sewage disposal plant. Fischer, however, was denied a requested special exception permit required under the zoning ordinance.[119] The appellate decision concluded that the county's decision not to provide public utilities, combined with the denial of alternative liquid waste treatment, denied beneficial use of the property.[120]

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can promote efficient development patterns and prevent or delay development of agricultural or wetland resources. Growth boundaries may be coordinated with urban service areas however, the urban growth boundary may be set somewhat beyond projected extension of urban services. *See, e.g.*, CITY OF SALEM, OREGON, SALEM AREA COMPREHENSIVE PLAN (1982). *See generally* Gustafson, Daniels & Shirack, *The Oregon Land Use Act: Implications for Farmland and Open Space Protection*, 48 J. AM. PLAN. A. 365 (1982); Rochette, *Prevention of Urban Sprawl: The Oregon Method* in ZONING AND PLANNING LAW 315 (F. Strom ed. 1982).

116. *See, e.g.*, Demoise v. Dowell, 10 Ohio St. 3d 92, 461 N.E.2d 1286 (1984)(mandatory hook-up when new sewer lines became operative); Rupp v. Grantsville, 610 P.2d 338 (Utah 1980)(sustaining mandatory hook-up ordinance and fee based on health and prosperity rationales); McMahon v. Virginia Beach, 221 Va. 102, 267 S.E.2d 130 (1980)(sustaining mandatory connection ordinance and fee).

117. *See, e.g.*, Fischer v. Bd. of County Comm'rs, 462 So. 2d 480, 481 (Fla. Dist. Ct. App. 1985); Heitzman v. United States Homes of Fla., Inc., 317 So. 2d 838 (Fla. Dist. Ct. App. 1984).

118. Fischer v. Bd of County Comm'rs, 462 So. 2d at 481 (Fla. Dist. Ct. App. 1985).

119. *Id.*

120. *Id.*

> If the regional supplier of public utility services, which has the exclusive right, and concomitant duty to provide sewer service to land zoned for residential use, refused or fails to serve that land, then the appropriate governmental authority may decide which of the remaining disposal methods are most appropriate to the land as zoned. Yet, that authority cannot deny to the owner all remaining methods of

C. Recouping Growth Costs Through Impact Fees

Impact fees are imposed by local government on new developments to off-set the costs of extra-development capital facilities necessitated by that development.[121] This financing technique can be a component of a local government's capital facilities program, and part of the implementation strategy of the comprehensive plan. The Local Planning and Development Regulation Act includes impact fees as an innovative regulation that may be integrated into the local land development code.[122]

Florida courts have upheld impact fees as regulatory enactments under a "dual rational nexus" test.[123] This two part test requires first, that a reasonable or rational relationship exist between the costs to the local government attributable to new development and the fees assessed and collected under the ordinance. The second part of the test requires that there be a reasonable relationship or nexus between the fees collected and the expenditure of those monies such that the fee is spent for the benefit of the residents paying the fees. Under this test, courts have sustained impact fees for roads, sewer and water systems, and recreational facilities.[124]

The Omnibus Growth Management Act of 1985 appears to codify the prevailing judicial standards for impact fees. New provisions applicable to developments of regional impact require that dedications and impact fees meet three criteria. The need to construct new facilities or add to present systems must be reasonably attributable to the proposed development subject to the impact fee

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disposing liquid waste without thereby unconstitutionally denying that owner the beneficial use of his property. *Id.*

121. *See generally* Bosselman & Stroud, *Pariah to Paragon: Developer Exactions in Florida 1975-85*, 14 STETSON L. REV. 527 549-53 (1985) [hereinafter Bosselman & Stroud]; Juergensmeyer & Blake, *Impact Fees: An Answer to Local Governments' Capital Funding Dilemma*, 9 FLA. ST. U.L. REV. 415 (1981).

