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GROWTH MANAGEMENT: WHAT CALIFORNIA CAN LEARN FROM THE SUNSHINE STATE

*Robert Odland**

I. INTRODUCTION

Florida is well underway in implementing the growth management legislation it adopted in 1985.¹ This legislation required each city and county in the state, plus one special district, to prepare a comprehensive plan and submit it to the state for approval.² Although the legislation refers to comprehensive plans,³ the overall legislative structure results in a growth management system. The schedule for preparation of the Florida plans was spread out over several years in order to address critical coastal issues first and level the workload of the state agency designated as the review authority.⁴ The first plans were completed just under three years ago, and the last group of plans are scheduled to be completed in the summer of 1991. Florida has gained sufficient experience between 1985 and 1991 to begin evaluating the effectiveness of its growth management legislation and its potential applicability in other states.

This Article discusses the background and implementation of Florida's growth control legislation. Next, the Article analyzes how effective Florida's growth control plan has been in achieving legislative goals. The Article then discusses the concerns of California's legislators and citizens in controlling growth in California, and concludes by suggesting that California adopt, with some adjustments, the Florida legislation.

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1. Local Government Comprehensive Planning and Land Development Regulation Act, ch. 85-55, 1985 Fla. Laws 207 (codified as amended at FLA. STAT. ANN. §§ 163.3161-.3215 (West 1990)).

2. FLA. STAT. ANN. § 163.3167 (West 1990).

3. *Id.* § 163.3177(1). This section states: "The comprehensive plan shall consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area. *Id.*

4. *See id.* § 163.3167; FLA. ADMIN. CODE ANN. r. 9J-12 (1990).

II. BACKGROUND

Beginning in the mid-1960s, Florida politicians grew increasingly concerned about the negative impact of rapid growth, especially in the southern part of the state.⁵ The water crisis of 1971 resulted in the appointment of the Governor's Task Force on Land Use, charged with developing a set of laws to manage growth.⁶ This task force determined that tentative draft number three of the American Law Institute's Model State Land Development Code⁷ should serve as the starting point for the proposed legislation,⁸ referred to as the Florida Environmental Land and Water Management Act of 1972 (the Land Management Act).⁹ The task force also endorsed three other major pieces of legislation:¹⁰ the Florida State Comprehensive Planning Act of 1972,¹¹ the Land Conservation Act of 1972 (the Land Conservation Act),¹² and the Florida Water Resources Act of 1972.¹³ All four bills were adopted into law.¹⁴

The Land Management Act intended local governments, rather than the state government, to have authority over land use decisions, unless such decisions involved substantial regional or statewide impacts.¹⁵ The act established the process for designating "Areas of Critical State Concern"—those areas with environmental, historical, natural, or archaeological significance or other regional or state importance.¹⁶ The act gave the state authority to review any local government regula-

5. J. DEGROVE, *LAND, GROWTH AND POLITICS* 102-06 (1984) (wet/dry cycles brought water crises, saltwater intrusion threatened fish water supplies on both the east and west coasts and extensive pollution of practically every river and stream and other water body in the peninsula).

6. *Id.* at 108-09.

7. MODEL STATE LAND DEV. CODE (Proposed Official Draft 1976).

8. J. DEGROVE, *supra* note 5, at 110.

9. FLA. STAT. ANN. §§ 380.012-.0558 (West 1988).

10. J. DEGROVE, *supra* note 5, at 110.

11. Ch. 72-295, 1972 Fla. Laws 72 (codified as amended at FLA. STAT. ANN. §§ 186.001-.031, .801-.911 (West 1987 & Supp. 1991)).

12. Ch. 72-300, 1972 Fla. Laws 1126 (codified as amended at FLA. STAT. ANN. § 259.01-.07 (West 1975 & Supp. 1991)).

13. Ch. 72-299, 1972 Fla. Laws 1082 (codified as amended at FLA. STAT. ANN. § 373.011-.619 (West 1988 & Supp. 1991)).

14. *See supra* notes 11-13.

15. FLA. STAT. ANN. §§ 380.012 (West 1988).

16. *Id.* § 380.05. The state land planning agency recommends to the Administration Commission the purchase of specific lands that are environmentally endangered. The recommendation includes any report or recommendation of a statutorily appointed planning and management committee. The agency's recommendation should set forth the dangers of uncontrolled or inadequate development, the benefits of coordinated development, a detailed description of the proposed area and specific principles to guide development. *Id.* § 380.05(1)(a). Within 45 days of receipt of the agency's recommendation, the Commission must either reject it or adopt it with or without modification. *Id.* § 380.05(1)(b). The Commission then must

tory action within these areas and, if necessary, require modifications.¹⁷ The act also set up the Development of Regional Impact (DRI) process to deal with large projects which, because of their character, magnitude, or location, would have a substantial effect upon the health, safety or welfare of citizens in more than one county.¹⁸ Regional planning councils were given a major role in the DRI process. Under the DRI process, if it was determined that a proposed development would have regional or statewide significance, the applicable regional planning council would be required to evaluate the environmental, housing, economic, transportation and energy impacts of such development.¹⁹ The local government retained final approval authority over the proposed development; it was required to address the project's consistency with the regional council's comments, but was not required to comply with them.²⁰ However, a procedure was established whereby the local government's decision could be appealed to the state governor and the cabinet, sitting as the Land and Water Adjudicatory Commission.²¹

