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Environmental Permit Coordination in Florida

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ENVIRONMENTAL PERMIT COORDINATION IN FLORIDA

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I. INTRODUCTION

During the last twenty years, a proliferation of state land development permit requirements[1] has emerged in Florida[2] without any corresponding degree of coordination between state and local governments.[3] Since lack of coordination may unnecessarily burden some developers,[4] it is incumbent upon the state to develop procedures to deal with this situation.[5]

This article surveys a "model" permit coordination procedure (proposed in the American Law Institute's Model Land Development Code) as well as "working" permit coordination procedures operating in various states, principally Washington, Maryland, and

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1. These permit requirements are largely the result of "environmental laws [which] protect the environment by providing for the issuance of permits to limit or place conditions on activities that may degrade water, land or air quality." ENVIRONMENTAL EFFICIENCY STUDY COMM'N, REPORT TO THE FLORIDA LEGISLATURE 3 (Apr. 1987) [hereinafter ENVIRONMENTAL EFFICIENCY STUDY]. "State environmental permitting is based on the premise that a state permit enforces a minimum standard, to protect the state's interest regardless of local decisions about the same project." DIGEST OF INITIAL REPORTS TO THE ENVIRONMENTAL EFFICIENCY STUDY COMMISSION 7 (Dec. 11, 1986).

2. The Florida Legislature has implemented various environmental and land use planning laws in response to the rapid growth occurring in Florida over the past 15 years. ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at 5. These acts include: The Environmental Land and Water Management Act of 1972, FLA. STAT. §§ 380.012-.10 (1985 & Supp. 1986); The Florida Water Resources Act of 1972, FLA. STAT. §§ 373.011-.617 (1985 & Supp. 1986); The Local Government Comprehensive Planning and Land Development Regulation Act, FLA. STAT. §§ 163.3161-.3211 (1985 & Supp. 1986); The Environmental Reorganization Act of 1975, FLA. STAT. § 403.801 (1985); The Henderson Wetlands Protection Act of 1984, FLA. STAT. §§ 403.91-.929 (1985 & Supp. 1986); The State Comprehensive Plan, FLA. STAT. §§ 187.101-.201 (1985). *Id.*

3. As a result of this lack of coordination, the permitting process is "both duplicative and inefficient." ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at v.

4. There are four regulatory categories for construction projects in Florida: environmental permitting, state lands management, land use planning, and water management. Potential burdens result from this overlap because "several different agencies may end up reviewing the same project for the same potential environmental impacts with the possibility of arriving at different conclusions." Landers, Lotspeich & Osiason, *Environmental Streamlining: A State Perspective*, 2 J. LAND USE & ENVTL. L. 1, 6 (1986).

5. The Environmental Efficiency Study Commission was created in 1986 by the Florida Legislature to review the administration of the environmental and public health laws in Florida, identify duplication and inefficiency, and give recommendations on improving the enforcement and administration of these laws. ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at 1. The preliminary findings of the Commission found the permitting "process . . . [to be] confusing, expensive, unpredictable and on occasion irrational." *Id.* at v.

New York. In addition, this paper reviews two coordinated permitting procedures[6] available for developers under the Florida Environmental Land and Water Management Act of 1972 (FLWMA)[7] which might be useful models for coordinating Florida's other permitting processes under Florida's land management programs.

II. TRADITIONAL VIEW OF LAND USE MANAGEMENT

Traditionally, land use management has been dominated by local government.[8] Recently, however, state governments have taken notice of problems and abuses accompanying increased development of state resources.[9] Such problems include the haphazard scattering of urban growth; the growing needs for energy, water, and waste disposal; the loss of open space and the devastation of wetlands and other fragile resources; the destruction of historic and architectural landmarks; and construction in hazardous areas.[10] These environmental and energy crises have created a need for greater state involvement in the land management process which, in turn, is causing profound shifts in traditional power equations among national, state, and local governments.[11] While

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6. Under the Florida Environmental Land and Water Management Act of 1972 (FLWMA), a developer whose development is of regional impact may elect to coordinate the permit process in the form of conceptual agency review. This procedure allows all relevant agencies to review applicable permits simultaneously. FLA. STAT. § 380.06(9) (Supp. 1986). The legislature has recently passed legislation allowing a coordinated agency review process for the Florida Keys, which is considered an area of critical state concern under FLWMA. FLA. STAT. § 380.051 (Supp. 1986). Under this review procedure, the state land planning agency acts as a clearinghouse by distributing a developer's application to appropriate agencies. FLA. STAT. § 380.051(2)(a) (Supp. 1986).

7. The Florida Land and Water Management Act of 1972, FLA. STAT. §§ 380.012-.10 (1985 & Supp. 1986).

8. Schwenke, *Environmental and Land Use Laws, Regulations and Permits: How They Affect Real Estate Transactions, Financing and Lawyers, and What To Do About It*, 14 REAL PROP. PROB. & TR. J. 851 (1979). For a Florida case which illustrates this tradition of local land use decisionmaking see Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978) (invalidating the portion of the FLWMA (1972) which delegated power to the governor and cabinet for designating particular areas of critical state concern). The appellate decision reflected the bias toward local control of land use: the provision in the act "shifts ultimate regulatory authority from the county courthouse and city hall to the capital . . . . [T]he jurisdictional claim of local governments in these matters is based on historical preferences stronger than law." Askew v. Cross Key Waterways, 351 So. 2d 1062, 1065 (Fla. 1st DCA 1977).

9. THE COUNCIL OF STATE GOVERNMENTS, LAND, STATE ALTERNATIVES FOR PLANNING AND MANAGEMENT 5 (1975) [hereinafter COUNCIL OF STATE GOVERNMENTS].