122. FLA. STAT. § 163.3202(3) (1985).

123. *See* Contractors & Builders Ass'n v. County of Dunedin, 329 So. 2d 314 (Fla. 1976), *cert. denied*, 444 U.S. 867 (1979); Home Builders and Contractors Ass'n v. Board of County Comm'rs, 446 So. 2d 140, 143-44 (Fla. Dist. Ct. App. 1983), *petition for review denied*, 451 So. 2d 848 (Fla. 1984); Hollywood, Inc. v. Broward City, 431 So. 2d 606 (Fla. Dist. Ct. App. 1983), *petition for review denied*, 440 So. 2d 352 (Fla. 1983). *Cf.* Town of Longboat Key v. Lands End, Ltd., 433 So. 2d 574 (Fla. Dist. Ct. App. 1983)(invalidating park and recreation impact fee where collected funds could be allocated to "other town purposes and facilities required as capital facilities").

124. *See* Hollywood, Inc. v. Broward County, 431 So. 2d at 611-12 (park impact fee system); Home Builders Ass'n v. Board of County Comm'rs, 446 So. 2d at 148, 49 at (road impact fee). *Cf.* Contractors & Builders Ass'n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976), *cert. denied*, 444 U.S. 867 (1979) (water and sewer).

or dedication.[125] Contributions of funds, land, or public facilities must also be comparable to the amount of funds, land, or public facilities that the state or local government would have to expend to mitigate the impacts.[126] Third, all funds or lands contributed must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.[127]

V. Issues in Local Government Plan Implementation

Under the Local Planning and Development Regulation Act, administrative and judicial challenges by property owners, citizen groups, and local governments may focus on the relation between internally consistent plans and land development or service provision decisions. As amended through 1986, the Act provides for citizen participation and standing in certification review,[128] and for threshold challenges of Rule 9J-5 regarding its interpretation of legislatively delegated authority.[129] Federal claims may also be raised by property owners who contend that a restrictive plan designation constitutes a "regulatory taking."[130] The potential effect of a United States Supreme Court decision allowing interim damages as a remedy in land use restrictions could alter Florida's presently prevailing standard.[131]

Under the revised statute, a particular city or county planning or regulatory approach will be sustained if it meets the review standard for legislative decision-making.[132] Florida Courts generally apply this "fairly debatable" standard when reviewing land use regulations in relation to the comprehensive plan.[133] The new statute also affirms this standard for determining threshold consis-

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125. Fla. Stat. § 380.06(15)(d)(1) (1985).

126. *Id.* § 380.06(15)(d)(2).

127. *Id.* § 380.06(15)(d)(3). *See generally* Bosselman & Stroud, *supra* note 121, at 549-53.

128. *See* Fla. Stat. § 163.3184 (1985) (amended in 1986 Fla. Laws 191).

129. *See* Fla. Stat. § 163.3177(9) (1985) (amended by 1986 Fla. Laws 191). The added language permits a rule challenge under Fla. Stat. § 120.56 (1985) (Administrative Procedure Act) if initiated between October 1, 1986 and July 1, 1987.

130. *See* notes 139-146 and accompanying text *infra*.

131. *See* notes 145-46 and accompanying text *infra*.

132. Fla. Stat. § 163.3184(7)(b) (1985).

133. *See, e.g.*, Florida Land Co. v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983); Dade County v. Yumbo, 348 So. 2d 392 (Fla. Dist. Ct. App. 1977). *See generally* Apgar, *Judicial Interpretation of the Local Comprehensive Plan and Planning Requirements* 7-14 to 7-21 in Land Use Planning and Regulation: The Role of the Local Comprehensive Plan (1986).

tency of land development regulations.[134] In these contexts, a record indicating discussion and adequately noticed public participation in a locality's planning effort should preclude replacing a state or citizen-planner's judgment on the plan. However, individual rezoning decisions remain subject to the prevailing judicial standard including adjacent property owners or other entities whose alleged injury is different in degree or kind from the general public.[135] There is also judicial precedent for demanding more substantial administrative records in relating the plan to individualized land use decisions.[136]

A procedural reform prescribed by the Local Planning and Development Regulation Act limits localities to two plan amendments per year, except in defined emergencies.[137] This provision addresses the practice of *post-hoc* consistency where by plans or planning maps are amended to coincide with or follow individual rezoning approvals. While multiple amendments may be permitted at these intervals, it is presumed that the aggregations of private requests and government-initiated proposals will improve consistency of planning and regulatory adaption.