Florida adopted other pertinent legislation between 1972 and 1985. In 1975, the legislature passed the Local Government Comprehensive Planning Act of 1975 (the 1975 Local Government Planning Act),²² requiring each city and county to prepare a comprehensive plan.²³ The legislature amended the Florida Environmental Land and Water Management Act of 1972,²⁴ in 1979²⁵ in response to a state supreme court decision holding certain provisions of the Land Management Act unconstitutional due to an unlawful delegation of legislative powers from the state legislature to the Administrative Commission.²⁶ The legislature also amended the Land Management Act by adopting detailed criteria for designating areas of critical state concern and requiring legislative

designate the area of critical state concern and establish principles to guide development of the area. *Id.* The Rule becomes effective 20 days after it is filed with the Secretary of State. *Id.*

17. *Id.* § 380.06.

18. *Id.*

19. *Id.*

20. *Id.* § 380.06(14)(c).

21. *Id.* § 380.07.

22. Ch. 75-257, 1975 Fla. Laws (codified as amended at FLA. STAT. ANN. §§ 163.3161-.3215 (West 1990)).

23. FLA. STAT. ANN. § 163.3161 (West 1990).

24. *Id.* §§ 80.012-.10 (West 1990 & Supp. 1991).

25. Act effective July 1, 1979, ch. 79-73, § 4, 1979 Fla. Laws 390, 392 (codified as amended at FLA. STAT. ANN. § 380.05 (West 1988)).

26. See *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). The *Askew* court found support for its decision in article II, section 3 of Florida's Constitution, FLA. CONST. art. II, § 3, which states that "fundamental and primary decisions should be made by members of the legislature . . ." *Askew*, 372 So. 2d at 925.

review of such designations.²⁷ In 1980, the Florida legislature further amended the Land Management Act to ensure that DRI reviews by the regional planning councils were confined to regional, not local, issues.²⁸ The process also was strengthened by the 1980 enactment of the Florida Regional Planning Council Act (the Regional Planning Council Act).²⁹

The Regional Planning Council Act changed the membership of the regional councils from all local officials to two-thirds local officials and one-third members appointed by the governor.³⁰ It also instructed regional councils to adopt regional plans to guide their DRI reviews.³¹ By 1983, inadequacies in Florida's growth management system were becoming apparent. The local plans prepared pursuant to the 1975 Local Government Comprehensive Planning Act were of inconsistent quality, did not necessarily reflect regional or state concerns, and were often modified in response to rezoning requests. Regional councils and state agencies did not have adequate resources to fund an effective program. The Florida legislature never adopted the state plan required by the State Comprehensive Planning Act of 1972.³² Therefore, no statewide framework existed for planning. Only four areas of critical state concern had been designated under the Land Management Act from 1972 through 1985. Moreover, significant implementation problems had arisen, especially in the Florida Keys area, because of the lack of cooperation by the local governments. The DRI provisions of the Land Management Act, however, were considered more successful, especially after 1980, when the Regional Planning Council Act required the preparation of regional plans and changed the council membership to reflect more of a statewide interest.³³

Adoption of the Florida State and Regional Planning Act of 1984³⁴ prepared the groundwork for addressing these problems.³⁵ This legislation required the Office of the Governor to prepare a state plan and pres-

27. Act effective July 1, 1979, ch. 79-73, § 4, 1979 Fla. Laws 390, 392 (codified as amended at FLA. STAT. ANN. § 380.05 (West 1988)).

28. Act effective July 1, 1980, ch. 80-313, 1980 Fla. Laws 1354 (codified as amended at FLA. STAT. ANN. §§ 380.06, 380.031-.032 (West 1988 & Supp. 1990)).

29. Ch. 80-315 1980 Fla. Laws 1370 (codified as amended at FLA. STAT. ANN. §§ 186.501-.515 (West 1987 & Supp. 1991)).

30. FLA. STAT. ANN. § 186.504 (West 1987).

31. *Id.* § 186.507.

32. *See id.* § 186.001-.031, .801-.911.

33. *See id.* § 186.504.

34. Ch. 84-257, 1984 Fla. Laws 1166 (West 1987) (amending Florida State Comprehensive Planning Council Act of 1972, FLA. STAT. ANN. §§ 186.001-.031, 186.801-.911 (West 1987 & Supp. 1991); Florida Regional Planning Act, FLA. STAT. ANN. §§ 186.501-.513 (West 1987)).