10. *Id.*

11. Finnell, *Intergovernmental Relationships in Coastal Land Management*, 25 NAT. RESOURCES J. 31, 52 (1985) [hereinafter *Intergovernmental Relationships*].

increased state involvement has created a proliferation of environmental and land management regulation, rarely is coordination between different levels of government found.[12] A consequence of this lack of coordination is an increase in the time and cost it takes to obtain necessary permits.[13]

Because local governments have been unable or unwilling to address these problems adequately on a statewide basis, the need for state intervention is more immediate and apparent.[14] Indeed, local politicians are quite often more interested in enhancing the local government tax base than in providing special protection for valuable resources.[15] Local governments also face problems of a limited jurisdictional base and a lack of institutional responsibility.[16] Unless the leadership void and lack of direction is solved, the demands of our changing society cannot be adequately addressed.[17]

State involvement in land management does not mean that the power of local government ought to be usurped. However, this involvement does mean that the traditional state-local relationship must change and that the character of local power must change.[18] Incumbent upon each state is a duty to define the scope of this new relationship. Historically, political values have focused on the autonomy of the individual. The doctrine of "home rule"[19] is an expression of this political bias; local communities want to manage their own affairs in order to achieve the greatest degree of self-determination.[20] Along this line, other values which ought to be considered are the degree of accessibility of the governed to the government; the degree of accountability; the advancement of localism, voluntarism, and diversity; and the encouragement of private initiative and experimentation.[21] Local government and re-

12. Schwenke, *supra* note 8, at 851.

13. *Id.* at 853.

14. For an account of some of the resistance that California, Oregon, and Washington encountered from local governments in implementing state mandated coastal zone management programs see Hildreth & Johnson, *CZM in California, Oregon, and Washington*, 25 NAT. RESOURCES J. 103 (1985).

15. *Id.* at 113.

16. *Id.*

17. For an article about problems with local land use planning and proposed solutions see Delogu, *The Dilemma of Local Land Use Control: Power Without Responsibility*, 33 ME. L. REV. 15 (1981) [hereinafter *Local Land Use Dilemma*].

18. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 9.

19. Home rule refers to the right of a local government to manage its own affairs. *Id.* at 26.

20. *Id.*

21. *Intergovernmental Relationships*, *supra* note 11, at 54.

gional agencies play a major role in fulfilling these values.[22] Consistency with statewide policies, however, must not be forgotten, and consistency requires state authority to overrule local decisions which conflict with state defined goals.[23]

III. METHODS OF STATE LAND MANAGEMENT CONTROL

State action in response to increased growth demands may cover a wide range. A state may continue to allow local governments to regulate and manage land use[24] or may usurp local control completely.[25] However, neither of these alternatives adequately addresses the many interests and considerations implicated in land use management.

Generally, four specific methods of statewide planning and management have emerged.[26] A state may wish to use one or any combination of these approaches. One method is a statewide management program[27] which controls all areas and activities connected with land use.[28] While this approach assures statewide consideration of land use problems by way of state control, it by no means precludes strong local involvement.[29] Another method is imple-

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22. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 28.

23. *Id.*

24. For instance, in Washington State local governments "directly regulate development on Washington's shorelines through administration of a permit system." Chapman, *Substantive Decision-Making Under the Washington Shoreline Management Act*, 9 U. PUGET SOUND L. REV. 337, 342 (1986).

25. The State can preempt local land use control by providing for a "one-window" development permitting process. *Local Land Use Dilemma*, *supra* note 17, at 22. For example, for some types of developments, the permits and applications are consolidated at the state level to improve efficiency. Florida, for example, has a one-stop siting process for electrical power plants. See the Florida Electrical Power Plant Siting Act, FLA. STAT. §§ 403.501-.517 (1985 & Supp. 1986). The legislative intent of Florida's one-stop siting process is to improve the efficiency of the permit application and review process at the state and local level. FLA. STAT. § 403.502 (1985). The legislation allows the permit application to be "centrally coordinated and all permit decisions . . . reviewed on the basis of standards and recommendations of the deciding agencies." *Id.* The Department of Environmental Regulation provides copies of applications and requests agencies to perform studies and prepare reports. FLA. STAT. § 403.507 (Supp. 1986). All affected agencies are parties to the hearing proceedings. FLA. STAT. § 403.508(4) (Supp. 1986).

26. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 13.

27. OR. REV. STAT. ANN. §§ 197.030-.060 (1985) creates a Land Conservation and Development Commission (LCDC) which prepares and adopts a statewide system of planning goals and guidelines that both local governments and state agencies must follow.

28. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 13. For an article about urban land use planning in Oregon and the advantages and disadvantages of a centralized procedure for land use control see Morgan & Shonkwiler, *Urban Development and Statewide Planning: Challenge of the 1980's*, 61 OR. L. REV. 351 (1982).

29. Oregon's approach to a state level mechanism of review and control for proposed

mentation of a limited comprehensive planning and management scheme which focuses on activities requiring more than local considerations.[30] These activities might include developments which have impacts beyond a local jurisdiction. Still another method, similar to the previous one, consists of state control over specific geographic areas which are of critical concern to the state.[31] These areas might include historical landmarks, archeological sites, or fragile ecosystems and unique natural resources.[32] Finally, a fourth method of statewide planning and management is state control only over those areas which are not controlled by any other governmental unit.[33] This approach comes closest to preserving the status quo. All of these methods vary the degree of state intrusion into the traditional sphere of local authority and influence attempts at coordination.

IV. COORDINATION DEVELOPMENT CONSIDERATIONS

Once a state exercises increased responsibility for growth management, important decisions must be made regarding the scope of this involvement. Some degree of coordination is desirable.[34] A state should consider such factors as whether to use a single master application which can be submitted to all permitting agencies or to require a developer to submit multiple applications,[35] whether a

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large scale development activities "is interesting in that it neither preempts local controls nor does it adopt a tolerant concurrent posture." Delogu, *Local Land Use Controls: An Idea Whose Time has Passed*, 36 ME. L. REV. 261, 303 (1984) [hereinafter *Local Land Use Controls*]. *See also* OR. REV. STAT. §§ 197.030-.060 (1985).

30. Florida has increased state participation in land regulation through Regional Planning Councils (RPCs) created by the FLWMA 1972 to review applications for development which would have "a substantial effect upon health, safety or welfare of citizens of more than one county." FLA. STAT. § 380.06(11) (Supp. 1986). "Issuance or denial of a development order by local government [is] based on the recommendations of the particular regional planning council." Landers, *supra* note 4, at 3.

31. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 13. Florida has involved the state in land development regulation by designating four areas of critical state concern. These are the Big Cypress Swamp, FLA. STAT. § 380.055 (Supp. 1986); the Green Swamp, FLA. STAT. § 380.0551 (1985); the Florida Keys, FLA. STAT. § 380.0552 (Supp. 1986); and Apalachicola Bay, FLA. STAT. § 380.0555 (1985).

