Florida State University Journal of Land Use and Environmental Law

Volume 1
Number 1 *Winter 1985*

Article 3

April 2018

Florida's Development of Regional Impact Process, Practice, and Procedure

Alfred Lloyd Frith

Florida's Development of Regional Impact Process, Practice, and Procedure

Cover Page Footnote

The author wishes to express his appreciation to Martin C. Boire, Esq., Taylor & Early, P.A., Deland, Florida, for his extensive assistance in the preparation of this article.

FLORIDA'S DEVELOPMENT OF REGIONAL IMPACT PROCESS, PRACTICE, AND PROCEDURE

ALFRED LLOYD FRITH†

I. INTRODUCTION

The Florida Environmental Land and Water Management Act (ELWMA)[1] was enacted in 1972 with the avowed purpose of protecting Florida's natural resources and environment while at the same time facilitating orderly and well-planned development.[2] To accomplish this, the ELWMA created a process designed to regulate large-scale development in the state, commonly known as the Development of Regional Impact[3] or "DRI" process.[4] This article sets forth and analyzes the DRI process as it operates today and suggests changes which should be made to improve the process.

The ELWMA also created a regulatory process under chapter 380 for "Areas of Critical State Concern."[5] Presently, three areas have been designated under this process, most notably nearly all of Monroe County, Florida, which includes the Florida Keys.[6] There

---

† Associate, Siemon, Larsen & Mattlin, Boca Raton, Florida; B.A., magna cum laude, 1978, Samford University; M.P.A. 1980, George Washington University; J.D. 1983, Florida State University.

The author wishes to express his appreciation to Martin C. Boire, Esq., Taylor & Early, P.A., Deland, Florida, for his extensive assistance in the preparation of this article.

1. The ELWMA is codified in Part I of FLA. STAT. ch. 380 (1983) which includes sections 380.012 to .12. Section 380.012, the short title of the Act, labels the Act as including sections 380.012 to .10, but the Act also includes section 380.11 and section 380.12, which were added after 1972. Section 380.012 has not been amended to reflect these changes.
2. FLA. STAT. § 380.021 (1983). This section provides:

   > It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in s. 7, Art. II of the State Constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary adequately to plan for and guide growth and development within this state. In order to accomplish these purposes, it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

3. FLA. STAT. §§ 380.06-.12 (1983).
4. FLA. ADMIN. CODE Rule 9B-16.01(3) (Supp. 1983).
5. FLA. STAT. §§ 380.05-.0552 (1983).
6. The three Areas of Critical State Concern presently designated are the Big Cypress

are similarities and differences between the DRI process and regulation of Areas of Critical State Concern.[7] But since most developments subject to regulation under chapter 380 are DRIs, and because Areas of Critical State Concern could be a topic unto itself, this article focuses on the DRI process.

A DRI is statutorily defined as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[8] Hence, the DRI process is designed to establish a regulatory framework primarily to assess *regional,* as opposed to local, impact of proposed large-scale development to determine whether and in what form it will proceed. A novel feature of the DRI process is that it does not vest any one governmental entity with absolute power to make land use decisions. Instead, it disperses that power among local, regional, and state authorities. As a result, the practitioner must be familiar with the actors and the decision-makers who participate in this often unwieldy process. The following brief outline of their identities and roles should be helpful in this regard.

A developer is a person or entity who proposes to undertake a particular development. But the term is not limited to private individuals, corporations, or partnerships; it may also include government agencies proposing certain types of developments.[9] The owner of a project is also a party in the DRI process and, like a developer, is entitled to appeal a development order issued by a local government.[10] As a practical matter, "owner" and "developer" are often used interchangeably since they are usually the same person or entity and have virtually identical interests.

The initial decision-maker in the DRI process is the local government, which may be a county, municipality, or, where appropriate, a joint airport zoning board.[11] The local government may issue

---

Area, FLA. STAT. § 380.055 (1983); the Green Swamp Area, FLA. STAT. § 380.0551 (1983); and the Florida Keys Area, FLA. STAT. § 380.0552 (1983).

7. The most fundamental similarity between the two processes for the purposes of this article is that a development order issued by a local government, whether under the DRI process or the Areas of Critical State Concern process, is appealable to the Florida Land and Water Adjudicatory Commission pursuant to section 380.07 (1983), Florida Statutes. Therefore, some cases involving developments in Areas of Critical State Concern may have application to DRI appeals as well and are cited in this article when appropriate.

8. FLA. STAT. § 380.06(1) (1983).

9. FLA. STAT. § 380.031(2) (1983).

10. FLA. STAT. § 380.07(2) (1983).

11. FLA. STAT. § 380.031(11) (1983).

a development order either granting, denying, or conditionally granting permission to proceed with the project.

A regional planning council (RPC)[12] is an agency charged with certain review responsibilities under chapter 380.[13] It is also entitled to appeal a development order issued by a local government on a project subject to the ELWMA.[14]

The state land planning agency, the agency charged with statewide comprehensive planning,[15] has certain monitoring responsibilities under chapter 380[16] and may also appeal development orders of local governments under the ELWMA.[17] Presently, the state land planning agency is the Florida Department of Community Affairs.[18]

The ELWMA does not expressly mention neighboring landowners or citizen groups, but both can play an important role in the DRI process. Since most local governments are composed of elected officials who depend upon local support to retain their offices, the public's attitude toward a project can have a dramatic effect upon whether a project is approved and with what conditions.[19] Landowners, citizen groups, and other members of the public are afforded ample opportunity to participate in the DRI process. DRI proceedings are open to the public and the ELWMA requires that the local government give notice and hold a public hearing on the proposed project at which any individual or group may participate.[20] Moreover, it is customary for administrative hearing officers and the Florida Land and Water Adjudicatory Commission (Adjudicatory Commission) to solicit public comments whenever a public hearing or public meeting is held on an appealed project.[21]

The Adjudicatory Commission is an administrative agency com-

---

12. *See* FLA. STAT. §§ 160.001-.09 (1983). RPCs are composed of representatives of member counties, local governments, and appointees of the governor, all of whom must come from within the geographic area covered by the RPC. FLA. STAT. § 160.01 (1983).

13. FLA. STAT. § 380.031(15) (1983).

14. FLA. STAT. § 380.07(2) (1983).

15. FLA. STAT. § 380.031(18) (1983).

16. FLA. STAT. § 380.032 (1983).

17. FLA. STAT. § 380.07(2) (1983).

18. FLA. STAT. § 163.3164(18) (1983).

19. Local governments, within the traditional meaning of the term, are always elected. FLA. CONST. art. VIII, §§ 1(d), 1(e), 2(b). However, "local government" within the meaning of chapter 380 includes joint airport zoning boards, FLA. STAT. § 380.031(11), which are appointed bodies. FLA. STAT. § 333.03(2)(b) (1983).

20. FLA. STAT. § 380.06(10) (1983).

21. FLA. ADMIN. CODE Rule 27G-1.09 (1982).

prised of the governor and Cabinet.[22] Administrative appeals of development orders rendered by local governments under chapter 380 are taken directly to the Commission[23] and orders rendered by the Commission operate as final agency action.[24] Thereafter, the decision may be appealed to the district courts of appeal.[25]

Other regional, state, and federal agencies may also be participants in the DRI process. In fact, the RPC may solicit input from agencies with regulatory authority over a particular type of development,[26] and the comments of such agencies must be incorporated into the report of the RPC.[27] However, the RPC may attach dissenting views to these reports.[28]

II. Determining Whether a Project is a DRI

The threshold consideration for the land use practitioner is determining whether a project is a DRI subject to regulation under chapter 380; however, as a preliminary matter, one must first realize that not all development is subject to the ELWMA. Certain types of development are exempted by statute, other developments may not be presumed to be DRIs based upon regulatory thresholds, and still others may be DRIs, but not subject to review.

A. Types of DRIs, Exemptions, and Regulatory Thresholds

A project must first be a "development" within the meaning of the chapter. Until 1983 there was some question, at least in one district court of appeal, whether construction activity on land not divided into three or more parcels satisfied the statutory definition

---

22. Fla. Stat. § 380.07 (1983). Chapter 380 creates the Administration Commission and vests this body with certain powers and responsibilities under the Act. Section 380.031(1) (1983) specifies that the Administration Commission means the Governor and Cabinet. Section 380.07 (1983) creates the Florida Land and Water Adjudicatory Commission, which consists of the Administration Commission.

23. Fla. Stat. § 380.07(2) (1983).

24. Fla. Admin. Code Rule 27G-1.11 (1982); Fla. Stat. § 120.68 (1983).

25. Fla. Stat. § 120.68 (1983). *E.g.*, Manatee County v. Estech Gen. Chem. Corp., 402 So. 2d 1251 (Fla. 2d DCA 1981).

26. Fla. Stat. § 380.06(11)(b) (1983). Simply because a development is subject to DRI review does not excuse the developer from obtaining required permits from federal or state agencies or local governments. For example, if a DRI involves dredging and filling in wetlands, a developer must obtain not only DRI approval in the form of a development order, but also dredge and fill permits from the Florida Department of Environmental Regulation and the U.S. Army Corps of Engineers.