35. Rhodes & Apgar, *Charting Florida's Course: The State and Regional Planning Act of 1984*, 12 FLA. ST. U.L. REV. 583, 587 (1984).

ent it to the 1985 legislature.³⁶ It provided funding for the regional planning councils to prepare comprehensive regional policy plans and additional funding for the Florida Department of Community Affairs (DCA)³⁷ to strengthen its planning capabilities.³⁸

As part of the Omnibus Growth Management Act of 1985,³⁹ the legislature adopted the State Comprehensive Plan⁴⁰ and the Local Government Comprehensive Planning and Land Development Regulation Act (the 1985 Local Government Planning Act).⁴¹ In 1986, the Florida legislature passed the "Glitch Bill,"⁴² which made numerous modifications to the 1985 planning and regulatory legislation in response to criticisms that it was too much of a "top down" approach.⁴³ The legislation also made minor changes to the DRI process, and established the Florida Local Government Development Agreement Act.⁴⁴

III. FLORIDA'S IMPLEMENTATION OF GROWTH MANAGEMENT

A. Planning and Regulatory Structure

Florida has several state agencies to consider growth management planning, foremost of which is the Department of Community Affairs, which oversees the growth management process.⁴⁵ Other agencies involved in land use and natural resources planning include: (1) the Department of Transportation;⁴⁶ (2) the Department of Environmental Regulation, which regulates air quality management, water and wastewater management, and waste management;⁴⁷ and (3) the Department of Natural Resources, which regulates marine resources, recreation and parks, state lands, mining, and geology.⁴⁸ These agencies play an essen-

36. See FLA. STAT. ANN. § 186.008 (West 1987).

37. The act uses the term "Department of Community Affairs" synonymously with "State Land Planning Agency." *Id.* § 163.3164(19) (West 1990).

38. *Id.* § 186.010.

39. *Id.* §§ 188.101-.201 (West 1987 & Supp. 1991). For a review of this legislation, see DeGrove & Stroud, *New Developments and Future Trends in Local Government Comprehensive Planning*, 17 STETSON L. REV. 573 (1988).

40. Ch. 85-57, 1985 Fla. Laws 295 (codified as amended at FLA. STAT. ANN. §§ 187.101, .201 (West 1987 & Supp. 1991)).

41. Ch. 85-55, 1985 Fla. Laws 207 (codified as amended at FLA. STAT. ANN. §§ 163.3161-.3215 (West 1990)).

42. Act of July 1, 1986, ch. 86-191, 1986 Fla. Laws 1404 (codified as amended at FLA. STAT. ANN. §§ 161.053-163.3202, .3243, 186.508-.511, 380.06-.0651 (West 1990)).

43. See FLA. STAT. ANN. § 163.3177 (West 1990).

44. See *id.* §§ 163.3220-.3243.

45. *Id.* § 20.18.

46. *Id.* § 20.23.

47. *Id.* § 20.261.

48. *Id.* §§ 20.25, 370.013 (West 1988).

tial oversight role in the state's resource and growth management system.

In 1985, Florida adopted the State Comprehensive Plan.⁴⁹ In its current format, the state plan is a policy plan with no maps. It provides goals in twenty-six subject areas such as land use, transportation, air quality, energy, the economy and families.⁵⁰ Following each of the goals is a set of policies. For example, following the goal of improving the quality of life of the elderly are policies including increasing the percentage of self-sufficient elderly, developing and implementing preventive services and strategies to maximize individual independence, and strengthening the care-giving capacity of family members.⁵¹ All state budgets must be consistent with this plan.⁵² All state agencies must adopt functional plans, and regional planning councils must adopt regional policy plans, all of which must be consistent with the State Comprehensive Plan.⁵³ The state agency functional plans were completed in 1986 and 1987, while the regional policy plans were adopted by 1987.

Florida has eleven regional planning councils to review developments of regional impacts,⁵⁴ prepare regional policy plans,⁵⁵ provide technical assistance to local governments,⁵⁶ and develop a mediation process for resolving disputes between local governments.⁵⁷ The 1985 Local Government Planning Act expanded the responsibility of the regional planning councils to include reviewing comprehensive plans prepared by

49. Ch. 85-57, 1985 Fla. Laws 295 (codified as amended at FLA. STAT. ANN. §§ 187.101, .201 (West 1987 & Supp. 1991)).

50. The complete list of areas covered includes education, children, families, the elderly, housing, health, public safety, water resources, coastal and marine resources, natural systems and recreational lands, air quality, energy, hazardous and nonhazardous materials and waste, mining, property rights, land use, downtown revitalization, public facilities, cultural and historic resources, transportation, governmental efficiency, the economy, agriculture, tourism, employment, and plan implementation. *See* FLA. STAT. ANN. § 187.201 (West 1987 & Supp. 1991). These subject areas each contain specified goals. *See id.* For instance, in the area of education, the comprehensive plan's goals are as follows: "The creation of an educational environment which is intended to provide adequate skills and knowledge for students to develop their full potential, embrace the highest ideas and accomplishments, make a positive contribution to society, and promote the advancement of knowledge and human dignity." *Id.* § 187.201(1)(a). Similarly, the comprehensive plan's goal in the area of children is to "provide programs sufficient to protect the health, safety, and welfare of all its children." *Id.* § 187.201(2)(a). Furthermore, the goal in the area of families is to "strengthen the family and promote its economic independence." *Id.* § 187.201(3)(a).

51. *See id.* § 187.201(4)(b).

52. *Id.* § 186.008(5).

53. *Id.* § 186.022, .508.

54. *See id.* § 380.06 (West 1988).