The argument that combining planning directives with an application of the consistency doctrine[138] could lead to a compensable

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134. FLA. STAT. § 163.3213(5)(b) (1985).

135. Few appellate decisions interpret the issues of local planning and regulatory consistency. The 1975 Local Planning Act contained no specific authorization for administrative or judicial review. Furthermore, review of local plans utilizing the 1969 enabling law was limited by judicial doctrine to neighboring property owners and those with interests distinguishable from those of the public at large. *See* Citizens Growth Management Coalition v. City of West Palm Beach, 450 So. 2d 204 (Fla. 1984); Renard v. Dade County, 261 So. 2d 832 (Fla. 1972); Arline, Layman & Coffin, *Local Government Plan Consistency and Citizen Standing: Renard in the Chicken Coop*, 1 J. LAND USE & ENVTL. L. 127 (1985).

136. *See, e.g.*, Pinellas County v. Ashley, 464 So. 2d 176 (Fla. Dist. Ct. App. 1985); City of Jacksonville Beach v. Grubbs, 461 So. 2d 160, 163 (Fla. Dist. Ct. App. 1985).

137. FLA. STAT. § 163.3187(1) (1985) (amended by 1986 Fla. Laws 191).

138. The notions that adequate plans must possess an internal logic, and that implementing actions relate logically to the directives of the plan, provide the rational bases for the "consistency doctrine." *See* J. DIMENTO, THE CONSISTENCY DOCTRINE AND THE LIMITS OF PLANNING at 15-17 (1980). *See generally*
D. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 900, 901-09 (1976).

The consistency debate in growth management intertwines with the issue of plan adequacy. While one could argue on an abstract value level that good plans should be supported by logically consistent implementing actions, it is more difficult to develop a working standard to rationally relate an action to its plan. The mandate for local planning guidelines and certification reflect concerns with ensuring professional standards and quality. *See generally* DiMento, *Taking the Planning Offensive: Implementing the Consistency Doctrine* in 1985 ZONING AND PLANNING LAW HANDBOOK. 105, 106-08 (J. Gailey ed. 1985).

due process violations continues to be at issue in the United States Supreme Court.[139] Though procedural rulings have deferred reaching this argument,[140] many jurisdictions have adopted a dissenting opinion proposed by Justice Brennan in *San Diego Gas & Electric Company v. City of San Diego*.[141] This view would permit an interim damages remedy for such "temporary takings," measured as the lost value to the restricted property during the time an unlawful regulation is in effect.[142]

Judicial acceptance of an interim damages remedy in land use could enable compensation for unreasonable land use restrictions. However, the decision in *McDonald, Summer, & Frates, Inc. v. Yolo County*,[143] affirms the necessity for property owners to pursue applicable local and state due process procedures to raise hardship contentions.[144] In *Dade County v. National Bulk Carriers, Inc.*,[145]

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139. *See* First Evangelical Church of Glendale v. County of Los Angeles, (unpublished opinion of Cal. Dist. Ct. App. June 25, 1985) *cert. granted*, 55 U.S.L.W. 3047 August 5, 1986 (No. 85-1199) (concerning development prohibition in hazard-prone area). *See generally* Sallet, *Regulatory 'Takings' and Just Compensation: The Supreme Court's Search for a Solution Continues*, 18 URB. LAW. 635, 653-54 (1986).

140. *See* McDonald, Somer, & Frates v. County of Yolo, 54 U.S.L.W. 4782 (U.S. June 25, 1986) (No. 84-2015); Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, (1985); San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621 (1981); Agins v. City of Tiburon, 447 U.S. 255 (1980).

141. 450 U.S. at 646 (Brennan, J., dissenting). Justice Brennan's recommended approach would permit interim damages for overly restrictive land use controls from the time the regulation first took effect until the date the locality rescinds or amends the law. The rationale for the compensation remedy appears to be that the costs of the regulation should be distributed to the public as a whole rather than borne by certain individuals. *Id.*

Justice Brennan also posited that the threat of financial liability for unconstitutional regulations may help produce a more rational cost-benefit decision-making:

> Such liability might also encourage municipalities to err on the constitutional side of police power regulations, and to develop internal rules and operating procedures to minimize overzealous regulatory attempts. After all, if a policeman must know the Constitution, then why not a planner?