32. COUNCIL OF STATE GOVERNMENTS, *supra* note 9, at 53.

33. *Id.* at 13.

34. "The effectiveness and efficiency of Florida's environmental regulatory system is hindered by duplication of effort, lack of coordination and conflicts in assessments among the agencies." Landers, *supra* note 4, at 8.

35. A developer in Florida who applies for a dredge and fill permit or a permit for construction of stormwater discharge facilities will have to go through multiple permit reviews. FLA. ADMIN. CODE. ANN. rr. 17-4, 17-12, 17-25 (1984). Initially, the Department of Environmental Regulation (DER) will determine whether the project harms the water quality or

coordination scheme should be administered at the state or local level, and whether coordination should be mandatory or voluntary, binding or non-binding.[36] These administrative questions are multifaceted. Permit coordination can be directed by a central office[37] which has ultimate control over the entire process, or by providing an opportunity for all permitting authorities to meet as a group to simultaneously consider the merits.[38] Ultimately, the specific aspects of a coordination procedure will determine its effectiveness and usefulness.

V. OBSTACLES TO COORDINATION

Notwithstanding the need for coordinated review procedures, such planning schemes face many obstacles. As noted previously, land management traditionally has been the exclusive domain of local government.[39] State initiated management programs threaten the power base of local authorities, and in some instances response to state delegation of planning responsibility has actually resulted in significant delay.[40] The end result may well be that by submitting to coordinated review local government may lose some of its influence.[41] Negative local reaction may cause serious problems.[42]

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impacts on biological resources. In addition, the Department of Natural Resources (DNR), the Department of Community Affairs (DCA), the regional planning council, and the water management district conduct similar reviews. Landers, *supra* note 4, at 8.

36. The coordinated review procedures for DRI, FLA. STAT. § 380.06(9) (Supp. 1986), and the more recent consolidated review procedure for the Florida Keys area of critical concern, FLA. STAT. § 380.051 (Supp. 1986), are voluntary. Whether or not an agency's assessment will be binding depends on agency rule; for developments on state owned land the Department of Natural Resources has provided by rule that Department of Environmental Regulation's biological impact assessments may be considered, but are not binding on DNR. Landers, *supra* note 4, at 11.

37. In Washington State permits are issued at the local level, but they are subject to review by the Department of Ecology. Mack, *Reflections on Washington's Coastal Zone Management Program*, 3 COASTAL ZONE MGMT. J. 325 (1977).

38. In Florida the various agencies "exchange comments and information regarding applications." Landers, *supra* note 4, at 21. However, the Environmental Efficiency Commission found that, in fact, the agencies are not sharing information among themselves: environmental "[p]ermitting decisions are often made by one agency without the benefit of useful information developed by other agencies." ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at 15.

39. *See supra* notes 8-17 and accompanying text.

40. Hildreth & Johnson, *supra* note 14, at 124-25.

41. Regional review bodies may operate independently of or in addition to local review and permitting procedures. Depending on the type of mechanism the state chooses, regional review bodies can lift "the permitting process for . . . larger-scale developments out of the hands of the most parochial, and perhaps the most malleable, level of government, but still [keep] it within reach of the region that will be most affected." *Local Land Use Controls*,

From a developer's standpoint, coordination can be beneficial or harmful, depending on the particular developer. Coordinated review is designed to save time and money for the developer, which is especially important for small developers or those new to an area.[43] Large developers, on the other hand, often seek state and local permits independently and separately so as to maintain control over the timing and flow of information in permitting review.[44] These developers may also be concerned about different agencies reviewing the project together; one agency's negative view of the project may influence other agencies, thereby compounding the difficulty of obtaining permits. For these developers, separate permit review may seem desirable, and they may oppose coordinated review.[45]

Permitting authorities, especially state agencies, also are reluctant to proceed with coordinated review.[46] These agencies are typically conservative in their approach to the issuing of permits. Once a system is established they develop expertise in its administration; they know what is required and what to expect from their actions. In addition, coordinated permitting does not replace standard permitting; rather it involves new, uncertain processes in addition to the normal, heavy permitting workload. Reluctance to change follows, for these agencies lack confidence in decisions they make using different procedures.[47]

Depending upon when, where, and how coordinated review is administered, financing the operation is an important consideration. If a coordinated system is administered at the state level, appropriations must come from the state legislature. Today's political climate may make increased spending, let alone the increased bureaucracy, difficult to justify. If coordinated review is administered at the local level at least part of the financial responsibility will lie with local government. Even with state support, however, local

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supra note 29, at 304.

42. For criticism of local land use controls *see generally, Local Land Use Controls, supra* note 29.

43. Interview with Robert C. Apgar, attorney specializing in environmental growth and management law, in Tallahassee, Florida (Nov. 17, 1986) [hereinafter Apgar interview]. Mr. Apgar was the Executive Director of the Second Environmental Study Management Committee (ELMS) 1982-84 and consultant to the Department of Community Affairs on the development of the Coordinated Review process for the Florida Keys.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

governments are often unwilling or unable to assume the burdens.[48]

VI. THE ALI MODEL LAND DEVELOPMENT CODE

In an effort to address multiple federal, state, and local land use requirements, the American Law Institute (ALI) drafted a Model Land Development Code.[49] Primary planning and regulatory responsibility is given to local government, subject to a system of uniform statewide procedural standards.[50] Comments contained in the Code indicate that the vast majority of land use decisions do not involve matters of state or regional importance; therefore, it is important for local entities to handle the majority of land use decisions.[51] The state's role is to establish statewide standards with which local decisions must comport.[52] By emphasizing local decisionmaking the ALI suggests that the time-cost burden of obtaining both state and local permits is lessened, that friction between state and local authorities is eased, and that the cost of duplication processes is reduced.[53] However, there is no indication that local control will be free of local bias.

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48. Hildreth & Johnson, *supra* note 14, at 124-25. State governments will encounter resistance in implementing coordinated plans: "[T]here is little willingness on the part of local governments to assume the cost, responsibilities and political headaches that go along with the enforcement of state mandates." Bosselman, Raymond & Persico, *Some Observations on the ALI's Model Land Development Code*, 8 URB. LAW. 474, 490 (1976).