27. *Id.*

28. *Id.*

of a "development."[29] Today, the statute more clearly defines development as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[30]

Once a project is determined to be a "development," the type of development proposed must be ascertained. This is necessary because certain types of developments are exempt from the DRI process.[31] For example, the use of land for agricultural purposes is exempt from DRI review, notwithstanding any regional impact which may result from this activity.[32] Moreover, hospitals of a certain size, most electrical power plants, and additions to many existing sports facilities are exempt from review.[33]

Other types of developments are subject to regulatory thresholds which aid in determining whether a particular type of development is subject to DRI review.[34] For example, a residential development, which is the most common type of DRI,[35] may be presumed to be of regional impact depending upon the number of dwelling units therein and the population of the county in which the development is to occur. In counties with a population in excess of 500,000, a 3000-unit development would be presumed to be of regional impact, while in a county of less than 25,000 persons, a 250-unit project would exceed the regulatory threshold.[36]

---

29. In Seminole County v. Mertz, 415 So. 2d 1286, 1290 (Fla. 5th DCA 1982) the court held that the definition of "development" contained in section 380.04(1), FLA. STAT. (1981), mandates "that the requirement of a division of three or more [parcels] is fundamental to the finding of a development." Under this reasoning, projects not subdivided into three or more parcels arguably are not DRIs. In 1983, the word "activity" was inserted following "building" in the definition of development. 1983 Fla. Laws 83-308, § 2. *See* FLA. STAT. § 380.04(1) (1983). The change was minor and does not affect the three parcel requirement.

30. FLA. STAT. § 380.04(1) (1983). This section was amended in 1983 to avoid the result obtained in *Mertz*.

31. FLA. STAT. § 380.04(3) (1983).

32. FLA. STAT. § 380.04(3)(e) (1983).

33. FLA. STAT. § 380.06(23)-(25) (1983).

34. The 12 types of developments presumed to be of regional impact in certain circumstances are airports, attractions and recreation facilities, electrical generating facilities and transmission lines, hospitals, industrial plants and industrial parks, mining operations, office parks, petroleum storage facilities, port facilities, residential developments, schools, and shopping centers. FLA. ADMIN. CODE Rule 27F-2.01 to .12 (1982).

35. As of June 30, 1981, 55.7 percent of the DRIs processed in Florida were residential developments. Shopping centers were the next most frequent at 11 percent. INTERIM REPORT OF THE ENVIRONMENTAL LAND MANAGEMENT STUDY COMMITTEE, app. C (1983).

36. FLA. ADMIN. CODE Rule 27F-2.10 (1982), establishes the presumptive thresholds for residential developments:

(1) The following developments shall be presumed to be developments of regional im-

B. Binding Letters

DRI thresholds are presumptive only, but the general statutory definition of a DRI is controlling whenever questions arise as to whether a particular project is subject to review under chapter 380.[37] Thus, a sub-threshold development may be a DRI while a supra-threshold development may not be subject to DRI review. It is the presentation of evidence which will determine whether a particular project, "because of its character, magnitude, or location, would [or would not] have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[38]

Since the thresholds are presumptive only and the statutory definition of a DRI is so broad, a developer may often be unsure whether his project will be subject to review. Frequently, the need to proffer information on a project's extra-county effects does not

---

pact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed residential development that is planned to create or accomodate more than the following number of dwelling units:

(a) In counties with a population of less than 25,000 — 250 dwelling units

(b) In counties with a population between 25,000 and 50,000 — 500 dwelling units

(c) In counties with a population between 50,001 and 100,000 — 750 dwelling units

(d) In counties with a population between 100,001 and 250,000 — 1,000 dwelling units

(e) In counties with a population between 250,001 and 500,000 — 2,000 dwelling units

(f) In counties with a population in excess of 500,000 — 3,000 dwelling units

Provided, however, that any residential development located within two (2) miles of a county line shall be treated as if it were located in the less populous county.

(2) As used in this section, the term "residential development" shall include, but not be limited to:

(a) the subdivision of any land attributable to common ownership into lots, parcels, units or interests, or

(b) land or dwelling units which are part of a common plan of rental, advertising, or sale, or

(c) the construction of residential structures, or

(d) the establishment of mobile home parks.

(3) As used in this section, the term "dwelling unit" shall mean a single room or unified combination of rooms, regardless of form of ownership, that is designed for residential use by a single family. This definition shall include, but not be limited to, condominium units, individual apartments and individual houses.

(4) For the purpose of this section, the population of the county shall be the most recent estimate for that county, at the time of the application for a development permit. The most recent estimate shall be that determined by the Executive Office of the Governor pursuant to Section 23.019, Florida Statutes.

37. *See supra* note 8 and accompanying text.

38. FLA. STAT. § 380.06(1) (1983).

arise because no one questions whether a given project is a DRI, especially where it is clearly below the regulatory threshold for the type of development proposed. But increasingly, local governments, citizens groups, environmental activitists, RPCs, and the Department of Community Affairs are questioning developments which fall below the regulatory thresholds. In fact, the Department of Community Affairs monitors all types of development set forth in chapter 27F-2 of the Florida Administrative Code,[39] and may enjoin any violation of chapter 380.[40] Often, when such questions arise, the developer may resolve the matter informally by providing any requested information in writing to the Department or by meeting with regional or state officials. Still, a more formal procedure at times may be prudent.

In *General Development Corp. v. Division of State Planning*,[41] the court held that "[a] developer who bypasses Section 380.06 supervision of its development of regional impact does so at its peril and, notwithstanding local zoning and building permits, the developer may be enjoined during construction."[42] To avoid a result like that in *General Development* and to resolve a developer's doubts as to whether a project is a DRI, the Florida Legislature created the binding letter of interpretation process.[43]

A binding letter of interpretation is an opinion letter issued by the Department of Community Affairs which binds all state, regional, and local agencies, as well as the developer. It is available whenever a developer is in doubt as to whether a proposed development would be a DRI, whether rights have vested, or whether a proposed substantial change to a DRI which had previously vested would divest such rights.[44] It is "a process for determining whether another layer of government must be dealt with by a developer."[45] It "only determines whether a proposed development is a DRI; it is not a permit to begin any development activity and does not protect the developer from any state, federal, or local restrictions applicable to its development."[46]

---

39. FLA. ADMIN. CODE Rule 9B-16.16(6) (Supp. 1983).
40. FLA. STAT. § 380.11 (1983).
41. 353 So. 2d 1199 (Fla. 1st DCA 1977).
42. *Id.* at 1202.
43. FLA. STAT. § 380.06(4) (1983).
44. FLA. STAT. § 380.06(4)(a) (1983).
45. Suwannee River Area Council Boy Scouts v. Florida Dep't of Community Affairs, 384 So. 2d 1369, 1374 (Fla. 1st DCA 1980).
46. Peterson v. Florida Dep't of Community Affairs, 386 So. 2d 879, 880-81 (Fla. 1st DCA 1980).

A request for a binding letter of interpretation must be made in writing to the Department of Community Affairs.[47] The Department must determine within fifteen days of receipt whether the application is sufficient or whether additional information is needed to issue the binding letter.[48] If the application is sufficient, the Department must issue a binding letter within thirty days of acknowledging receipt of the application.[49] If additional information is requested, the developer has 120 days to respond.[50] Each time additional information is provided by the applicant, the Department has fifteen days from receipt to determine whether information furnished is sufficient.[51] Once the application process is complete, a binding letter must be issued within thirty days.[52]

If the developer does not respond to the request for additional information, the binding letter application is deemed to be withdrawn and presumably the Department cannot issue a binding letter.[53] But if the developer notifies the Department that additional information will not be supplied, the Department may proceed and issue the binding letter.[54] However, the Department's rules suggest that it may simply state that the information was insufficient to make the binding determination requested by the applicant and summarily deny the application.[55]

---

47. FLA. STAT. § 380.06(4)(a) (1983). The rules of the Department of Community Affairs also require the applicant to provide copies of the application to the appropriate RPC and local government with jurisdiction over the development site. FLA. ADMIN. CODE Rule 9B-16.16(2) (1982).

Rule 9B-16.16, FLA. ADMIN. CODE (1982 & Supp. 1983), governs binding letters of interpretation and should be consulted before making a binding letter application. Three binding letter application forms are available: Form BLWM-01-83, Application for a Binding Letter of Development of Regional Impact (authorized by 9B-16.17(1)(b)); Form BLWM-02-81, Application for a Binding Letter of Vested Rights (authorized by 9B-16.17(1)(c)); and Form BLWM-03-81, Application for a Binding Letter of Modification to a Development of Regional Impact with Vested Rights (authorized by 9B-16.17(1)(d)). These forms are available from the Department of Community Affairs, Division of Resource Planning and Management, Bureau of Land and Water Management, 2571 Executive Center Circle, East, Tallahassee, FL, 32301. FLA. ADMIN. CODE Rule 9B-16.16 (1982 & Supp. 1983). Notice of receipt of the Application for a binding letter is published by the agency in the Florida Administrative Weekly. FLA. ADMIN. CODE Rule 9B-16.16(2) (1982).