55. *See id.* § 186.507 (West 1987).

56. *See id.* § 186.505(10).

57. *See id.* § 186.509.

local governments.⁵⁸

The 1985 Local Government Planning Act also requires each incorporated municipality and county, and the Reedy Creek Improvement District, which surrounds Disney World, to prepare a comprehensive plan,⁵⁹ followed by land development regulations.⁶⁰ The Department of Community Affairs has prepared and adopted administrative regulations for the plan preparation schedule,⁶¹ plan process and content,⁶² and land development regulations.⁶³ All local comprehensive plans must be consistent with both these state regulations and the applicable regional policy plan.⁶⁴

All local plans must contain the following eight elements: (1) land use, (2) traffic circulation, (3) infrastructure—sewer, solid waste, drainage, potable water, and aquifer recharge, (4) conservation, (5) recreation and open space, (6) housing, (7) intergovernmental coordination, and (8) capital improvements.⁶⁵ The plans may also contain elements dealing with public buildings and facilities, community design, redevelopment, safety, historic and scenic preservation, and local economics.⁶⁶ All required elements in the plan must be internally consistent with each other.⁶⁷

In addition, local plans must form the basis for a concurrent management system that ensures that “public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that development are available concurrent with the impacts of the development.”⁶⁸ This requirement, together with the inclusion of the capital improvement element in the local plans, form a critical part of the Florida growth management system—linking development with infrastructure availability. The capital improvement element, which is reviewed annually, must contain level of service standards for essential facilities.⁶⁹ The concurrency management system cannot allow

58. *Id.* § 163.3184(4) (West 1990).

59. *Id.* § 163.3167.

60. *Id.* § 163.3202.

61. FLA. ADMIN. CODE ANN. r. 9J-12 (1990).

62. *Id.* r. 9J-5 (1986).

63. *Id.* r. 9J-24 (1989).

64. *Id.* r. 9J-5, 9J-5.021 (1990); see FLA. STAT. ANN. § 163.3177(9)(c) (West 1990).

65. FLA. STAT. ANN. § 163.3177 (West 1990). In addition, coastal counties must prepare a coastal management element, and local governments having populations greater than 50,000 must prepare a mass transit element and a port and aviation element. *Id.*

66. *Id.* § 163.3177(7).

67. *Id.* § 163.3177(2).

68. *Id.* § 163.3177(10)(h).

69. *Id.* § 163.3177(3).

for development that would cause these service standards to be exceeded.⁷⁰

The Department of Community Affairs, the regional planning council, and other government agencies review the plans of each local government.⁷¹ The regional planning councils review the plans for consistency with their policy plan. They have authority only to comment on the local plans;⁷² the power to approve the plans rests with the Department of Community Affairs.⁷³ In addition to considering the comments of the regional planning councils in its review of local comprehensive plans for consistency with the regional policy plan, the Department of Community Affairs reviews the local plans for consistency with the State Comprehensive Plan.⁷⁴

The review process begins with the transmittal of the completed plans to the regional planning council and the Department of Community Affairs.⁷⁵ The Department of Community Affairs has ninety days to complete its review.⁷⁶ Within the first forty-five days of this period, the regional planning council transmits to the Department of Community Affairs its comments on whether the local plan is consistent with the regional plan.⁷⁷ The local plans are also reviewed by the Department of Environmental Regulation, Department of Natural Resources, Department of Transportation, and the applicable water management district; these entities also submit their comments to the Department of Community Affairs within the first forty-five days of the review period.⁷⁸ The Department of Community Affairs then provides the local government with its comments on the extent to which the local plan is consistent with the State Comprehensive Plan and applicable regional policy plan.⁷⁹ The department's comments are usually quite detailed and often exceed one hundred pages.

After it receives the Department of Community Affairs' comments,

70. *Id.* § 163.3177(10).

71. *Id.* § 163.3184(4).

72. *Id.* § 163.3184(5) (regional planning council shall review and comment).

73. *Id.* § 163.3184(8) (Department of State Land Planning Agency to determine compliance).

74. *Id.* § 163.3184(6),(8).

75. *Id.* § 163.3184(3)(a).

76. *Id.* § 163.3184(4) (must transmit within five working days copy of plan to various government agencies; forty-five days for receipt of comments from various government agencies); *id.* § 163.3184(6) (forty-five days to review comments from government agencies and then transmit written comments to local government).

77. *Id.* § 163.3184(4).

78. *Id.*

79. *Id.* § 163.3184(6).

the local government has sixty days to adopt the plan or, in response to the comments, adopt the plan with changes.⁸⁰ The local government then sends the adopted plan to the Department of Community Affairs to determine, within forty-five days, if the plan complies with the 1985 "Local Government Comprehensive Planning Act and Land Development Regulation Act."⁸¹ If the Department of Community Affairs determines that the plan is not in compliance with the act, it must issue a notice of intent to the Division of Administrative Hearings of the Florida Department of Administration, which holds an administrative hearing on the validity of the plan.⁸² If it is determined that the plan fails to comply with the 1985 Local Government Planning Act, the state can impose sanctions, such as cutting off all state assistance or federal assistance passing through the state to the local government.⁸³ There are ample opportunities in the process for other local governments and interested parties to intervene and force an administrative hearing on the validity of the plan.⁸⁴

Local governments must evaluate and update the plans at least once every five years as part of preparing a formal evaluation and appraisal report.⁸⁵ Within one year after submitting their plans to the Department of Community Affairs for review, local governments must adopt or amend and enforce land development regulations which are consistent with the adopted comprehensive plans.⁸⁶ The department must also adopt regulations to implement the concurrency management system.⁸⁷

80. *Id.* § 163.3184(7).