49. MODEL LAND DEVELOPMENT CODE (1976) [hereinafter MODEL CODE]. The Model Code is a long and complicated document embodying "a critical examination and re-working of the law relating to public control of land use and development." *Id.* at ix. For comments and criticism of the Model Land Development Code see Babcock, *Comments on the Model Land Development Code*, 5 URB. L. ANN. 59 (1972); Bosselman, *supra* note 48.

50. MODEL CODE, *supra* note 49, § 1-101(1). In the forward to the Model Code, the commentator recognizes that "the code [will] not be enacted as a whole where the totality may prove to be unsuitable or unacceptable, [but] . . . hope[s] that portions [of the Code will] . . . be utilized." *Id.* at xi. For the Code's authors, one of the hardest issues to resolve was the "distribution of authority between state and local government." *Id.* at xii.

51. MODEL CODE, *supra* note 49, at 252-53. For articles on Florida's borrowing from the Model Code *see generally*, Pelham, *Regulating Developments of Regional Impact: Florida and the Model Code* 29 U. FLA. L. REV. 789 (1977) [hereinafter *Regulating Developments of Regional Impact*], and Pelham, *Regulating Areas of Critical State Concern: Florida and the Model Code*, 18 URB. L. ANN. 3 (1980) [hereinafter *Regulating Areas of Critical Concern*].

52. MODEL CODE, *supra* note 49, § 1-101(1). "[T]he Code reflects compromise between localism and centralism by leaving most land use decision-making at the local level but providing for state intervention when clearly defined regional and state interests outweigh the local values." Finnell, *Coastal Land Management in Florida*, 1980 AM. B. FOUND. RES. J. 307, 320 [hereinafter *Coastal Land Management in Florida*].

53. MODEL CODE, *supra* note 49, § 1-101(7-8).

Under the Model Code, states may exercise specific control by reviewing local decisions involving developments of significant impact or developments affecting an area of critical concern.[54] Developments which have a regional or state impact are defined as those projects which, because of their nature or magnitude, present an issue of state or regional concern.[55] Areas of critical concern[56] are defined as specific areas which are of special importance to the state.[57] Under either regulatory scheme, local government may grant development permission after local regulations are approved by the state, but only to the extent of state rules.[58]

Because permitting authority may be exercised at all levels of government and by different agencies, multiple permitting is specifically addressed by the Code.[59] The ALI recommends the establishment of a state coordinated Permit Register.[60] Under this statutory scheme all permitting authorities are required to supply needed information concerning required permits, and the state publishes a comprehensive list.[61] This list includes references to specific statutes authorizing specific permits,[62] types of develop-

54. *Id.* § 1-101(3). Article 7 of the Code proposes the development of regional impact (DRI) and the area of critical state concern as techniques for increasing the participation of the state in land use decisionmaking. *Id.* §§ 7-201 to 7-504. "Florida . . . was the first state to enact legislation based on article 7 of the Model Code." Both the DRI and the area of critical state concern were incorporated into the Florida Environmental Land and Water Management Act. *Regulating Developments of Regional Impact*, *supra* note 51, at 793-94.

55. MODEL CODE, *supra* note 49, § 7-301. One commentator feels that "[t]here is no single or best approach to [a] . . . state level mechanism designed to review and control proposed large scale development activities which in most instances have sub-state (regional) impact and some potential for adverse environmental or land use consequences." *Local Land Use Controls*, *supra* note 29, at 302-03. *Compare* Maine (state level review of developments) ME. REV. STAT. ANN. tit. 38 §§ 481-489 (West Supp. 1986) and Vermont (state and regional review of developments) VT. STAT. ANN. tit. 10, §§ 6001-6091 (1984 & Supp. 1986). *Local Land Use Controls*, *supra* note 29, at 303 n.119.

56. The critical area technique is the "most popular technique for protecting and promoting state and regional interests in the use and development of land." *Regulating Areas of Critical Concern*, *supra* note 51, at 4.

57. MODEL CODE, *supra* note 49, § 7-201. The states have used the critical area technique in two ways: either regulating an entire geographical region on an ad hoc basis (legislative designation of a particular geographical area), or regulating on a comprehensive statewide basis (enacting comprehensive statewide programs). *Regulating Areas of Critical Concern*, *supra* note 51, at 5. Among the states using the ad hoc approach are California, Massachusetts, New Jersey, New York, and North Carolina. *Id.* at 5. Some of the states using the comprehensive approach are Colorado, Florida, Minnesota, Nevada, Oregon, and Wyoming. *Id.* at 5-6.

58. MODEL CODE, *supra* note 49, §§ 7-201, 7-203.

59. *Id.* § 2-401.

60. *Id.*

61. *Id.* § 2-401(1).

62. *Id.* § 2-401(a).

ments to which each permit applies,[63] and when, where, and how each permit may be obtained.[64] In essence, the state runs an information clearinghouse for the benefit of potential developers.

In addition to a Permit Register, the Model Code contains a provision for joint hearings.[65] Under this provision a developer has discretion to institute a joint hearing proceeding for any or all of the multiple permits required.[66] Requests for joint proceedings are filed with the state agency responsible for coordinating the proceeding, on application forms which it provides.[67] The state controls this coordination procedure, including the appointment of hearing officers, and retains discretion as to whether a joint hearing should be granted.[68] If a joint hearing does take place, it is conducted within the local jurisdiction where the development is located.[69] The intent of this scheme is not to change the substantive standards under which permits are to be issued, but to authorize a coordinated procedure[70] which may be requested by a developer so as to simplify and expedite the administrative process.[71]

A. Coordination Attempts in Washington

Permit coordination in Washington State is dependent upon a state-run central office which guides the application procedure for all state issued permits.[72] None of the permitting authorities loses decisionmaking power, and local governments maintain exclusive control of local permitting.[73] The coordination that does take place consists of identifying those agencies with an interest in the pro-

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63. *Id.* § 2-401(b).
64. *Id.* §§ 2-401(c), (d).
65. *Id.* § 2-402.
66. *Id.* § 2-402(1).
67. *Id.* § 2-402(1).
68. *Id.* §§ 2-402(4), (6).
69. *Id.* § 2-402(4).
70. This "one-window" approval saves time and money for the developer and regulatory bodies since the hearings are consolidated and witnesses appear only once. *Local Land Use Dilemma*, *supra* note 17, at 23.
71. One commentator considers the Model Code a failure: "[a]fter years of careful drafting, redrafting, and discussion, and despite much scholarly support and a clear need, the code has gone nowhere . . . only a handful of states have borrowed bits and pieces of ideas advanced in the code." *Local Land Use Controls*, *supra* note 29, at 277.
72. The "Department is charged with acting in a supportive and review capacity with primary emphasis on ensuring compliance with the policy and provision [of the Shoreline Act of Washington (1971)]." Mack, *supra* note 37, at 325.
73. The "Act and subsequent activities at the state level have consistently been directed at supporting, enhancing and reinforcing the local role in administering the program." *Id.* at 328.

posed development, and having all permits pass through a central office.[74] This system provides a purely administrative procedure with a minimum of coordination; nevertheless it may expedite the permit process at the discretion of the developer.