Id.

Justice Brennan's opinion is given authoritative weight by some courts as three justices joined him in dissent. A fifth, Justice Rehnquist, concurred in the result of *San Diego Gas*, writing that if he were satisfied that case was properly before the Court, he "would have little difficulty in agreeing with much of what is said in (Justice Brennan's) dissenting opinion. *Id.* at 633-34.

See generally Bauman, *The Supreme Court, Inverse Condemnation and the Fifth Amendment: Justice Brennan Confronts the Inevitable in Land Use Controls*, 15 RUTGERS L. REV. 15 (1983).

142. *Id.*

143. 54 U.S.L.W. 4782 (U.S. June 25, 1986).

144. *Id. See generally* Smith, *The Hamilton Bank Decision: Regulatory Inverse Condemnation Claims Encounter Some New Obstacles*, 29 WASH. U.J. URB. & CONTEMP. L. 3, 15-16 (1986).

145. 450 So. 2d 213 (1984).

the Florida Supreme Court has indicated that compensation is not an appropriate relief for restrictive zoning regulations.[146]

The effect of a temporary takings ruling and damage liability must be considered in local planning, zoning, and service provision. When development decisions are required to be consistent with the comprehensive plan, the implications of specific plan directives or mappings could gain legal significance. However, reversion to generalized statements and a mapless plan defeat the legislative intent of improving predictability and fiscal soundness in local planning and development decisions. Ironically, more, rather than less planning could improve the defense posture for local government land use policies. In light of potential judicial scrutiny of governmental infringements on property, reliance on a well-documented and well-considered plans would refer individual development decisions directly to community health, safety, and welfare objectives. In turn, relating local plan goals and policies to state and regional directives may provide a basis for restoring sovereign immunity to local land use decisionmaking.

VI. Considerations in Selecting and Employing Techniques

Under Florida's evolving framework for urban growth management, certified local government comprehensive plans coordinate the programing of public infrastructure with the land development review process. Planning directives can encourage contiguous urbanization, protection of land resources, and other community objectives. The choice of planning approaches and implementation tools will reflect projected economic, population, housing, and land development patterns. City and county officials also maintain the presumption of validity concerning the comprehensive plan and implementing land development actions.

The emergence of local government comprehensive plans as a source of direction for land development and accompanying public facilities will focus unprecedented attention on the responsibilities of local planners and managers. With respect to adopting or revis-

146. *Id.* at 216. Justice Adkins' decision distinguished the zoning context from other types of regulations such as permitting where such damages could lie. *Id., discussing,* Albrecht v. State, 444 So. 2d 8 (Fla. 1984); Key Haven Associated Enterprises, Inc., v. Board of Trustees of the Internal Improvement Trust Fund, 427 So. 2d 153, 159 (Fla. 1983) (permit denial). *See also,* Dep't of Envtl Reg. v. Bowen, 472 So. 2d 566 (Fla. 1985), *affirming,* Bowen v. Florida Dep't of Envtl Reg., 448 So. 2d 566, 568-69 (Fla. Dist. Ct. App. 1984) (modifying inverse condemnation procedures discussed in *Albrecht* and *Key Haven*); Fla. Stat. § 253.763(2) (1985).

ing plans and land use regulations, local officials should consider the capacity to support personnel skilled in the land development controls process. "State of the art" techniques such as site-sensitive zoning, transfer of development rights, and the designation of urban growth limits require substantial planning and management skills, and should be considered in light of available expertise and fiscal capacity for implementation.

State certification and authority for citizen challenges to the plan and implementing regulations add new dimensions to ensuring greater consideration and documentation of growth planning. Required consistency of implementing actions with applicable local, regional, and state plans will increase scrutiny of the basis for planning judgments. Attention to statutory requirements, and to judicial developments in Constitutional and administrative law will be essential throughout the local growth management process.