48. FLA. STAT. § 380.06(4)(a) (1983).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. FLA. ADMIN. CODE Rule 9B-16.16(13) (Supp. 1983). However, at any time before the initial binding letter is issued, or within 30 days after reconsideration of a binding letter is completed and a final binding letter is issued, if the applicant believes the determination

The binding letter process is usually an informal proceeding conducted pursuant to section 120.57(2).[56] A developer may submit written documents, written statements, or any other relevant information pertaining to the project which would show that it is not a DRI. However, the only formal participants in the binding letter process are the Department and the developer,[57] and the courts have rejected attempts by other persons or entities to intervene.[58] The Department's rules afford persons other than the Department and the developer limited participation in the binding letter process by allowing them to submit information,[59] but even here the applicant must be provided copies of any facts submitted by persons other than the Department and has the opportunity to respond to the information.[60]

The burden of proof in the binding letter process shifts depending upon whether a development exceeds the presumptive thresholds contained in the Department's rules. If a proposed development exceeds the presumptive threshold, the applicant has the burden of proving that it is not a DRI. If the proposed develop-

---

involves a disputed issue of material fact which requires a full evidentiary hearing, the applicant may request a formal hearing by filing a petition specifying the disputed material facts in compliance with section 120.57(1) and the model rules of the Administration Commission.

56. FLA. ADMIN. CODE Rule 9B-16.16(16) (1982). Section 120.58(1)(a), FLA. STAT. (1983), intends a free and open informal process not governed by the formal rules of evidence and procedure. *See, e.g.*, Jones v. City of Hialeah, 294 So. 2d 686 (Fla. 3d DCA 1974). The only evidence excluded by section 120.58(1)(a) from a section 120.57 proceeding is irrelevant, immaterial, or unduly repetitious evidence. Also, hearsay evidence alone is not sufficient to support a finding unless it would be admissible over objection in civil actions. It is notable that section 120.58(1)(a) speaks to the use of hearsay, while the Florida courts interpret it as speaking to the admissibility of hearsay. *See* Astore v. Fla. Real Estate Comm'n, 374 So. 2d 40 (Fla. 3d DCA 1979).

57. *See* Compass Lake Hills Dev. Corp. v. Florida Dep't of Community Affairs, 379 So. 2d 376, 378 (Fla. 1st DCA 1979). *See, e.g.*, South Fla. Regional Planning Council v. Florida Land and Water Adjudicatory Comm'n, 372 So. 2d 159 (Fla. 3d DCA 1979); South Fla. Regional Planning Council v. Division of State Planning, 370 So. 2d 447 (Fla. 1st DCA 1979).

58. *See, e.g., Peterson*, 386 So. 2d 879 (adjacent homeowners do not have standing to petition for formal administrative hearing when the Department issues a binding letter); *Division of State Planning*, 370 So. 2d at 449 (RPCs do not have standing to intervene in the binding letter process).

59. The rules do not specify the form or manner in which information may be submitted by third persons. Presumably, pursuant to Rule 9B-16.16(8), FLA. ADMIN. CODE (Supp. 1983), letters or any other data could be offered suggesting that the proposed development would or would not have a substantial effect upon the health, safety, or welfare of the citizens of more than one county. If substantiated, such information could, of course, influence the agency's binding letter opinion.

60. FLA. ADMIN. CODE Rule 9B-16.16(4) (1982).

ment is below the threshold, the Department has the burden to prove that it is a DRI.[61] The legal standard, however, remains the same: whether the proposed development would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.[62]

The binding letter itself must contain findings of fact and conclusions of law and is considered final agency action for purposes of appeal.[63] The applicant may, however, request a reconsideration within thirty days of issuance.[64] Appeal may be taken only to the district court of appeal in the district where a party resides or the agency maintains its headquarters.[65]

Chapter 380 also contains a vested rights provision under which certain projects may be exempt from DRI review.[66] For purposes of the DRI process, a project is vested and not subject to DRI review whenever a subdivision has been registered pursuant to chapter 478 of the Florida Statutes, the project has been recorded under local subdivision plat law, or other authorization to commence development has occurred prior to July 1, 1973.[67] With one exception,[68] the law requires that a person or entity seeking vested rights status must show reliance and a change of position based upon an authorization to commence development in order for a vesting of rights to occur.[69]

Whenever the binding letter process is used to make a vested rights determination, the Department will issue a letter either granting or denying vested rights status to the project.[70] If a development has obtained vested rights status, nothing in chapter 380 can impair those rights, regardless of the size or impact of the project.

---

61. FLA. ADMIN. CODE Rule 9B-16.16(9) (Supp. 1983).

62. FLA. STAT. § 380.06(1) (1983).

63. FLA. ADMIN. CODE Rule 9B-16.16(14) (1982).

64. *Id.*

65. FLA. STAT. § 120.68(2) (1983).

66. FLA. STAT. § 380.06(18) (1983). The common law concept of vested rights must be distinguished from the statutory vested rights provision of chapter 380. The common law concept is beyond the scope of this article and has been adequately discussed elsewhere. For a general discussion of vested rights, *see* C. SIEMON & W. LARSEN, VESTED RIGHTS (1982).

67. FLA. STAT. § 380.06(18) (1983).

68. Reliance and a change of position do not have to be shown to establish vested rights under chapter 380 if a subdivision plat was approved by a county or municipality pursuant to local subdivision plat law, ordinance, or regulation after August 1, 1967, and prior to July 1, 1973. FLA. STAT. § 380.06(18)(a) (1983).

69. FLA. STAT. § 380.06(18) (1983).

70. FLA. ADMIN. CODE Rule 9B-16.16(10), (12) (1982).

III. DRI Review Procedures

A. *Regular DRI Review*

Once it is determined that a project is a DRI and is subject to review under chapter 380, the developer should contact the appropriate RPC to schedule a preapplication conference.[71] The purpose of this conference is to identify issues such as the type of permits required for a particular project[72] and to "otherwise promote a proper and efficient review of the proposed development."[73]

The preapplication conference is very important for developers because it presents an opportunity to interact informally with the RPC, an agency which plays a central role in the DRI process. RPCs can act in an advisory or litigious capacity,[74] and either role may influence approval of the development. Local governments, particularly in rural areas, are often dependent on the technical and professional expertise of RPCs and the recommendations of the RPCs are often followed. Therefore, a positive working relationship with the RPC may help avoid delay on a project, while an antagonistic relationship can be costly in terms of both time and money.

A frequent criticism of the DRI process has been that unnecessary delays arise due to requests for additional information by an RPC. An understanding of what information is required, which may be determined at the preapplication conference, will help eliminate this problem. The preapplication conference is also important because at this juncture an RPC has the authority to enter into binding agreements to "eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review."[75]

---

71. Fla. Stat. § 380.06(7)(a) (1983).

72. *See supra* note 22.

73. Fla. Stat. § 380.06(7)(a) (1983). Each RPC has rules governing DRI review procedures which should be consulted. These rules are found in chapter 29 of the Florida Administrative Code.

74. An RPC acts in an advisory capacity when it provides information about the DRI process to developers and when it holds preapplication conferences "to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development." Fla. Stat. § 380.06(7)(a) (1983). An RPC acts in a litigious capacity when it initiates an appeal of a development order pursuant to section 380.07(2), Fla. Stat. (1983).

75. Fla. Stat. § 380.06(7)(b) (1983). The statute in relevant part provides that "[i]t is the legislative intent of this subsection to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-

After the preapplication conference is completed, the developer submits an application for development approval (ADA) to the local government having jurisdiction over the project.[76] The developer also sends copies of the application to the appropriate RPC and the Department of Community Affairs.[77] Within thirty days of receipt of the ADA, the RPC must determine whether the ADA contains sufficient information upon which a decision can be made.[78] If the ADA is sufficient, the RPC notifies the local government that a date has been set for a public hearing on the project.[79]

If the ADA is insufficient, the RPC must make a written request to both the local government and developer for additional information within thirty days of its receipt.[80] Upon receipt of this request, the developer has five working days to indicate in writing to the RPC and the appropriate local government whether the information will be provided.[81] If the requested information is not provided within 120 days, or within a time agreed upon by the applicant and the RPC, the application is considered to have been withdrawn.[82] However, if the information is provided, the RPC must review it within thirty days and may not request additional information unless it is needed to clarify the supplemental information provided by the developer or answer new questions raised by the supplemental information.[83]

Once the ADA is complete, the local government must give at least sixty days notice of a public hearing and hold the hearing on the project in the same manner as for a rezoning request pursuant to the appropriate special or local law or ordinance.[84] The RPC has

---

regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law."

76. FLA. STAT. § 380.06(6) (1983). An ADA form, Form DSP-BLWM-11-76, can be obtained without cost from the Department of Community Affairs, Division of Resource Planning and Management, Bureau of Land and Water Management, 2571 Executive Center Circle, East, Tallahassee, FL, 32301. Most RPCs also make these forms available.

77. FLA. STAT. § 380.06(9)(a) (1983).

78. FLA. STAT. § 380.06(9)(b) (1983).

79. FLA. STAT. § 380.06(9)(c) (1983). This procedure is commonly referred to as "sufficiency notification." *See* FLA. STAT. § 380.06(10) (1983).