Under the Shoreline Management Act,[75] which requires local governments to establish management programs consistent with administrative rules, Washington emphasizes local enforcement and administration of state mandated programs.[76] Control of the permitting system is held exclusively by the local government.[77] Nevertheless, numerous permit requirements developed at both the state and local level.[78] In an attempt to alleviate undesirable burdens, the legislature passed the Environmental Coordination Procedures Act (ECPA)[79] to provide an optional procedure coordinating administrative decisionmaking processes and fostering better understanding between state and local agencies.[80]

The ECPA provides a centralized permit clearinghouse feature.[81] Any person requiring multiple permits may submit a single master application to the Department of Ecology.[82] Upon receipt of a master application the department notifies state agencies which might have a possible permit interest.[83] Then the contacted agencies notify the department whether or not they actually have an interest in the proposed development.[84] If an agency does have an interest it forwards, along with its notification, all permit requirements.[85] Failure to respond waives the right of that agency to issue

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74. The State Department of Ecology (DOE) ". . . maintains supervisory authority and monitors permits issued by local governments." Hildreth & Johnson, *supra* note 14, at 132.

75. Shoreline Management Act of 1971, WASH. REV. CODE ANN. § 90.58 (West Supp. 1986).

76. The Shoreline Act's basic premise is that local government should be responsible for coastal planning and project decisionmaking, with the state providing overview and guidance. Mack, *supra* note 37, at 329.

77. WASH. REV. CODE ANN. § 90-58.140(3) (West Supp. 1986). For an examination of the first three years of the Shoreline Management Act in Washington see McCrea & Feldman, *Interim Assessment of Washington State's Shoreline Management*, 3 COASTAL ZONE MGMT. J. 119 (1977).

78. Environmental Coordination Procedures Act, WASH. REV. CODE ANN. § 90.62.010(1) (West Supp. 1986).

79. *Id.* §§ 90.62.010-908.

80. *Id.* § 90.62.010(d).

81. *Id.* § 90.62.040(1).

82. *Id.*

83. *Id.* § 90.62.040(2).

84. *Id.* § 90.62.040(2)(a)(i).

85. *Id.* § 90.62.040(2)(a)(ii).

the permit,[86] except in cases of applicant fraud or deception.[87] After completion of the notification process, the department sends the applicant the appropriate application forms with directions to complete and return them.[88] Completed applications are sent to the appropriate agencies for decision.[89] However, no application is complete without certification by the local government having jurisdiction over the proposed project.[90]

Local government certification is a statement that the development project is in compliance with all zoning ordinances and associated comprehensive plans administered by the local authority.[91] When a local government receives a certification application it may issue all locally required permits.[92] There is no indication, however, as to whether an application for certification can or will be submitted through the department; if not, it must be pursued solely by the developer.

In conjunction with the department's control over the permit procedure, the department also acts as an information center. The department's regional offices are established as information centers which provide information to the public concerning federal, state, and local permit requirements.[93] In addition, each county is required to designate a public office where environmental permit applications may be filed.[94] These offices act as the primary contact point with the public; they provide application forms, assist in preparation, and accept completed forms for transmission to the department.[95]

B. Coordination Attempts in Maryland

Maryland approaches permit coordination from two directions: consolidation of application procedures, and consolidation of review hearings.[96] This strategy is designed to make permitting guidelines less costly and more efficient. Unlike other states with coordinated review procedures, Maryland's consolidation approach

86. *Id.* § 90.62.040(2)(b)(ii).
87. *Id.*
88. *Id.* § 90.62.040(3).
89. *Id.* § 90.62.040(4).
90. *Id.*
91. *Id.* § 90.62.100(1).
92. *Id.* § 90.62.100(2)(a).
93. *Id.* § 90.62.120(1).
94. *Id.* § 90.62.120(2).
95. *Id.*
96. MD. STATE GOV'T CODE ANN. §§ 11-102(a), (b) (1984).

applies equally to all levels of government, except for those entities with specific grants of authority by law.[97]

Under this coordination scheme there is a State Permit Coordinating Council[98] which reviews and discusses problems associated with the issuance of permits, including matters of delay, arbitrariness, or unreasonableness.[99] The Council also encourages state units to participate in the problem review process[100] and acts as a liaison with local government.[101] While the Council does not have a great deal of power, the legislature has provided that any state or local permit authority must act promptly to remedy problems brought to its attention.[102] In effect, the Council's primary function is that of oversight and as an information center.

Local governments, for the most part, remain autonomous, but are required to maintain a list of current permits with the Council. Copies of the application along with descriptions of the permit and its relevant requirements and procedures are maintained with the Council.[103] At the state level a master application is used, developed by the Council with the cooperation of relevant agencies.[104] Maryland uses this concept to standardize information requirements. The master application supplies basic information about the project needed by all or most of the state agencies,[105] thereby reducing duplicated effort.[106] The primary function of this approach is to reduce procedural costs by reducing the duplication of paperwork.