81. *Id.* § 163.3184(8)(a). The plan will be in compliance if it is consistent with the requirements of sections 163.3177, 163.3178, 163.3191. *Id.* § 163.3184(1)(b). The department's determination of compliance may be based only upon the department's written comments to the local government pursuant to section 163.3184(6) and/or any changes made by the local government to the plan as adopted. *Id.* § 163.3184(8)(a).

82. *Id.* § 163.3184(10).

83. *Id.* § 163.3184(11).

84. *Id.* § 163.3184(9), (10). Subject to certain specified exceptions, plan amendments are limited to no more than two per year. *Id.* § 163.3187(1). Plan amendments related to small scale developments not exceeding the threshold specified in section 163.3187(1)(c), are not "subject to a review and determination of compliance by the [Department of Community Affairs] until the local government has adopted a comprehensive plan pursuant to [section] 163.3184." *Id.* § 163.3187(1)(c).

85. *Id.* § 163.3191(1) (planning program is a continuous and ongoing process).

86. *Id.* § 163.3202(1). Land development regulations include subjects normally covered in zoning ordinances, sign regulations, subdivision regulations, and some environmental regulations. See *id.* § 163.3202(2)(a)-(h) for a specific list of minimum contents of land development regulations.

87. *Id.* § 163.3202(1)(g). The concurrency management system is a requirement "aimed at supporting the infrastructure requirements." Degrove & Stroud, *supra* note 39, at 579. The most significant is the requirement for a capital facilities element. FLA. STAT. ANN.

B. Observations to Date

Few conclusive evaluations of the Florida growth management system are available because the initial planning process is still being implemented.⁸⁸ In order to get early information to policy-makers in other states, who may want to build from the Florida experiences, however, certain initial comments are available. These comments are based on the author's personal involvement with the preparation of three local comprehensive plans in Florida, discussions with planners who have been responsible for preparing many more, discussions with leaders of state-wide interest groups, and analyses of various publications from Florida.

1. The Department of Community Affairs reportedly has been disappointed in the quality of the intergovernmental coordination elements of the local plans because of a general lack of specificity. As the first plans came in for review, the Department of Community Affairs focused on the land use and other elements, presumably deferring a critical review of the intergovernmental coordination elements until the second round of reviews, five years hence. It appears, however, that two years into the first round review process, the Department of Community Affairs is starting to take a more critical look at these elements.
2. Local governments have not been particularly forceful in responding to the affordable housing issue. Some observers have felt that the Department of Community Affairs is waiting for the second round of reviews and hoping that, in the meantime, the state adopts a more effective state affordable housing program. New housing initiatives are

§ 163.3177(3)(a). This requirement in essence links the future land use to the infrastructure requirements created by that use. Degrove & Stroud, *supra* note 39, at 580. Under the concurrency management system, the local governments will set levels of service, FLA. STAT. ANN. § 163.3177(3)(a), for transportation as well as other capital facilities and then manage growth to the ability to maintain those levels of service. Degrove & Stroud, *supra* note 39, at 580-81.

88. See, e.g., GROWTH MANAGEMENT INNOVATIONS IN FLORIDA (W. deHaven-Smith ed., Florida Atlantic University/Florida International University Joint Center for Environmental and Urban Problems 1988); IMPLEMENTATION OF THE 1985 GROWTH MANAGEMENT ACT: FROM PLANNING TO LAND DEVELOPMENT REGULATIONS (B. Brumback & M. Marvin eds., Florida Atlantic University Joint Center for Environmental and Urban Problems 1989); Audirac, Shermeyen & Smith, *Ideal Urban Form and Visions of the Good Life: Florida's Growth Management Dilemma*, 56 J. AM. PLAN. A. 470 (1990); Frank, *Florida's Local Government Comprehensive Planning and Land Development Act*, 37 LAND USE L. & ZONING DIG. 3 (1985); Koenig, *Down to the Wire in Florida*, 56 PLANNING 4 (1990); Rhodes, *Controversial "Concurrency" in Florida*, 47 URB. LAND 32 (1988).

being considered by the state, and legislation may be forthcoming. One approach that has surfaced is to include housing as one of the services and facilities to which the concurrency requirement applies.