80. FLA. STAT. § 380.06(9)(b) (1983).

81. *Id.*

82. *Id.*

83. *Id.*

84. FLA. STAT. § 380.06(10) (1983). In the event the DRI is multi-jurisdictional, a joint public hearing may be held at the request of the developer. Furthermore, under this section, the local government must comply with the following due process requirements:

> (a) The notice of public hearing shall state that the proposed development would be a development of regional impact.

fifty days after receipt of that notice to prepare a report with recommendations on the regional impact of the proposed development.[85]

The report of the RPC can be extremely important in determining whether a project will be approved and identifying what changes must be made before approval may be given. Although not binding on the local government, the report must be considered by the local government[86] and is admissible as substantive evidence in subsequent court challenges.[87] The report itself is a written document prepared by the RPC[88] and must address the extent to which the development will have a favorable or unfavorable impact on the environment, the economy, public facilities such as water, sewer and solid waste disposal, public transportation, housing, and other regional issues.[89] The report is also admissible for evidentiary purposes in any subsequent appeal.[90] Not surprisingly, controversy often arises when the report of the RPC suggests that the DRI would have an unfavorable impact on the environment and natural resources of the region. Because an adverse conclusion can be very damaging to the likelihood of project approval, the land use practitioner should closely monitor the preparation of the report and submit any information which would tend to highlight the favorable impacts of a project. Since the report may include input from "other appropriate agencies,"[91] the developer, and substan-

---

(b) The notice shall be published at least 60 days in advance of the hearing and shall specify where the information and reports on the development of regional impact application may be reviewed.

(c) The notice shall be given to the state land planning agency, to the applicable regional planning agency, to any state or regional permitting agency participating in a coordinated review process under subsection (8), and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

(d) A public hearing date shall be set by the appropriate local government at the next scheduled meeting.

85. FLA. STAT. § 380.06(11)(a) (1983).

86. FLA. STAT. § 380.06(13)(c) (1983).

87. *See* FLA. STAT. § 120.68 (1983).

88. An RPC is staffed by professional and technical personnel who prepare DRI reports. These reports must be approved by the council itself at a public meeting prior to submission to the local government. Anyone may appear at such meetings and present evidence or testimony about a particular DRI. FLA. STAT. § 380.06(11)(a) (1983).

89. FLA. STAT. § 380.06(11)(a) (1983).

90. *See* FLA. STAT. § 120.68 (1983).

91. Section 380.06(11)(b), FLA. STAT. (1983), permits the RPCs to request other agencies to review a proposed project and prepare reports which are integrated in the RPC's report. Though this section also allows an RPC to comment on the *regional* implications of permits which have been issued by the Department of Environmental Regulation or a water man-

tially affected parties,[92] the practitioner representing these entities should not fail to take advantage of this opportunity to present additional information and evidence.

Once appropriate notice has been given and the report of the RPC has been received, the local government must hold a public hearing on the project.[93] At the hearing, the developer, the RPC, and any interested persons are allowed to present evidence or advance arguments in support of or in opposition to the project. Although a court reporter is usually present, the public hearing is often more a political than a legal proceeding, particularly where there is local opposition to the project.

Within thirty days after the hearing, unless the developer requests an extension, the local government must render a decision either approving or rejecting the project, and may attach conditions to its decision.[94] This decision is referred to as a "development order"[95] and must contain findings of fact and conclusions of law.[96] By statute, if the development is not in an area of critical state concern, the development order must address whether the

---

agement district, a council may not offer recommendations which conflict with the issuance of these permits.

92. Section 380.06(11)(c), FLA. STAT. (1983), provides that the RPC "shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations."

93. FLA. STAT. § 380.06(10)(d) (1983).

94. FLA. STAT. § 380.06(14) (1983).

95. A development order is defined as "any order granting, denying, or granting with conditions an application for a development permit." FLA. STAT. § 380.031(3) (1983). A development permit includes "any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development . . . ." FLA. STAT. § 380.031(4) (1983).

96. FLA. STAT. § 380.06(14)(c) (1983). Under this subsection, further mandatory and discretionary requirements may be contained in development orders. Specifically, the development order:

> 1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the development with the development order.
>
> 2. May establish expiration dates for the development order, including a deadline for commencing physical development, for compliance with conditions of approval or phasing requirements, and for the termination of the order.
>
> 3. Shall specify the requirements for the annual report designated under subsection (16), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.
>
> 4. May specify the types of changes to the development which shall require submission for a substantial deviation determination under paragraph (17)(a).
>
> 5. Shall include a legal description of the property.

development is consistent with the report of the RPC, local land development regulations, and any state land development plan adopted for the area.[97]

Once a development order is rendered, the local government transmits copies to the developer or owner, the RPC, and the Department of Community Affairs.[98] It is the developer's responsibility to record the development order with the clerk of the circuit court for each county in which the project is located.[99] Once the order is recorded, development may commence unless an appeal is taken to the Adjudicatory Commission.[100]

B. Other Review Procedures

1. Coordinated Review Process

Some projects by their nature are exceedingly complex and may require permits from other agencies in addition to local DRI approval.[101] To accommodate such projects, the Florida Legislature created an optional coordinated review process designed to make the various permitting processes more manageable.[102] It does not supplant DRI review, but can eliminate duplicative requirements of various agencies and, when used properly, appreciably reduce delays incident to review.

Only the developer has the election to proceed in a coordinated review process.[103] However, the alternative — piecemeal review — can in many cases make the choice to elect the coordinated review process a wise one. The RPC coordinates the actual process,[104] though the developer may dictate the scope of the review by selecting the state or regional agencies which will participate.[105]

The coordinated review process normally involves a series of preapplication conferences attended by the developer, the RPC, and various state and federal regulatory agencies. These conferences may ultimately result in binding agreements between the developer and participating agencies. Areas of agency jurisdiction

97. FLA. STAT. § 380.06(13) (1983).
98. FLA. STAT. § 380.07(2) (1983).
99. FLA. STAT. § 380.06(14)(d) (1983).
100. FLA. STAT. § 380.07 (1983).
101. *See supra* notes 26 and 72 and accompanying text.
102. FLA. STAT. § 380.06(8) (1983).
103. FLA. STAT. § 380.06(8)(a) (1983).
104. FLA. STAT. § 380.06(8)(b)(4)(d) (1983).
105. FLA. STAT. § 380.06(8)(a) (1983).

over the proposed development, applicable administrative rules, types of information required, and other appropriate subjects may be included in the binding agreement.[106] In addition, the RPC can develop permit processing schedules with other agencies, propose the concurrent processing of applications, or where appropriate, propose the use of the ADA as a substitute for permit-data requirements of other agencies[107] — all designed to further simplify and facilitate coordinated review.

2. Master Development Approval

Development projects often are planned in phases or segments over an extended period of time. Rather than review each segment as a DRI, chapter 380 allows a developer to file an application for master development approval of the overall project to minimize piecemeal review.[108] Under this procedure, the developer enters into an agreement with the RPC and the appropriate local government whereby the developer agrees to file an application for master development approval and submit subsequent increments of the project for preconstruction review.[109] Next, a master plan is presented to the local government for conceptual approval. The master plan then undergoes normal DRI review; that is, a master plan development order is issued following a duly noticed public hearing. The order must, however, "ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined."[110] Subsequent incremental phases of the project undergo a review which is limited to the established requirements of the master plan development order.[111]

Master development approval offers two major advantages to the developer. First, it offers predictability in the subsequent incremental review process. A master development order must specify all information which will be required in the subsequent incremental applications and must identify issues which may result in a denial of the project.[112] Second, master development approval limits subsequent review to such issues, and a project cannot be denied

106. FLA. STAT. § 380.06(8)(b) (1983).
107. FLA. STAT. § 380.06(8)(d) (1983).
108. FLA. STAT. § 380.06(20)(b) (1983).
109. *Id.*
110. FLA. STAT. § 380.06(20)(b)(1) (1983).
111. FLA. STAT. § 380.06(20)(b)(2) (1983).
112. FLA. STAT. § 380.06(20)(b)(1) (1983).

unless it is inconsistent with the development order or the original approval was based upon "substantially inaccurate information."[113]

Notwithstanding the clear intent of the statute, master development approval apparently does not absolutely preclude subsequent review of a project. In *General Development Corp. v. Florida Land and Water Adjudicatory Commission*,[114] the local government issued a master development order subject to certain conditions, one of which required that subsequent increments be in conformity with the master plan. When an incremental ADA was subsequently submitted and approved by the local government as being in conformity with the master plan, the RPC and the Division of State Planning appealed to the Adjudicatory Commission. A hearing officer was designated and the developer sought to limit the hearing to a determination of whether the incremental development order conformed to the master development order. The hearing officer refused to limit the hearing and entered a prehearing order indicating that the issue would be whether the ADA met the standards of chapter 380.[115]

The First District Court of Appeal upheld the hearing officer's prehearing order.[116] The court held that the conditions attached to the master development order required that an incremental ADA conform to both the master ADA and the provisions of chapter 380 generally.[117] Hence, the court found that the hearing officer's order was reasonable.

The *General Development* decision does not contradict the clear intent of the statute, which dictates that "review of subsequent incremental applications shall be limited to . . . issues specifically raised by the master development order . . . ."[118] Conformity with the master development order is mandatory. The court specifically noted that the prehearing order did not ignore the master development order, but held that in this particular case the scope of inquiry was not limited to the four corners of the master development order because it had provided that the development must conform to chapter 380 generally.[119] But the decision may also be read simply to demonstrate the judiciary's deference to a hearing

113. FLA. STAT. § 380.06(20)(b)(2) (1983).
114. 368 So. 2d 1323 (Fla. 1st DCA 1979).
115. *Id.* at 1325.
116. *Id.* at 1326.
117. *Id.*
118. FLA. STAT. § 380.06(20)(b)(2) (1983).
119. 368 So. 2d at 1326.

officer's discretion to consider all evidence relevant to chapter 380.