In addition to consolidating the application procedure, Maryland provides an optional joint hearing process, before local and state units, for those applicants requiring permits from both.[107] By providing intergovernmental coordination through a joint application procedure, this scheme departs from the Washington example. Yet, even here, emphasis is placed on local administration. Requests for joint hearings are submitted to the local government at the same

97. *Id.* §§ 11-103(b)(1), (2).
98. *Id.* § 11-202.
99. *Id.* § 11-207(a).
100. *Id.* § 11-207(c).
101. *Id.* § 11-207(d).
102. *Id.* § 11-207(e).
103. *Id.* § 11-401.
104. *Id.* § 11-402(a).
105. *Id.* § 11-403.
106. *Id.* § 11-402(b).
107. *Id.* § 11-505.

time that local permit applications are submitted,[108] and copies of the request are submitted to the state coordinator along with all permit applications under consideration.[109] The state coordinator then forwards this information to the relevant state agencies.[110] Discretion to approve or disapprove the request, with respect to any and all state agencies, is maintained by the local government.[111] If a request is denied, the local government is free to proceed separately with its consideration of local permits.[112] While state agencies also have discretionary power to participate, participation is mandatory if only one state agency is involved.[113] Once a joint hearing is authorized the local government sets the time, date, and place of the hearing, which is held in the county where the local government is located.[114] Maryland also provides an intragovernmental consolidated hearing procedure at the state level,[115] but this approach is similar to programs in other states.

C. *Coordination Attempts in New York*

New York has empowered local governments to implement state policies, with state directed supervision of local decisionmaking.[116] Within the statutory framework of the Environmental Conservation Law,[117] the state identifies coastal areas prone to erosion hazards. In these areas development is regulated to achieve minimum damage to property, the protection of natural protective features, and the reduction of erosion hazards.[118] Local governments, in order to achieve these objectives, are encouraged to use their own land management authority.[119]

Once a coastal erosion hazard area is identified, local govern-

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108. *Id.* § 11-506(a)(1).
109. *Id.* § 11-506(b)(1).
110. *Id.* § 11-506(b)(2).
111. *Id.* § 11-507(a).
112. *Id.* § 11-507(c).
113. *Id.* §§ 11-508(a), (c).
114. *Id.* §§ 11-509(a), (b).
115. *Id.* § 11-512 to § 11-519.
116. New York has "largely renounced the opportunity to systematically plan and control coastal development at the state level. Under the New York Coastal Act, municipal coastal zone plans are binding on the State, but the State retains jurisdiction in localities which fail to adopt plans." Weinberg, *Coastal Area Legislation: Taking Arms Against A Sea of Trouble*, 6 SETON HALL LEGIS. J. 317, 322 (1983). *See also* N.Y. ENVTL. CONSERV. LAW §§ 34-0106, 34-0107 (McKinney Supp. 1986).
117. N.Y. ENVTL. CONSERV. LAW § 34-0102(1) (McKinney 1984).
118. *Id.* § 34-0102(2).
119. *Id.* § 34-0102(3).

ments having jurisdiction submit ordinances and regulations to the Commissioner of Environmental Conservation.[120] The Commissioner reviews these regulations for consistency with state standards, and if consistent they are certified.[121] State oversight continues, however, as these regulations are subject to revocation if the local authority fails to administer or enforce them properly.[122]

The unique feature of the New York coordination scheme is that permit applications may be initiated at whichever level of government the applicant chooses.[123] Whether initiated at the state or local level the procedure is the same. At the local level, when application is made for a locally required permit, the local permitting authority ascertains whether any other permits are required by another governing body.[124] In this manner the local authority acts as an information center; however, it is not until the application is made that the permit office actually performs this function. Application, permit, variance, and hearing requirements of each governing authority are consolidated and coordinated into a single comprehensive review procedure by the local authority when an applicant requests such a procedure.[125] Each permit authority, however, retains separate, independent power and discretion to issue, deny, or modify any permit under its jurisdiction.[126] Coordination of this type offers a great deal of flexibility for the applicant.

VII. The Case in Florida

Florida has a network of statutes which provides a comprehensive land management program.[127] A major component of this program is the Florida Environmental Land and Water Management Act of 1972.[128] This regulatory scheme increases state participation in the land management process through two specific techniques: the development of regional impact (DRI); and designation of areas of critical state concern (ACSC).[129] However, along with the development of a more centralized planning and regulatory pro-

120. *Id.* § 34-0105(1).
121. *Id.*
122. *Id.* § 34-0105(5).
123. *Id.* §§ 34-0105, 34-0106, 34-0107.
124. *Id.* § 34-0105(6) (McKinney Supp. 1986).
125. *Id.*
126. *Id.*
127. *Intergovernmental Relationships, supra* note 11, at 47. *See also supra* note 2.
128. The Florida Land and Water Management Act of 1972, Fla. Stat. §§ 380.012-.10 (1985 & Supp. 1986).
129. *Intergovernmental Relationships, supra* note 11, at 47.

cess, a corresponding proliferation of permit requirements has emerged.[130] Today, there is a need for greater coordination.

Like other states, Florida recognizes the need for greater coordination[131] and is developing coordinated permit review procedures. The DRI statute already provides a system of coordination in the form of conceptual agency review.[132] More recently, a coordinated scheme applicable to the Florida Keys area of critical state concern has been authorized and is being developed by the Department of Community Affairs (DCA).[133] DCA hopes this new procedure will be used as a model for future coordinated review systems.[134] The fact that Florida has elected to implement a weak land management program makes the DRI and ACSC programs all the more essential for ensuring statewide consistency.[135] However, a Strong State Comprehensive Plan could make these programs unnecessary and duplicative.[136] The recent adoption of a new and strengthened State Comprehensive Plan[137] may give impetus to local governments to push for an expansion of permit coordination.

A. Conceptual Review Under DRI

Florida currently provides a coordinated review process applicable to developments of regional impact.[138] Conceptual agency review under DRI was specifically a model for the coordinated agency review applicable to the Florida Keys; it was given a different name to avoid confusion.[139] A look at conceptual review is helpful in understanding the new statute. At the developer's op-

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130. *See, e.g.*, Landers, *supra* note 4.

131. The Environmental Efficiency Study Commission found that the permitting process "makes it virtually impossible for the agencies to be responsibly efficient, fully accomplish their mandate and satisfy the justified concerns of property owners, municipalities, developers and others who must seek their approval on planned projects." ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at v.

132. FLA. STAT. § 380.06(9) (Supp. 1986).

133. FLA. STAT. § 380.051 (Supp. 1986).

134. Apgar interview, *supra* note 43.

135. Finnell, *Keynote Address for the Conference on Managing Megagrowth: Florida's New Mandate*, 1 J. LAND USE & ENVTL. L. 189, 193 (1985).

136. *Id.* at 199.