3. Although this issue did not appear to be a major part of the legislation, the Department of Community Affairs has become very active in addressing urban sprawl in its plan reviews. It has defined categories of urban/suburban sprawl: leapfrog development,⁸⁹ strip or ribbon development,⁹⁰ and large expanses of low-density, single-dimensional development.⁹¹ It then developed a series of sprawl indicators that help it review the local comprehensive plans.⁹²
4. Some observers are concerned that Florida's concurrent growth management system may actually encourage sprawl because it makes development very difficult in areas with existing traffic congestion, thus encouraging development in places where current traffic congestion is low. The Department of Community Affairs appears to be aware of this concern and is attempting to be flexible in order to encourage infill development in already developed areas.
5. The concurrency requirement has raised other concerns, especially among developers. They point out that under "conventional" growth management systems, they can proceed by paying their fair share for those increased services and facilities attributable to their development. Under the concurrency system, this fair share system does not apply because existing deficiencies in infrastructure will cause the level of service (LOS) standards to be exceeded and thereby stop the development. Some developers allege that a "takings" issue is present,⁹³ but no

89. "Leapfrog development" is development that is sited away from an existing urban area, bypassing vacant developable parcels located in or closer to the urban area.

90. "Strip or ribbon development" is development that involves the location of high amounts of commercial, retail, office and other uses in a linear pattern along a major arterial roadway.

91. "Low density, single-dimensional development" is development that consists of single land uses, typically low-density residential, spread over large land areas.

92. FLORIDA DEP'T OF COMMUNITY AFFAIRS, No. 4, DCA TECHNICAL MEMO 11 (1988); GOVERNOR'S TASK FORCE ON URBAN GROWTH PATTERNS, OFFICE OF THE FLA. GOVERNOR, FINAL REPORT 11-20 (1989).

93. For a thorough discussion of taking issues arising in the context of growth control

litigation has surfaced at this point.

6. Another concurrency issue is that concurrency requirements apply to state as well as local facilities. Therefore, if a state road is at an unacceptable LOS standard, the local government cannot approve a development that would have further impact on the road, even though the local government has no control over improving or upgrading the road.
7. A third concurrency issue relates to how long a finding of concurrency by a local government is valid. For example, what happens if concurrency is found to exist on a large or multi-phased project but, before construction begins, other projects have come along that cause the LOS standard to be exceeded?
8. A fourth concurrency issue is determining which projects in the approval process have achieved a vested right to proceed without meeting the concurrency requirement. Development interests would like to get a modification or clarification of the concurrency provisions to address this and the other issues.
9. The quality of local planning in Florida has risen dramatically during the past four years. Plans still reflect local politics and the resources available for planning, but overall, the technical quality of the plans is impressive. In the areas of intergovernmental coordination and coordination of infrastructure with development approvals, the plans are ahead of the typical California city or county general plan.⁹⁴
10. A few local governments appear to be unwilling to make decisions they know are necessary to get the plans approved by the Department of Community Affairs. Instead of saying "no" or "slow down" to developers, they will let the Department of Community Affairs say "no" for them and thus avoid the political heat.
11. Several plans have been subject to administrative hearings where affected parties have challenged their validity. The sophistication of the administrative decisions has been

ordinances, see Stone & Seymour, *Regulating the Timing of Development: Takings Clause and Substantive Due Process Challenges to Growth Control Regulations*, 24 LOY. L.A.L. REV. 1207 (1991).

94. See *infra* note 99 and accompanying text.

surprisingly high. The administrative hearing officers obviously are very familiar with the principles of local, regional, and state planning and have applied their wisdom in a manner that has commanded the respect of almost everyone, even if they may disagree with the results.

12. Attention is now turning to the local land development regulations. They must be adopted within one year after the submission of the local plan to the Department of Community Affairs for approval. The requirements for the development regulations are firm as to what the regulations must do, but are quite flexible as to format. The word "zoning" is used much less frequently than in California, and many local governments are preparing unified development ordinances.

IV. WHAT CALIFORNIA CAN LEARN FROM FLORIDA'S EXPERIENCE

The Florida experience presents several potential lessons for California.⁹⁵ The states are alike in many respects in that both are attempting to deal with high growth rates, increasing environmental concern, increasing traffic congestion, and lack of affordable housing. Both states, at various times in recent years, have been in the forefront of land use and environmental legislation. The structure of cities and counties is much the same in both states, with similar intergovernmental coordination issues.

Historically, California has not been active in growth management at the state level. Local governments have broad authority to deal with growth in their general plan, zoning, subdivision, and other police power measures. Cities and counties have been free to define growth management and develop programs that attempt to meet their needs. The California Environmental Quality Act⁹⁶ imposes some uniformity on local governments and other agencies in assessing environmental impacts of growth.

California's land use problems include uncoordinated local planning activities, suburban sprawl, poor air quality, increased use of citizen initiatives to control or stop growth, lack of regional transportation coordi-

95. State action involving growth management through planning and land use restrictions began in the early 1970s, particularly in California, Florida, Hawaii, North Carolina, Oregon and Vermont. See Degrove & Stroud, *supra* note 39, at 573-74. California's growth and demographic similarities to those of Florida make California's legislative approach and ensuing results of much interest to the Florida legislature.

96. CAL. PUB. RES. CODE §§ 21000-21165 (West 1986 & Supp. 1991).

nation, lack of state policies on growth, and difficulty in providing affordable housing.⁹⁷ California's state and local lawmakers should look at the results of Florida's system to determine if any parts of it can form the basis for modifications in the California land use planning system.