3. Substantial Deviations

A recurrent problem under chapter 380 has arisen when developers seek to make changes in a previously approved project. The ELWMA provides another procedure known as a "substantial deviation determination" to either approve or disapprove these changes.[120]

A substantial deviation is defined as "any change to the previously approved development of regional impact which creates a reasonable likelihood of additional adverse regional impact, or any other regional impact created by the changes not previously reviewed by the regional planning agency."[121] Chapter 380 creates negative presumptions to assist local governments in assessing whether proposed changes to an approved DRI should be subject to further review. Specifically, the following changes are presumed *not* to be substantial deviations:

> 1. An increase in the number of dwelling units of not more than 5 percent or 200 dwelling units, whichever is less.
> 2. A decrease in the number of dwelling units which does not require a major redistribution of density.
> 3. A decrease in the area set aside for common open space of not more than 5 percent or 50 acres, whichever is less.
> 4. An increase in the area set aside for common open space.
> 5. An increase in the floor area proposed for nonresidential use of not more than 5 percent or 10,000 square feet, whichever is less.
> 6. A decrease in the regional impact of the development.
> 7. A change required by permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency.[122]

The substantial deviation process is designed to prevent a developer from circumventing the DRI process by not submitting controversial phases of a project with the initial application for development approval and then subsequently changing the project once

120. FLA. STAT. § 380.06(17)(a) (1983).
121. *Id.*
122. FLA. STAT. § 380.06(17)(b) (1983).

a development order has been issued.[123] The burden of proof, however, lies with the moving party, that is, the party raising the issue.[124] The developer's only responsibility is to submit to the local government proposed changes to an approved DRI project.[125] The local government must review the changes according to the abovementioned statutory presumptions.[126] The moving party, which is usually the local government, the RPC, or persons opposing the changes, must rebut the presumptions by clear and convincing evidence.[127] Otherwise, the development is not subject to further DRI review.

4. Areawide Development Plans

In 1984, the Florida Legislature created a DRI review procedure known as the areawide development plan (ADP).[128] This new process is designed to encourage predevelopment planning and consensus-building for specified areas that will include at least two individual developments.[129] Under this process, a petition for an ADP is submitted to the appropriate bodies[130] and a regular DRI review takes place with local hearings, RPC review, and opportunity for public input.[131]

Specifically, the petition for the proposed ADP is filed with the local government, the appropriate RPC, and the state land planning agency. The local government must then schedule a public hearing.[132] The local government has the duty to give notice to the

---

123. FLA. STAT. § 380.06(17)(a) (1983) also recognized the right of the local government or Department of Community Affairs to enjoin a DRI pursuant to section 380.11 if the changes violate the provisions of chapter 380.

124. FLA. STAT. § 380.06(17)(c) (1983).

125. FLA. STAT. § 380.06(17)(a) (1983).

126. *Id.*

127. FLA. STAT. § 380.06(17)(c) (1983). This section also states that "[t]he appropriate local government shall afford a reasonable opportunity for a developer or other substantially affected party to present evidence to support or rebut such presumptions."

128. Act of June 24, 1984, ch. 84-331, 1984 Fla. Laws 1788 (to be codified at FLA. STAT. § 380.06(26)(a)-(l)).

129. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(a)(1)).

130. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(b)(1)).

131. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(b)). This section requires the state land planning agency to establish administrative rules governing the procedure and criteria for petitioning for authorization to submit a proposed areawide development plan for a defined planning area. When developed, these rules will be located in chapter 27F of the Florida Administrative Code.

132. Ch. 84-331, § 1, 1984 Fla. Laws 1789-90 (to be codified at FLA. STAT. §

public, the appropriate RPC, the state land planning agency, other local governments which have jurisdiction over the defined planning area, and persons designated by the state land planning agency as entitled to receive such notices.[133] Of major significance, however, is the affirmative duty of the applicant to provide every owner of property within the defined planning area with timely and actual notice of the proposed development plan.[134] This duty extends only to those property owners within the defined planning area, not to adjacent or surrounding property owners, or to interested or affected parties or persons.

The criteria for reviewing an ADP petition differ from regular DRI review in that additional requirements are mandated: the developer must be financially capable of processing the application through final approval;[135] the ADP must be in the public interest;[136] the developer must demonstrate that it is legally, financially, and administratively able to perform any commitments it has made in the ADP;[137] the developer must demonstrate that all property owners within the defined planning area consent or do not object to the proposed ADP;[138] and the area and anticipated development must be consistent with local, regional, and state comprehensive plans.[139]

The first two criteria will be encountered by the ADP petitioner when he initially applies for authorization from the local government to submit an ADP. These two criteria, and perhaps others which may be adopted in the future,[140] are used by the local gov-

---

380.06(26)(b)(1), (d)).

133. Ch. 84-331, § 1, 1984 Fla. Laws 1790 (to be codified at FLA. STAT. § 380.06(26)(d), (d)(1)).

134. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(b)(1)).

135. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(b)(3)(a)).

136. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(b)(3)(b)).

137. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(i)(1)).

138. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(i)(2)). An owner may later withdraw his consent to the ADP. The result would be that the ADP would not apply to the owner's property and the owner would not be exempt from the DRI review process for future development of his property. No approval is needed to withdraw consent prior to local government approval, but after the ADP has been approved the owner must have the approval of the local government to withdraw consent. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(l)).

139. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(i)(3)).

140. Ch. 84-331, § 1, 1984 Fla. Laws 1789-90 (to be codified at FLA. STAT. § 380.06(26)(b)). This section authorizes the state land planning agency to develop additional

ernment, the RPC, and the state land planning agency to determine if the petitioner is qualified to apply for an ADP. This is important because the developer is seeking to affect land which he does not entirely own. Therefore, subsections 380.06(26)(a)-(g), inclusive, outline an elaborate procedure necessary to authorize the developer to act as the representative of the land owners in the area and to apply for an application for area development approval. If the petitioner is qualified, then he receives authorization from the local government to submit an application for area development approval for the proposed ADP for a defined planning area.[141]

The section also enumerates criteria and directives to be used by the local government and the RPC in the actual evaluation of the application for the ADP.[142] This procedure is cumulative to all other requirements of the chapter 380 DRI review process.[143]

It should be noted that the criteria in subsection 380.06(26)(i) are intended as guidelines, not absolute requirements. Thus, in its discretion the reviewing body may allow deviation. The exact degree of permissible deviation is not stated, but chapter 380 in general requires that the public interest protected by the police power of the state be balanced against the rights of the individual property owners.[144]

Following the public hearing the local government must issue a written order either approving, approving with conditions, or denying the petition.[145] If the order approves or approves with conditions, the local government must submit copies of the order to the petitioner, every landowner within the defined planning area, the RPC, and the state land planning agency.[146] The order must incorporate by reference the approved ADP and also must specify the approved land uses and the amount of development approved within each land use category within the defined planning area.[147]

---

criteria.

141. Ch. 84-331, § 1, 1984 Fla. Laws 1790-91 (to be codified at FLA. STAT. § 380.06(26)(h)).

142. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(i) to (k)).

143. Ch. 84-331, § 1, 1984 Fla. Laws 1789, 1791 (to be codified at FLA. STAT. § 380.06(26)(b)(1), (i)).

144. Graham v. Estuary Properties, Inc., 399 So. 2d 1374, 1377 (Fla. 1981), *cert. denied sub nom.* Taylor v. Graham, 454 U.S. 1083 (1981).

145. Ch. 84-331, § 1, 1984 Fla. Laws 1790 (to be codified at FLA. STAT. § 380.06(26)(e)).

146. Ch. 84-331, § 1, 1984 Fla. Laws 1790 (to be codified at FLA. STAT. § 380.06(26)(f)).

147. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(j)).

Although the criteria for approval of an ADP are more stringent than regular DRI review, once the ADP is adopted, conforming individual developments within the boundaries of the ADP may be commenced without any further DRI review, unless the ADP development order provides otherwise.[148] Only where an individual development is not consistent with the specifications of the ADP must the developer re-enter the DRI review process.[149] Only if the developer wishes to propose changes to the ADP, or substantially deviate from it, must he request further review and obtain local government approval under the DRI process.[150] Proposed changes regarding the type of land use or increases in the amount of development are presumed to be substantial deviations from the ADP and will be subject to further DRI review.[151]

The requirement of unanimous consent to or no objection to the proposed ADP by all property owners within the defined planning area may appear likely to make the ADP a seldom-used DRI review procedure. However, only those persons who own land within the defined planning area must consent or not object to the proposed ADP.[152] Therefore, according to the rationale of 380.06(26), it is possible to design the geographic description of the defined planning area so that those who will not consent simply are not included within the defined planning area of the ADP, and therefore their consent is unnecessary.[153] Most likely, this new procedure will find use in situations where the area encompassed by the ADP is owned by a relatively cohesive group of owners, perhaps such as common business venturers, or where the purpose is redevelopment of a neighborhood or deteriorating downtown area.