137. Florida State Comprehensive Planning Act of 1972, FLA. STAT. §§ 186.001-.031, 186.801-.911 (1985); State Comprehensive Plan, FLA. STAT. §§ 187.101-.201 (1985). For an analysis of the State Comprehensive Plan see Pelham, Hyde & Banks, *Managing Florida's Growth: Toward an Integrated State, Regional and Local Comprehensive Planning Process*, 13 FLA. ST. U.L. REV. 517 (1985); RuBino, *Can The Legacy of a Lack of Follow-Through in Florida State Planning Be Changed?*, 2 J. LAND USE & ENVTL. L. 27 (1986).

138. FLA. STAT. § 380.06(9) (Supp 1986).

139. Apgar interview, *supra* note 43.

tion, DRI conceptual review takes place either concurrently with DRI review[140] or after a preapplication conference.[141] Preapplication conferences are designed to reduce paperwork, discourage unnecessary data gathering, and promote coordinated review.[142] At the time of this conference the regional planning agency,[143] often in conjunction with affected state agencies, may identify applicable permits, information requirements, and permit issuance procedures, if the developer so desires.[144]

As part of conceptual review each participating agency sends to the state land planning agency information and application requirements specifically applicable to this type of review.[145] In developing these requirements, each agency must, to the extent possible, standardize review procedures, data requirements, and data collection methodologies with the other participating agencies.[146]

Conceptual approval or denial constitutes final agency action,[147] which is valid for up to ten years.[148] Approval, however, does not relieve a developer of the responsibility of actually obtaining a permit by meeting informational requirements or other standards necessary for permit issuance.[149] While not readily apparent, the benefit of conceptual review is that agency action creates a rebuttable presumption that the developer is entitled to the permit that the agency has reviewed.[150] Conceptual review provides an opportunity for a developer to acquire critical information about the permit process and allows all relevant agencies to review applicable permits simultaneously.[151] Yet the scope of this review is limited to

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140. *See generally*, Comment, *Florida's DRI Statute: Alternatives to the Standard DRI Review*, 13 STETSON L. REV. 619 (1984); Frith, *Florida's Development of Regional Impact Process, Practice and Procedure*, 1 J. LAND USE & ENVTL. L. 71 (1985).

141. FLA. STAT. § 380.06(9)(a)(1) (Supp. 1986).

142. FLA. STAT. § 380.06(7)(b) (Supp. 1986).

143. In Florida a regional planning council, rather than the local government, reviews and reports on the overall impacts of a development. *Coastal Land Management in Florida*, *supra* note 52, at 363.

144. FLA. STAT. § 380.06(7)(a) (Supp. 1986).

145. FLA. STAT. § 380.06(9)(c)(1) (Supp. 1986).

146. FLA. STAT. § 380.06(9)(c)(2) (Supp. 1986).

147. FLA. STAT. § 380.06(9)(a)(3) (Supp. 1986).

148. FLA. STAT. § 380.06(9)(a)(4) (Supp. 1986).

149. FLA. STAT. § 380.06(9)(e) (Supp. 1986).

150. *Id.*

151. FLA. STAT. § 380.06(9) (Supp. 1986). The Environmental Efficiency Study Commission recommended that the conceptual agency review process (which a developer can elect to use) be "strengthened and made more attractive to pursue." The Commission suggests that "all DRI applicants be required to use [the conceptual agency review process] unless the applicant waives participation in writing." ENVIRONMENTAL EFFICIENCY STUDY, *supra*

the DRI process, and the majority of permits remain unaffected.

B. *Legislative Authorization of New Statute*

The Florida Legislature recently passed legislation authorizing coordinated agency review of permits applying specifically to the Florida Keys area of critical state concern.[152] This legislation was proposed to facilitate the planning and preparation of permit applications and to coordinate information requirements necessary for their issuance.[153] "Coordinated agency review" is defined as a procedure for the consideration of the proposed location, densities, intensity of use, character, major design features, and environmental impacts of projects in the Florida Keys.[154] However, the coordinated review process is optional; the developer may elect to use coordinated review, and once he chooses to do so, all agencies involved in the decisionmaking process must participate.[155]

With the cooperation of other state and regional agencies, the state land planning agency is authorized to prepare and establish by rule the procedure to be followed during coordinated review.[156] As part of this procedure, a coordinated review application is submitted by the developer.[157] The state land planning agency acts as a clearinghouse by distributing this application to the appropriate agencies.[158] All concerned parties are required to prepare themselves to participate in this review procedure.[159] To ensure coordination between state agencies and local governments, state agencies are authorized to enter into intergovernmental agreements, and where appropriate, review authority is delegated to local entities.[160] These procedures are facilitated by coordination and standardization of permit requirements with all state, regional, and local authorities operating in the Florida Keys.[161]

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note 1, at 19.

152. FLA. STAT. § 380.051 (Supp. 1986).
153. FLA. STAT. § 380.051(1)(a) (Supp. 1986).
154. FLA. STAT. § 380.051(1)(b) (Supp. 1986).
155. FLA. STAT. § 380.051(1)(a) (Supp. 1986).
156. FLA. STAT. § 380.051(2)(a) (Supp. 1986).
157. FLA. STAT. § 380.051(2)(a) (Supp. 1986).
158. FLA. STAT. § 380.051(2)(a) (Supp. 1986).
159. FLA. STAT. § 380.051(2)(b) (Supp. 1986).
160. FLA. STAT. § 380.051(2)(b) (Supp. 1986).
161. FLA. STAT. § 380.051(3) (Supp. 1986).

C. Procedural Rules Adopted by DCA

DCA recently adopted a set of procedural rules designed to implement the new coordinated review process authorized by the Florida Legislature.[162] These rules are intended to facilitate the preparation and review of permit applications, to standardize data requirements, and to coordinate review procedures between state and local governments.[163] Some unique features of this procedure include the designation of a permit coordinator[164] and the general applicability to a specific geographic area.[165] DCA developed these rules hoping they will be used as a model for future coordinated review systems.[166] Expanded utilization, however, will have to come from new legislation.[167] Yet the possibility exists because local comprehensive plans are now required to undergo revision and recertification.

