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An Introduction to Developments of Regional Impact

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Q. What is the DRI program?

A. It is a State-required process for obtaining authorization to develop land for certain types of projects. In concept, it is intended to regulate a development which will have effects on more than one local government because of the project's character, location or magnitude. The project is reviewed to identify multi-jurisdictional "impacts" -- also called regional impacts -- and to require that those impacts be ameliorated through "mitigation" by the developer. That's why the program is called the development of regional impact ("DRI") program.

Q. Is DRI approval the same as the local comprehensive plan?

A. No. The local comprehensive plan is the general direction-setting document that the local government has adopted to prescribe how it wants the community to develop and where it wants various land uses to be located. The local plan establishes the framework within which a developer must fit his or her DRI project, so usually the planning issues must be addressed first.

The local plan affects all land development decisions, not just those for DRI-scale projects. It also limits the discretion of local decision-makers in subsequent actions related to land development because all development permits and other local approvals -- including DRI development orders -- must be consistent with the local plan.

When preparing to do a DRI it is crucial to examine the underlying land use for the site. If the site has not been designated on the comprehensive plan's Future Land Use Map in a category that allows the uses and densities and intensities of use needed for the DRI, then the comprehensive plan must be amended to allow those uses and densities and intensities. It is possible to amend the Future Land Use Map and obtain DRI approval in tandem, with concurrently filed and processed applications.

Addressing the underlying land use for the site is an important strategic decision for the DRI developer. It should be evaluated in light of the project's business plan, the local political climate, State minimum criteria for local comprehensive plans, community attitudes and other factors. A DRI developer who addresses the underlying land use issue as an after-thought does so at his or her peril.

Q. How will we know if our project is a DRI?

A. The State has specified the kinds of projects which require DRI review and approval, based on the type of development and its characteristics, such as size. Generally, a project which exceeds any DRI "threshold" requires DRI review and approval. Typically, these are large projects. For example, an office park in excess of 300,000 square feet will be considered a DRI.

Q. Did the DRI program change when the Legislature made those far-reaching changes to growth management in 2011?

A. The principal changes made by the Legislature in 2011 affected the local government comprehensive planning program, as well as sector planning (discussed below). The changes made to the DRI program were more modest. Among the most significant was the decision to remove industrial and hotel uses from the DRI thresholds. That means a developer may do a single-use industrial or hotel project of any size and in any location and it will not require DRI review. If the industrial or hotel use is included in a multi-use project, however, it may have to undergo DRI review. A few other changes were made also.

Q. What types of impacts are considered during DRI review?

A. Here's the list of regional resources that state, regional and local agency reviewers examine when they evaluate a project for regional impacts:

Human Resources

Affordable Housing
Police and Fire
Recreation and Open Space
Education
Health Care
Energy
Historic and Archaeological
Sites

Environmental Resources

Vegetation and Wildlife
Wetlands
Water
Soils
Floodplains
Water Supply
Wastewater Management
Stormwater Management
Solid/Hazardous/Medical Waste

Transportation Resources

Roads, Mass Transit, Bicycles, etc.
Air
Hurricane Preparedness

Sometimes, the agencies and developer agree at the outset that certain issues do not need to be addressed in DRI review because they are not pertinent.

Q. *How does a developer begin DRI review for a project?*

A. The developer prepares an application. It is hundreds of pages, often in multiple three-ring binders, with maps, drawings, tables and charts that present information for the agency reviewers for all the issues identified above, except for those that the agencies agree the developer can omit. Preparation of the application is typically coordinated by the developer's land planners with input from other consultants and guidance by the developer's lawyers. The application is a key document because it presents an opportunity to address issues in a way which will promote their elimination or settlement. Because the application by law must be incorporated into the final DRI development order for the project, the application is an important legal document.

The application and a review fee are submitted to the pertinent regional planning council. Other copies are delivered to the local government and a wide range of review agencies so they can evaluate the project for impacts to regional resources or facilities.

Usually, one or more agencies will say they don't have all the information they need to review the proposed project. If that happens, the developer provides additional information, taking more time. This supplementary information typically is also included in the final DRI development order. Sometimes the developer's lawyers and planners can persuade the agencies they don't need all the additional information for the application to be "sufficient" for DRI review.

Q. *What do the review agencies do?*

A. Each agency evaluates the project for regional impacts that fall within the area of its expertise and authority. It may recommend mitigation for any regional impacts that it finds, or in very rare cases it may recommend denial of the project.