---

148. Ch. 84-331, § 1, 1984 Fla. Laws 1789 (to be codified at FLA. STAT. § 380.06(26)(a)).

149. Ch. 84-331, § 1, 1984 Fla. Laws 1789, 1790-91 (to be codified at FLA. STAT. § 380.06(26)(a), (h)).

150. Ch. 84-331, § 1, 1984 Fla. Laws 1790-91 (to be codified at FLA. STAT. § 380.06(26)(h), (k)).

151. *See* Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(k)).

152. Ch. 84-331, § 1, 1984 Fla. Laws 1791 (to be codified at FLA. STAT. § 380.06(26)(i)(2)).

153. It is likely this will eventually raise the issue as to the rights of owners of property within the defined planning area of the ADP who do not consent to the ADP and by design of the defined planning area are turned into "out-parcel" owners who end up being inescapably surrounded by the results of the ADP to which they were opposed. While the legislation implementing this new section does not permit the developer to unilaterally impose its will upon a property owner, this "out-parceling design" would seem to have this effect, and would certainly create litigation if it is freely permitted.

IV. APPEALS UNDER CHAPTER 380

A. *Standing*

Once a development order is rendered by a local government, four parties — the owner, the developer, the appropriate RPC, and the Department of Community Affairs — have standing to appeal the order to the Adjudicatory Commission.[154] This provision of chapter 380, which has been described as a "limited standing rule,"[155] prevents other persons or entities from directly appealing a local government development order to the Commission. Attempts to broaden standing have failed.[156]

The rationale for the limited standing rule has been declared to be the avoidance of administrative and judicial delay in resolving a landowner's rights.[157] As one court aptly noted, "[t]o allow various other parties to appeal a development order could delay one's right to proceed with a development project approved by local authorities and reviewed by regional officials."[158]

However, the rigidity of this rule has produced unfair results. For example, in *Londono v. City of Alachua*,[159] the court denied standing to individuals who owned property within a DRI but whose property had been developed before the overall develop-

---

154. FLA. STAT. § 380.07(2) (1983).

155. Pelham, *Chapter 380's Closed Shop: The Limited Standing Rule*, 7 ENVIRONMENTAL AND LAND USE LAW SECTION REPORTER 6 (1984) (newsletter of the Florida Bar Environmental & Land Use Law Section).

156. *See, e.g.*, Friends of the Everglades, Inc. v. Board of County Comm'rs of Monroe County and Friends of the Everglades, Inc. v. Department of Community Affairs, ___ So. 2d ___, 9 FLW 1637, 1639 (1st DCA, July 25, 1984), (not consolidated, but addressed in single opinion) (intervention before a local government in a DRI proceeding pursuant to section 403.412(5), FLA. STAT. does not carry with it the right to appeal DRI orders to the Adjudicatory Commission); Londono v. City of Alachua, 438 So. 2d 91 (Fla. 1st DCA 1983) (property owners within a DRI whose property had been developed before the overall development attained DRI status had no standing to appeal a development order to the Adjudicatory Commission; "owner" within the meaning of the statute includes only the owners of property *to be developed* in the proposed DRI); Caloosa Property Owners Ass'n v. Palm Beach County Bd. of County Comm'rs, 429 So. 2d 1260, 1263-64 (Fla. 1st DCA 1983) (adjacent property owners had no standing to appeal development order to Adjudicatory Commission); Sarasota County v. General Dev. Corp., 325 So. 2d 45, 47 (Fla. 2d DCA 1976) (county had no standing to appeal to the Adjudicatory Commission a development order issued by municipality); Sarasota County v. Beker Phosphate Corp., 322 So. 2d 655, 658 (Fla. 1st DCA 1975) (county had no standing to appeal to the Adjudicatory Commission a development order issued by neighboring county).

157. *Caloosa*, 429 So. 2d at 1266; *Beker Phosphate*, 322 So. 2d at 658 n.11.

158. *Caloosa*, 429 So. 2d at 1266.

159. 438 So. 2d 91 (Fla. 1st DCA 1983).

ment attained DRI status. The court concluded that the individuals were not "owners" within the meaning of the statute because the term was intended to include only owners of land proposed for development.[160] Since their land had already been developed, the plaintiffs were not the "owners" entitled to appeal to the Adjudicatory Commission under chapter 380.

Under the reasoning of *Londono*, owners of developed lots in a neighborhood which ultimately becomes a DRI cannot appeal a development proposal which might significantly expand the size or density of the neighborhood, even though regional interests could be affected by the proposal. Only the owner of lots *proposed* for development could appeal under the DRI statutes.

In practice, the inflexibility of the limited standing rule has been substantially diluted by the Adjudicatory Commission, which has allowed the intervention with full party status of third parties once an appeal has been initiated by one of the four parties with standing under the statute.[161] Under the rules of the Commission, "materially affected parties" may intervene in its proceedings "[u]pon motion and good cause shown."[162] This, in effect, has allowed some persons to do indirectly what the statute does not allow directly and, without question, has delayed various projects.

An example of this anomaly occurred in *Florida Department of Community Affairs v. Keevan*,[163] popularly referred to as *Shark Key*. In that case, the Department of Community Affairs on May 18, 1983, appealed a development order to the Commission and a hearing officer was appointed.[164] Prior to the hearing, the parties entered into a stipulated settlement based upon concessions made by the developer to restrict the density and building heights of a multi-family project. Consequently, the hearing officer entered an Order of Dismissal on November 11, 1983.

Then, on January 17, 1984, a representative of the Florida Audubon Society appeared before the Adjudicatory Commission seeking

---

160. *Id.* at 93.

161. Rule 27G-1.06, FLA. ADMIN. CODE (1982), permits the Adjudicatory Commission to allow intervention with full party status but offers no guidelines as to when full party status should *not* be allowed. Hence, the Commission has routinely granted intervenors full party status.

162. *Id.*

163. DOAH Case No. 83-1584 (1984).

164. *Shark Key* involved a development order issued in the Florida Keys Area of Critical State Concern (*see* Resolution No. MD 83-6 of the Zoning Board of Monroe County Approving Shark Key Resort, a Major Development Located in an Area of Critical State Concern), but the issues raised under section 380.07, FLA. STAT., (1983) are germane to all DRIs.

further concessions from the developer. And, on February 1, 1984, some nine months after the appeal was initiated and two months after it was dismissed, the Audubon Society filed a petition to intervene in the case and invalidate both the settlement and order of dismissal. As a result of this action on the part of the Audubon Society, the Commission delayed action on the project on February 7, 1984, and on February 21, 1984, rejected the Stipulation of Settlement and remanded the case to the hearing officer for further proceedings.

Before a hearing could be held, however, cosmetic concessions[165] were made by the developer and a settlement resulted. Under the terms of the stipulated settlement, the Audubon Society was allowed to intervene and minor changes were made in the project in order for the case to be dismissed without further delay. On March 15, 1984, a final order approving the project based upon the parties' settlement was entered.

Shark Key demonstrates the costs to the developer whenever intervention is permitted. Not only is the project delayed, but money often must be spent in litigating appeals. Moreover, the public may also suffer a loss in certain circumstances. In *Shark Key* the settlement reached after the Audubon Society intervened was no better than the settlement reached three months earlier between the Department of Community Affairs and the developer. But the Governor and Cabinet, sitting as the Adjuducatory Commission, their staff, and employees of the Department of Community Affairs spent an inordinate amount of time — at taxpayer expense — attempting to satisfy the demands of the Audubon Society. Interestingly enough, had the Audubon Society not entered into a settlement stipulation it could have delayed the project even longer by insisting on a formal administrative hearing.[166]

In addition to the Adjudicatory Commission's rules, intervention is also possible in DRI proceedings under the Florida Environmen-

---

165. The additional "concessions" obtained by the Audubon Society were that the developer not apply for future permits to construct boat docking facilities or marinas in water less than four feet deep at mean low tide, and that density of the project comply with the new Monroe County Comprehensive Plan. Ironically, Principles for Guiding Development in Monroe County proposed at the time of the settlement would not have allowed docking facilities in waters less than four feet anyway; and pursuant to section 163.3161(5), FLA. STAT., (1983) "no public or private development shall be permitted [in any county in the State of Florida with approved comprehensive plans] except in conformity with comprehensive plans . . . ."