Specifically, DCA rules provide an opportunity for the systematic, simultaneous review of permits by state, regional, and local permitting authorities.[168] In order to achieve simultaneous review, the process coordinates review times and provides for at least one joint meeting. In this manner the involved parties can resolve disputes or make revisions as quickly and inexpensively as possible.[169] State and regional agencies must conclude the process within sixty days after receiving notice to begin substantive review by either granting or denying certification.[170] Agency certification is a statement of whether or not the proposed development is in compliance with agency rules and statutes.[171] However, the certification re-

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162. 12 Fla. Admin. Weekly r. 9J-19.002(1) (to be codified in FLA. ADMIN. CODE ANN.) (proposed Nov. 21, 1986).

163. *Id.* r. 9J-19.002.

164. *Id.* r. 9J-19.003.

165. *Id.* r. 9J-19.006(1). The South Florida Water Management District has proposed a rule for coordinated agency review in the Florida Keys area of critical state concern. The proposed rule allows for coordinated agency review to "facilitate the preparation and review of permit applications for proposed developments" in the Keys. The proposed rule "provides a surface water management or water use permit applicant the opportunity to submit a permit application to the District and have the District process and review the application in coordination with other State and regional agencies . . . at the same time that the applicant is applying for local development approval." 13 Fla. Admin. Weekly r. 40E-1.615 (proposed May 8, 1987). Water management districts were formed to implement the Water Resources Act of 1972. FLA. STAT. §§ 373.012-.619 (1985 & Supp.1986).

166. Apgar interview, *supra* note 43.

167. *Id.*

168. Proposed Fla. Admin. Code r. 9J-19.002(1) (proposed Nov. 21, 1986).

169. *Id.* r. 9J-19.002(2).

170. *Id.* r. 9J-19.002(3).

171. *Id.*

quirement does not mean that an agency may not issue an actual permit within the time frame of coordinated review.[172]

An important feature of the new system is the creation of a permit coordinator.[173] While the permit coordinator does not have the authority to issue permits or bind participating agencies, he is the administrator of the review process and the primary contact for the applicant choosing this approach.[174] The coordinator's duties are to provide advice, assistance, and information about state, local, and federal permit requirements;[175] to supply application forms and advice on how to complete them;[176] to receive applications, distribute them to appropriate agencies, and advise applicants and agencies on review progress;[177] and to notify local officials of an applicant's request for coordinated review and coordinate a meeting of the local review committee to consider the various applications involved.[178] The permit coordinator is also required to submit annual reports to the state land planning agency, among others, for the purpose of assessing the effectiveness of review procedures.[179] Finally, the permit coordinator is required to develop, with the cooperation of affected agencies, a coordinated review application which uses standardized data requirements and data collection methodologies.[180]

Coordinated agency review is available for any project located in the Florida Keys area of critical state concern.[181] Review initiation is accomplished by simultaneously submitting local applications to the appropriate local government and a coordinated review application to the permit coordinator.[182] The permit coordinator then distributes the application to concerned agencies and monitors its progress so as to advise the applicant.[183] After consultation with the coordinator to identify required permits, the applicant indicates which of those permits he wishes to include in the coordinated review process.[184] During the review, the applicant may at

172. *Id.* r. 9J-19.002(4).
173. *Id.* r. 9J-19.003(1)
174. *Id.*
175. *Id.* r. 9J-19.003(1)(a).
176. *Id.* r. 9J-19.003(1)(b).
177. *Id.* r. 9J-19.003(1)(c).
178. *Id.* r. 9J-19.003(1)(d).
179. *Id.* r. 9J-19.003(2).
180. *Id.* r. 9J-19.004(3).
181. *Id.* r. 9J-19.006(1).
182. *Id.* r. 9J-19.006(2).
183. *Id.* r. 9J-19.006(3).
184. *Id.* r. 9J-19.005(1).

any time remove one or more of the participating agencies from the process, and continue with the remaining agencies.[185]

To achieve intergovernmental coordination, all permitting agencies with jurisdiction in the Florida Keys are required to enter into intergovernmental agreements allowing state and regional representatives to participate in the local review process.[186] Substantive review begins when the permit coordinator notifies the appropriate state and local officials and schedules a coordinated review meeting.[187] The applicant and concerned state agencies are advised of this meeting date, and all agencies are to be represented and prepared for a joint comprehensive review of the development plan.[188] If an applicant makes substantial changes to a proposed project while substantive review is in progress, a participatory agency that finds it has insufficient time to review these changes may request that the permit coordinator terminate the review process. The applicant may then reinitiate coordinated review.[189]

Substantive review ends with each agency giving notice of its intended action, including its conclusions concerning potential development impacts.[190] Each agency may either grant[191] or deny[192] certification, or issue an actual permit if the provided information is sufficient and processing can be completed within the sixty-day time frame of coordinated review.[193] A grant of certification creates a rebuttable presumption that the proposed project is consistent with all applicable principles for guiding development in the area.[194] Finally, the state land planning agency acts in a supervisory role by reviewing local government development orders and agency certifications, and is required to notify the applicant of whether or not it intends to appeal the local order.[195] The process is then complete.

VIII. CONCLUSION

In Florida, coordinated review is in the budding stage of its de-

185. *Id.* r. 9J-19.005(2).
186. *Id.* r. 9J-19.011.
187. *Id.* r. 9J-19.008(1).
188. *Id.* r. 9J-19.008(2).
189. *Id.* r. 9J-19.008(3).
190. *Id.* r. 9J-19.009(1).
191. *Id.* r. 9J-19.009(1)(a).
192. *Id.* r. 9J-19.009(1)(b).
193. *Id.* r. 9J-19.009(2).
194. *Id.* r. 9J-19.010(1).
195. *Id.* r. 9J-19.010(2).

velopment. Growth demands which cause an increasing need for state intervention constantly exert pressure on the regulatory process. As the proliferation of permit requirements continues, so does the need for greater regulatory efficiency. Today, many developers face unnecessary burdens as a result of multiple permits.[196] The need is there for Florida and other states to meet the challenges of coordination. Florida has taken a step in the right direction by adopting its most recent coordinated review procedure. How far coordination schemes will ultimately go remains to be seen. At least the groundwork for future attempts is being built today.

196. The Environmental Efficiency Study Commission found that "[p]ermit decisions are often made by one agency without the benefit of useful information developed by other agencies. This creates an unnecessary duplication of effort for agencies as well as for permit applicants." ENVIRONMENTAL EFFICIENCY STUDY, *supra* note 1, at 15.