For example, the Florida Department of Transportation ("DOT") will get a copy of the application and examine the impacts on surrounding roadways caused by traffic that can be expected from the project. DOT may recommend mitigation for those impacts, usually in the form of improvements -- road-widenings, the addition of turn lanes or providing traffic signals -- for which the developer must pay. DOT also may recommend that a developer implement a "transportation demand management" program to encourage car-pooling, transit or staggered work hours.

During the DRI review, your lawyers and consultants should meet with agency reviewers to discuss technical issues, and minimize or eliminate some issues.

Q. *What happens after the agencies have completed their reviews?*

A. The regional planning council assembles all the agency comments and recommendations into a "regional report." It submits the regional report and draft development order to the local government and the State. This report and proposed development order contain all agency recommendations for the project.

Within a prescribed time period, the local government must hold a hearing on the proposed project and make a decision. In doing so, it may hear from project opponents or others who like or dislike certain parts of the project or the regional report.

Q. *Are agencies the only ones involved in DRI review?*

A. No. Citizen groups may meet with reviewers to ask them to recommend certain limitations on the project. They will show up at the local government hearing to either oppose the project or ask for conditions. They may even encourage the state land planning agency to appeal the development order after the local government adopts it.

Q. *What do you end up with after completing DRI review?*

A. DRI review typically concludes with a development order adopted by the local government with jurisdiction over the project. A DRI development order contains many requirements, or "conditions," which the developer must satisfy through the life of the project. Conditions are to be based on State rules, which establish uniform statewide DRI standards for mitigation of regional impacts to natural resources and public facilities. Conditions can be enforced in court by the local government or the State.

Q. *What happens if somebody is unhappy with the local government's decision on the DRI development order?*

A. The developer, the landowner or the State may appeal a DRI development order to the Governor and Cabinet. Generally, nobody else can appeal the local government's decision, although other needed approvals for the project may become the focus of litigation. (Third parties have a limited right to file a lawsuit in circuit court contending that an approved DRI is not consistent with the local comprehensive plan. The State can raise that issue in an appeal to the Governor and Cabinet.) If a DRI development order is appealed to the Governor and Cabinet, citizen groups and others may intervene to raise issues of their own.

Q. *Can we do any development while we are going through the process, prior to approval?*

A. Yes. A developer may enter into a Preliminary Development Agreement ("PDA") with the State prior to final approval. It allows the developer to build a limited amount of development, subject to some conditions, if the project has the appropriate land use designation under the comprehensive plan. PDAs are discussed in our companion background paper on regulatory agreements.

Q. *What if we want to change our project after a few years?*

A. Some changes can be made to a project without further DRI review and approval. You just have to get the local government to approve them. But others are so significant that those changes are subject to the same type of review and approval process as the project originally went through. So just going through DRI review once does not mean you won't have to deal with it again.

Q. *What costs are involved in DRI review and approval?*

A. DRI costs depend upon the type of project, where it's located and other factors. DRI review and approval usually takes 9 to 18 months. Typically, the costs run well into six figures. That doesn't include the cost of mitigation, or the cost of getting through the comprehensive planning process or permitting after DRI approval. There is an aggravation cost as well. The DRI program makes the land development process expensive and painful and requires tough decisions and the making of commitments.

Q. *So after getting DRI approval, is that all the developer has to do?*

A. No. DRI approval does not mean that no other permits or approvals are required. In addition to gaining DRI approval, the developer must get all the normal approvals that otherwise are required, down to and including building permits. Sometimes, the local government can address these other requirements in its DRI development order. For example, local governments sometimes address concurrency in a DRI development order. But DRI review does not exempt a project from any regulatory review. In many respects DRI review and permitting reviews are duplicative.

Think of DRI review as one layer of regulation in doing a major project. The most general layer is the comprehensive plan. If the plan does not allow the type of project the developer wants, the plan must be amended and the amendment must be approved by the State. Next comes re-zoning, if the local government has zoning. Then comes the DRI development order, which is more specific and must be consistent with the plan. Then come other permits, like dredge-and-fill permits from the water management district and local environmental and building permits, all of which are more detailed.