A. *Role of the State and Regional Governments*

Florida has identified a role for the state in the planning process.⁹⁸ The 1985 State Comprehensive Plan guides budget decisions to direct financial resources toward activities consistent with the expressed policies of the state.⁹⁹ The Florida State Comprehensive Plan also provides the basis for functional plans of the state agencies to help ensure that agency activities exhibit some measure of cooperation.¹⁰⁰ For example, the Florida Department of Transportation cannot take an action contrary to a proposed action by the Department of Natural Resources, assuming the actions are addressed by one of the state goals or policies.¹⁰¹ This system contrasts with California's, where there is currently no such mechanism to guide budget and program decisions for how growth will occur in the state.¹⁰²

The 1985 State Comprehensive Plan also provides guidance to the regional planning councils in Florida because the regional policy plans must be consistent with the state plan.¹⁰³ This provides considerable di-

97. For a discussion of identified problems and possible solutions to the current planning and growth management situation in California, see ASSEMBLY OFFICE OF RESEARCH, CAL. STATE LEGISLATURE, CALIFORNIA 2000: GETTING AHEAD OF THE GROWTH CURVE (1989) [hereinafter CALIFORNIA 2000]; BAY AREA COUNCIL, MAKING SENSE OF THE REGION'S GROWTH (1988); BAY VISION 2020 COMM'N, BAY VISION 2020 REVIEW DRAFT REPORT (1991); CALIFORNIA PLANNING ROUNDTABLE, AT THE CROSSROADS: THE FUTURE OF GENERAL PLANNING IN CALIFORNIA (1985); SENATE OFFICE OF RESEARCH, CAL. STATE LEGISLATURE, DOES CALIFORNIA NEED A POLICY TO MANAGE URBAN GROWTH? (1989); SENATE SELECT COMM. ON PLANNING FOR CALIFORNIA'S GROWTH & SENATE COMM. ON LOCAL GOV'T, GROWTH MANAGEMENT: LOCAL DECISIONS, REGIONAL NEEDS, AND STATEWIDE GOALS (1988); THE 2000 PARTNERSHIP, L.A. 2000: A CITY FOR THE FUTURE (1989). For a plan which addresses some regional growth management issues, see SOUTHERN CAL. ASS'N OF GOV'TS, GROWTH MANAGEMENT PLAN (1989).

98. See FLA. STAT. ANN. § 163.3161(2) (West 1990).

99. *Id.* § 163.3160.

100. *Id.* § 163.3161(4).

101. See *id.* § 163.3160.

102. Existing state law requires the California Governor to prepare a State Environmental Goals and Policies Report that is to be updated every four years. See CAL. GOV'T CODE §§ 65041-65049 (West 1983). The report is required to address land use, population, growth and distribution, development, conservation of natural resources, and air and water quality. *Id.* Since the enactment of the statute in 1970, only one report has been approved and published. See *id.*

103. See FLA. STAT. ANN. § 163.3177 (West 1990).

rection to the regional councils in the exercise of their responsibilities. A regional council cannot move in a direction contrary to a policy in the state plan, and the activities of the regional councils should tend to be more consistent with each other because of a common point of reference. It must be kept in mind that the 1985 State Comprehensive Plan is a broad policy plan that allows considerable flexibility in dealing with the regional and local problems in different areas within the state; no maps are used. Similar state guidance in California would be very useful in preventing a balkanization of planning and development activities within the state.

The regional planning councils also have a clearly defined role in the Florida growth management system. They must adopt a regional policy plan, review local plans for consistency with this plan, establish dispute resolution mechanisms, and review projects with inter-jurisdictional impacts (DRIs).¹⁰⁴ It is hard to imagine an effective growth management system in California without some mechanism that deals with regional issues. The Florida system of granting limited authority to regional planning councils may be attractive to those California legislators concerned with the difficult issues in defining regional boundaries, determining governing bodies of regional agencies, and establishing what they may perceive to be a new layer of government. Regional planning councils in Florida make very few final decisions. Most land use decisions are made at the local level with some decisions made at the state level as to consistency with established state and regional policies. Other Florida agencies, such as the Regional Water Management Districts, continue to plan and regulate within their own regional boundaries. Issues of regional planning district boundaries and composition of governing boards may be somewhat less critical if the regional planning agency has limited power.

B. Intergovernmental Coordination

Intergovernmental coordination is an essential part of the Florida planning process. First, intergovernmental coordination is facilitated by the consistency requirement, because the existence of the regional policy plans, with which local plans must be consistent, tends to produce a common approach within the region.¹⁰⁵ This common approach provides guidance to local governments, which serves to minimize local disputes.

Florida's regional planning councils are required to establish an in-

104. *See supra* notes 18-21 and accompanying text.

105. FLA. STAT. ANN. § 163.3177(4)(A) (West 1990).

formal mediation process to resolve conflicts between local governments relating to comprehensive plans.¹⁰⁶ Florida has been a leader in attempting to apply alternative dispute resolution techniques to local government relations. The state has established a Dispute Resolution Center at Florida State University that provides resources to the regional planning councils and directly to the local governments.¹⁰⁷ Although the subject of alternative dispute resolution techniques for local intergovernmental disputes has received some attention in California, the system is much more formalized in Florida.