166 Since the Audubon Society had intervened with full party status, its right to a formal administrative hearing was guaranteed under Rule 27G-1.01, FLA. ADMIN. CODE (1982).

tal Protection Act (FEPA), which provides that any citizen may intervene in any proceeding for the protection of the environment.[167] This means that interested persons who are denied standing under the limited standing rule may *intervene* at both the local level in the DRI proceedings and before the Adjudicatory Commission if an appeal is taken from a development order by one of the groups or individuals granted standing under chapter 380 to take an appeal.[168] But the FEPA does not create a right to *appeal* local development orders to the Adjudicatory Commission for those who are adversely affected by the limited standing rule, but who are not granted standing.[169]

Although the limited standing rule was designed to prevent delay, it was not intended to preclude public participation in DRI appeals or proceedings. In practice, public participation by interested persons, including the submission of oral and written comments, is encouraged by the Commission. Moreover, the DRI process affords materially affected or interested persons ample opportunity to participate in proceedings before RPCs[170] and local governments.[171] The limited standing rule merely limits *party status* to four statutorily enumerated persons and entities in order to avoid delay in resolving a landowner's right to lawfully use his or her property. In essence, "[i]n exchange for the developer's subjection to additional review, 'red tape' and expense, he is promised expeditious action."[172]

However, critics of the limited standing rule argue that it precludes *effective* participation in DRI appeals because without standing citizens can neither challenge environmentally unsound projects which are not appealed to the Adjudicatory Commission nor persuade politicians to modify those projects which are appealed. This criticism presupposes that administrative agencies and politicians are not responsive to public input. The veracity of this supposition is unclear, but even if true, the problem is political rather than legal, and its solution may lie in a change in officials rather than the law. Nevertheless, a dispositive determination by

---

167. FLA. STAT. § 403.412 (1983); *Caloosa*, 429 So. 2d at 1264-65.

168. *Friends*, 9 FLW at 1639. The court did not invalidate the initial intervention by Friends of the Everglades and Upper Keys Citizens Association at the local level.

169. *Id.* at 1638-39.

170. An RPC must give "any substantially affected party reasonable opportunity to present evidence" for inclusion in its DRI report. FLA. STAT. § 380.06(11)(c) (1983).

171. FLA. ADMIN. CODE Rule 9B-16.09 (Supp. 1982).

172. *Friends*, 9 FLW at 1639.

either the legislature or supreme court is needed to ascertain the extent of involvement allowed parties not specifically enumerated in chapter 380.

Intervention and informal participation in DRI proceedings are not the only remedies available to members of the public. Other legal remedies also are available to substantially affected parties not entitled to appeal a local development order to the Adjudicatory Commission. Actions may be brought in circuit court challenging local zoning decisions which are part of the development order rendered by the local government[173] or alleging that the order constitutes a taking of property.[174] Both of these remedies are local as opposed to regional and are properly brought in circuit court. Moreover, such remedies are consistent with chapter 380 because "it is not the purpose of Chapter 380 to provide a forum for parties whose complaints focus on alleged detriment to activities they wish to conduct on adjoining lands."[175] In other words, should an adjoining landowner object to a development order which rezoned land within the DRI, the proper forum would be to challenge such a local zoning decision in circuit court rather than before the Adjudicatory Commission.

B. Appeal Procedure

DRI appeals are conducted in accordance with the rules of the Adjudicatory Commission[176] and the Florida Administrative Procedure Act.[177] The appeal must be taken within forty-five days after the development order is rendered by the local government.[178] Appeals to the Commission should not be confused with judicial appeals. The term "appeal" in the statute is construed in its "broadest, non-technical sense, i.e., to mean merely an application to a higher authority."[179]

---

173. *Friends*, 9 FLW at 1638; *Londono*, 438 So. 2d at 92; *Caloosa*, 429 So. 2d at 1265, (citing Renard v. Dade County, 261 So. 2d 832 (Fla. 1972)).

174. FLA. STAT. § 380.085(2) (1983). *See also Caloosa*, 429 So. 2d at 1264.

175. *Suwannee River*, 384 So. 2d at 1374 (Fla. 1st DCA 1980). *See also Londono*, 438 So. 2d at 93 (Fla. 1st DCA 1983).

176. Rule 27G-1.02 to .11, FLA. ADMIN. CODE (1982) governs the conduct of all appeals to the Adjudicatory Commission.

177. FLA. STAT. ch. 120 (1983). *See also* FLA. STAT. § 380.07(3) (1983); FLA. ADMIN. CODE Rule 27G-1.01 (1982).

178. FLA. STAT. § 380.07(2) (1983). The form of pleadings, motions, etc., are prescribed by rules of the Adjudicatory Commission. *See* FLA. ADMIN. CODE Rule 27G-1.01 to .11 (1982).

179. Transgulf Pipeline Co. v. Board of County Comm'rs of Gadsden County, 438 So. 2d

An administrative hearing is usually conducted by a hearing officer designated by the Division of Administrative Hearings of the Florida Department of Administration.[180] The hearing is conducted in accordance with the Florida Administrative Procedure Act and the Model Rules of Procedure adopted by the Commission.[181] Parties may be required to submit proposed findings of fact, conclusions of law, and memoranda of law to support their positions.[182]

The Commission encourages appeals on the record whenever a full and complete hearing has been conducted before the local government.[183] What constitutes a full and complete hearing is not completely clear. However, if testimony is taken under oath with the right of cross-examination before the local government, it is generally admissible in any subsequent hearing before the Commission or an appointed hearing officer.[184] Conceivably, in some cases the record of a full and complete hearing could constitute the only evidence admitted in a later administrative hearing.[185] In practice, however, the record of local government hearings normally supplements the evidence that is offered at the later hearing before the Commission.

Once a hearing is held, the hearing officer usually issues a recommended order after which the parties may file written exceptions and briefs within fifteen days.[186] A request for oral argument must also be filed at this time.[187] The Commission then holds a public meeting to consider the recommended order.[188] The Commission

---

876, 878 (Fla. 1st DCA 1983).

180. Rule 27G-1.08(1), FLA. ADMIN. CODE (1982), also allows the Adjudicatory Commission or a member thereof to act as a hearing officer. However, due to the workload of the Governor and Cabinet, a DOAH hearing officer is virtually always selected.

181. FLA. ADMIN. CODE Ch. 28 (1982).

182. FLA. ADMIN. CODE Rule 27G-1.08(3) (1982).

183. FLA. STAT. § 380.07(3) (1983).

184. General Dev. Corp. v. Florida Land and Water Adjudicatory Comm'n, 368 So. 2d 1323, 1325-26 (Fla. 1st DCA 1979); *Transgulf*, 438 So. 2d at 879.

185. *Transgulf*, 438 So. 2d at 879. The court noted that:

> [a]ny DRI applicant who chooses to "sit out" the local decision-making process or who purposely fails to exercise procedural rights (such as cross-examination) at the local government hearing does so at his own risk [because] [i]f the local government entity conducts its hearing with adequate procedural safeguards, such a hearing would presumably be considered full and complete by the Commission or its hearing officer and admitted into evidence at the section 120.57 hearing.

186. FLA. ADMIN. CODE Rule 27G-1.09(2) (1982).

187. *Id.*

188. FLA. ADMIN. CODE Rule 27G-1.09(1) (1982). The public meeting conducted by the Adjudicatory Commission more closely resembles an appellate proceeding rather than a

must render a final decision on the order within ninety days after the recommended order is submitted, and copies are then mailed to all parties.[189] The decision of the Commission is final agency action and subject to judicial review pursuant to chapter 120 in the appropriate district court of appeal.[190]

C. *Scope of Review*

A troublesome issue for attorneys practicing before the Adjudicatory Commission concerns the scope of that agency's review authority. The ELWMA vests the Commission with discretion to review development orders by allowing the Commission to issue a decision granting or denying permission to develop with the right to attach conditions and restrictions thereto.[191] But the ELWMA also clearly implies that the Commission should not supplant local decisions which are not inconsistent with the purposes of the Act.[192] Nor may the Commission unilaterally impose conditions on a project which are unsupported by the record. For example, in *Fox v. Treasure Coast Regional Planning Council*,[193] the Commission affirmed a development order but imposed several new conditions on the developer which were neither presented to nor considered by the hearing officer. The First District Court of Appeal held that there was insufficient evidence in the record to support the final order because the compromise plan fashioned by the Commission was not remanded to the hearing officer for findings of fact sufficient to support the final order.[194]

Ideally, the Commission should not unilaterally fashion compromises when a hearing officer has been designated.[195] In those

---

trial. Oral presentations are generally made by the parties followed by questions from the Governor and Cabinet members. The public also is permitted to make oral presentations.

189. FLA. ADMIN. CODE Rule 27G-1.11 (1982).

190. FLA. STAT. §§ 120.68(1),(2) (1983).

191. FLA. STAT. § 380.07(4) (1983).

192. Section 380.021, FLA. STAT. (1983), provides in part:

> In order to accomplish [the purposes of the Act], it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development . . . and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

193. 442 So. 2d 221 (Fla. 1st DCA 1983).

194. *Id.* at 223.

195. The rules of the Adjudicatory Commission allow the Commission or a member thereof to sit as a hearing officer under Rule 27G-1.08(1), FLA. ADMIN. CODE (1982). Whenever a hearing officer is not designated, the Commission acts as the finder of fact and fashions whatever solutions or compromises the evidence and record support.

instances, the Commission is sitting as a quasi-judicial body and should only render a decision based upon the hearing officer's recommendations as the finder of fact. The hearing officer, however, should be free to approve, deny, or impose restrictions regarding its recommended order in fashioning a compromise. But the Commission should make determinations only as to whether the factual findings are supported by substantial, competent evidence. It should not in such circumstances fashion an entirely new plan or impose new conditions without the benefit of a full evidentiary hearing.[196]

The Adjudicatory Commission's authority to review local land use decisions within the DRI process is well settled.[197] However, the scope of such review is uncertain and the extent of the Commission's discretion in modifying local decisions is open to question. One court has cautioned that the Commission cannot "arbitrarily ignore local zoning laws or decisions [within the DRI process], and its orders are always subject to review by the district courts of appeal."[198]

The focus of review on appeal is whether the project conforms to the standards of chapter 380. This review is best illustrated by the Supreme Court of Florida's decision in *Graham v. Estuary Properties, Inc.*[199] In *Estuary Properties*, a substantial wetland area was to be developed. The RPC recommended that the application be denied.[200] The local government adopted the council's report and denied development approval unless twelve conditions were satisfied.[201] The developer thereafter appealed to the Commission. The hearing officer entered a recommended order which concluded that the environment would be adversely affected by the destruction of mangroves, that an interceptor waterway would not adequately replace the functions of the mangroves, and that the risks of pollu-

---

196. *See* section 120.57(1), FLA. STAT. (1983), which provides for formal administrative hearings.