Q. *Now I'm beginning to see why the development process is so expensive and time-consuming. It must go on for years.*

A. For some projects, it does. If federal approvals are required, that will take time. And it is a very public process. Everything submitted to a government agency during DRI review becomes a public record, available for inspection by anyone. On a high-profile project, a developer should expect extensive press coverage and editorial criticism of those parts of the project that citizen groups don't like.

Q. *Is there any way to avoid DRI review entirely?*

A. For some projects, there are opportunities to avoid DRI review. One way to avoid it is to develop a site that was approved for development prior to 1972 and therefore is "vested". Development of these sites is limited to the previously approved development plan, although some changes may be made without loss of vested status. Sometimes agencies and landowners will have to negotiate over what development was in fact previously approved because of ambiguity in the historical records. Vested projects that are suitable for contemporary projects are hard to find.

Another way to avoid DRI review is to design the project so it is below the DRI "thresholds". This strategy requires careful planning by a multi-disciplinary team of consultants and a thorough knowledge of the applicable DRI rules as well as State rules interpretations and precedents. Frequently, a developer who wants to avoid DRI review while pushing his development program to the maximum "sub-threshold" levels will ask the State for a "binding letter" that confirms the project does not require DRI review. Such a conclusion legally binds all state and local governments and blocks anyone from contending that the project should undergo DRI review.

There are rules to prevent a developer from trying to circumvent the DRI law by breaking up his or her project into several ostensibly separate projects. These rules authorize the State to "aggregate" two or more ostensibly separate projects into one DRI-scale development for regulatory purposes if the projects are within a specified distance and meet certain criteria for having a "unified plan of development." The aggregation rule was significantly relaxed by the Legislature in 2011 but must still be considered in project planning.

And there are partial exemptions from DRI review available to projects in limited circumstances. They result in a qualifying project being responsible only for identifying and mitigating regional transportation impacts.

Q. *Are there any other means to avoid DRI review?*

A variety of exemptions have been enacted by the Legislature in recent years, the most prevalent being for projects within a "dense urban land area." DULAs tend to be in Florida's most populated urban counties and are based on population standards in the statutes. Each year the State publishes the official list of DULAs. The DRI program simply does not apply in these areas.

Outside a DULA, there are alternatives to DRI review. One is called the Florida Quality Developments ("FQD") program. A project that receives FQD approval does not need DRI approval, however, the prerequisites for FQD approval are so stringent that most developers don't consider that a serious alternative to the DRI program.

Another DRI exemption is available for development located in a "sector plan." The sector planning program was established by the Legislature as a pilot program in 1998 and was made a generally available planning tool in 2011. This planning tool is a two-step planning process for an area of 15,000 acres or more, based on statutory planning standards intended to achieve long-term conservation and development on a landscape scale. After a long-term master plan for the planning area is adopted by the local government as part of its comprehensive plan and approved by the State, developers can come back later with a detailed specific plan for a smaller area. That project can be approved by a local development order which will be exempt from DRI review even if the project would exceed the DRI "thresholds".

The rural land stewardship ("RLS") program includes a DRI exemption. RLS projects are limited to a minimum 10,000 acres, with a "sending area" identified for the transfer of "stewardship credits" created through land preservation. Planned development in a "receiving area" is exempt from DRI review regardless of intensity.

Q. *What does all this mean for us?*

A. We think you should keep these points in mind as you formulate your plans:

- ▶ Land development is time-consuming, expensive and filled with aggravation. There's nothing glamorous about it. Be prepared for what you're getting into.
- ▶ Winning entitlements requires a team effort by experts from many disciplines, all working together. There's no substitute for active management by the client.
- ▶ Knowing what kind of development you want is critical. Your internal business planning and market analysis is critical for making those decisions.
- ▶ Understand the land use issues affecting your site. For many projects, the underlying land use issues are be more sensitive and difficult than DRI approval.
- ▶ Consider whether your development program can be kept to "sub-threshold" levels in order to avoid DRI review. Be prepared to ask the State for a binding letter or a clearance letter, which is a more informal guidance document.
- ▶ Many agencies and neighbors will be at the table, trying to extract concessions from you. Be ready to negotiate and horse-trade -- and to make commitments.
- ▶ Coordination and timing are important. Don't do something now that you can do later as mitigation. Think ahead.
- ▶ Don't ask for approval for more than you realistically expect to develop, because you will pay mitigation based on everything you are authorized to develop. The days of getting more development rights than you need are long gone in Florida.

Please contact us at (850) 425-2222 if you have further questions.

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