197. FLA. STAT. § 380.07(4) (1983). *See also* Manatee County v. Estech Gen. Chem. Corp., 402 So. 2d 1251, 1255 (Fla. 2d DCA 1981):

> Chapter 380, in providing for review of local zoning decisions in the DRI process, does not remove local land use decisions from the control of local governing bodies. It simply shifts the review of those decisions from the circuit court to the Land and Water Adjudicatory Commission. Because a development of regional impact substantially affects more than one county, the Adjudicatory Commission will review decisions with regional interests in mind.

198. *Id.* at 1256.

199. 399 So. 2d 1374 (Fla. 1981).

200. *Id.* at 1376-77.

201. *Id.* at 1377.

tion in surrounding waters would be increased and the area's economy adversely affected.[202] The recommended order was adopted as a final order by the Commission with respect to the finding of adverse environmental impacts.[203]

An appeal was taken to the First District Court of Appeal where the court held for the developer.[204] The court reasoned that the developer only had the burden of supporting its application in accordance with the DRI statute and that objectors to the project must prove that the project would impair the public interest.[205] Since this was not done, the court held that a taking of property had occurred and it remanded the case to the Commission with instructions to enter an order granting development approval of the entire project unless condemnation proceedings were instituted.[206]

The supreme court reversed and upheld the Commission's discretion to balance the six factors which the statute requires to be considered in DRI review.[207] The court concluded that chapter 380 requires a balancing of the public interest protected by the police power of the state against the private property rights of the land-

---

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* at 1378.

206. *Id.* at 1377-78.

207. Graham v. Estuary Properties, Inc. 399 So. 2d 1374 (Fla. 1981). Section 380.06(11)(a), FLA. STAT. (1983), contains six factors which must be addressed in the report of the RPC. The council must consider whether, and the extent to which:

> 1. The development will have a favorable or unfavorable impact on the environment and natural resources of the region.
>
> 2. The development will have a favorable or unfavorable impact on the economy of the region.
>
> 3. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.
>
> 4. The development will efficiently use or unduly burden public transportation facilities.
>
> 5. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.
>
> 6. The development complies with such other criteria for determining regional impact as the regional planning agency deems appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54. Regional planning agencies may also review and comment upon issues which affect only the local governmental entity with jurisdiction pursuant to this section; however, such issues shall not be grounds for or be included as issues in a regional planning agency appeal of a development order under s. 380.07.

owner.[208] More importantly, the court indicated that specific values are not attached to any one statutory factor and four favorable factors do not necessarily outweigh two unfavorable factors.[209]

The court also discussed the burden of proof in DRI proceedings. The court held that the state, if it is denying a permit, must first prove that adverse impact will result if a permit is granted.[210] Then, if adverse impact is shown, the burden shifts to the developer to show that its proposed curative measures will be adequate to offset any negative impact resulting from the development.[211] The court then found that the state had met its burden of proof and that the Commission's findings with respect to the environmental damage which would result from the interceptor waterway were supported by competent, substantial evidence in the record.[212] However, the court held that the Commission erred by not recommending changes which would enable the project to receive development approval.[213] Hence, the court held that the Commission cannot absolutely deny a project unless, if possible, recommendations are made which may ultimately result in approval of the project.[214]

V. CONCLUSION

The Environmental Land and Water Management Act was enacted with the expressed purpose of establishing "land and water management policies to guide and coordinate local decisions relating to growth and development . . . ."[215] In the years which have elapsed since its enactment, state and regional involvement under chapter 380 has increased at the expense of local autonomy over land use decisions.

The DRI process has become the cornerstone of Florida's growth

---

208. *Estuary Properties*, 399 So. 2d at 1380-83.

209. *Id.* at 1377.

210. *Id.* at 1379 (citing Zabel v. Pinellas County Water and Nav. Control Auth., 171 So. 2d 376 (Fla. 1965)).

211. *Id.*

212. *Id.*

213. *Id.* at 1380, citing section 380.08(3), FLA. STAT. (1973), which provides that "[i]f any governmental agency denies a development permit under this chapter, it shall specify its reasons in writing and indicate any changes in the development proposal that would make it eligible to receive the permit." The wording in section 380.08(3), FLA. STAT. (1983), remains identical.

214. *Estuary Properties* 399 So. 2d at 1380-83. The court also rejected the argument that denial of the permit constituted a taking, and concluded that restrictions reducing the size and density of the project were reasonable exercises of the police power.

215. FLA. STAT. § 380.021 (1983).

management program.[216] The continued success of the DRI process, however, will lie in its ability to balance the competing interests which often clash when a large development is proposed. To accomplish this, changes in the act must be made. For the benefit of all parties, standing and intervention rules must be clarified. Limited standing makes no sense if liberal intervention negates its purpose of avoiding delay and protecting the rights of developers to proceed with an approved development. On the other hand, limited standing, when rigidly applied, can produce absurd results such as those demonstrated by the *Londono* case.[217] A fair solution to this problem would be the broadening of standing to allow adjacent landowners or other particularly defined persons to appeal development orders to the Adjudicatory Commission while restricting intervention. But if intervention is allowed, a specified point of entry should be adopted, perhaps by rule, to avoid belated intervention of the type that occurred in *Shark Key*.[218]

The Adjudicatory Commission's scope of review also must be more clearly defined. This is especially important because future growth pressures in Florida will undoubtedly result in more DRIs, thereby requiring increased official and public awareness of the parameters of the Commission's discretion in approving, denying or modifying development orders. Ideally, the Commission should function as a decision-making body, not a finder of fact. Factual determinations should be made by local governments and, when a project is appealed, by a hearing officer. Moreover, decisions of the Commission should be limited to a review of the record established at the local level and before the hearing officer, and evaluated upon the standard of substantial, competent evidence. Compromises fashioned by the Commission which are unsupported by the record, as demonstrated by the *Fox* decision,[219] should be avoided. Strict adherence to these principles would avoid repetitive proceedings and put all parties on notice as to the scope of DRI review.

---

216. FINAL REPORT OF THE ENVIRONMENTAL LAND MANAGEMENT STUDY COMMITTEE, 37 (Feb. 1984) [hereinafter cited as ELMS II REPORT]. In 1983, Florida Governor Bob Graham appointed the second Environmental Land Management Study Committee (ELMS II) to review growth management legislation in the state, particularly chapter 380. After 15 public meetings were held throughout the state, a final report was made to the Governor in February of 1984. The report and proposed legislation was submitted to the Florida Legislature but died without reaching the floor of either the House or Senate for a vote.

217. *Londono*, 438 So. 2d at 91. *See supra* notes 159-160 and accompanying text.

218. DOAH Case No. 83-1584 (1984). *See supra* notes 163-166 and accompanying text.

219. *See supra* notes 193-194 and accompanying text.

The continued viability of the DRI process depends upon changes in the law designed to foster predictability in identifying potential DRIs. Current presumptive thresholds should be modified. One proposal would exclude all developments from DRI review at or below 65 percent of a numerical threshold and include all developments at or above 135 percent of a threshold.[220] Projects falling within the 70 percent band above and below the numerical thresholds would be subject to the existing presumptions and subject to rebuttal in the binding letter process. This proposal would add a needed measure of predictability for developers for determining whether a project is a DRI, and would permit the Department of Community Affairs to more efficiently utilize its resources in making binding letter determinations and carrying out its other responsibilities under the ELWMA.[221]

Changes to chapter 380 designed to insure developer participation should also be made. Incentives such as tax breaks for the construction of low- and middle-income housing is an idea worthy of consideration. But punitive measures should also be developed to eliminate avoidance of the DRI process by developers. If the DRI process is to remain an important tool in Florida's growth management program, the Department of Community Affairs must have increased enforcement authority and resources to monitor large developments statewide.

As Florida approaches the year 2000, changes in the DRI process will undoubtedly occur in anticipation of increased growth pressures. The basic structure of the law will probably remain intact, but should be clarified to add predictability and eliminate delay. Most importantly, changes in the law must be guided by the goal of facilitating orderly and well-planned development while protecting Florida's natural resources and environment.

---

220. One particularly worthy recommendation of the ELMS II Committee involved modifying the presumptive threshold. For a detailed discussion of this proposal, see ELMS II REPORT at 59.

221. The ELMS II Committee found that the DRI section of the Department of Community Affairs spent between 60 and 70 percent of its time engaged in binding letter review, leaving little time to review actual DRIs and take appeals for projects inconsistent with the Act. ELMS II REPORT at 57-58.