Florida's DRI process was established to deal with large-scale projects that have impacts in more than one jurisdiction. The process moves all major development decisions to the regional planning council for review,¹⁰⁸ thereby serving as a mechanism to resolve local intergovernmental conflicts. All local governments with a planning region have the opportunity to formally review and comment on the DRI.¹⁰⁹ Perhaps more importantly, these development proposals are designed with the knowledge that they will be subject to the regional review.

Finally, in Florida, the local plans must include an intergovernmental coordination element to address how the comprehensive plan is to be coordinated with the comprehensive plans of adjacent municipalities, the county, and adjacent counties, as well as with the plans of school boards and other special districts.¹¹⁰ The element must include coordination mechanisms that address the impacts of development proposed in the plan on the development plans of adjacent municipalities, the county, adjacent counties, the region and the state.¹¹¹ The element also must ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.¹¹² Finally, the element must address how annexation issues are to be resolved.¹¹³

This process places the primary responsibility on local governments to determine methods of coordinating their activities with adjacent and nearby jurisdictions. This process is designed to produce an atmosphere of cooperation at the local level, rather than push the decision up to a higher level of review. The Department of Community Affairs gets in-

106. *Id.* § 186.509 (West 1987).

107. Slinger, *Tribute: Talbot D'Alemberte*, 16 FLA. ST. U.L. REV. 925, 926 (1989).

108. FLA. STAT. ANN. § 380.06(12)(a) (West 1988).

109. *Id.* § 380.06(11); see *supra* notes 20-21 and accompanying text.

110. FLA. ADMIN. CODE ANN. r. 9J-5, 9J-5.015 (1990).

111. *Id.*

112. *Id.* r. 9J-5.015(3)(b)(3).

113. *Id.*

volved in the process, not the substance, of this coordination—except in designated Areas of Critical Concern¹¹⁴ and, in a limited way, during an appeal in the DRI process.

Intergovernmental coordination is generally acknowledged to be a major issue in California.¹¹⁵ The Florida model, although it includes state and regional policies, places the primary responsibility for intergovernmental coordination with the local governments. The local governments can coordinate in any manner in which they mutually agree, but they must coordinate in some effective way. The regional planning council's role is to ensure that the local coordination system works, not to make regional decisions.¹¹⁶ If California were to mandate an intergovernmental coordination component in each local plan, along with some regional or state review to ensure that it is specific, enforceable, and updated as required, a significant number of existing local coordination problems could be addressed.

C. *Coordination of Infrastructure with Development*

The coordination of capital improvements with the planning and regulatory process in Florida is addressed in two ways. First, each local plan must have a detailed capital improvement element which, because of the internal consistency requirement, must be consistent with the land use, transportation, and other plan elements.¹¹⁷ The capital improvement element must provide detailed information on costs, timing, location and projected revenue sources for a five-year period.¹¹⁸ The capital improvement element, along with all other elements, is reviewed every five years for its effectiveness.¹¹⁹

Second, Florida has adopted the concurrency requirement that is at the heart of its growth management system. It can be summarized as follows: "It is the intent of the Legislature that public facilities and services needed to support development shall be available concurrent with the impacts of such development."¹²⁰

The public facilities and services to which this requirement applies are water, wastewater, drainage, roads, parks and solid waste.¹²¹ Each local government is required to adopt a concurrency management system

114. See *supra* notes 74-83 and accompanying text.

115. See CALIFORNIA 2000, *supra* note 97, at 25.

116. See *supra* notes 74-83 and accompanying text.

117. See FLA. STAT. ANN. § 163.3177 (West 1990).

118. *Id.* § 163.3177(3)(a).

119. *Id.* § 163.3191.

120. *Id.* § 163.3177(10).

121. *Id.* § 163.3177(6)(c).

to ensure that, at the time of development approval, infrastructure is or will be in place to service the development at the LOS standard it has adopted.¹²²

The inclusion of a capital improvement element in the list of required plan elements has increased the awareness among local planners of the important link between planning and implementation. As a result, the plan itself becomes part of the implementation mechanism, not just part of the policy guidance. California would do well to strengthen its relationship between planning and implementation so that general plans could become more of a management tool, rather than a reference work.

Concurrency is one of the most controversial aspects of the Florida approach because it can halt development unless adequate infrastructure is in place at the time the development comes on line. This, combined with the backlog in providing infrastructure improvements, especially roads and highways, causes the development community to be concerned about a de facto moratorium in some areas. Because of these concerns, some people believe that concurrency is the portion of the Florida growth management system that appears to stand some chance of being modified. The issue of slowing or stopping development makes the use of concurrency in California difficult to assess because of existing infrastructure inadequacies in many communities. If the system were applied to some of these communities, all new development could stop because of existing inadequate public services. This situation would be alleviated considerably if levels of service on state and federal highways were not an element in concurrency. This would allow cities and counties to grow by bringing their infrastructure up to an acceptable level without being at the mercy of state and federal facility planning and funding. Perhaps concurrency is a tool that local governments in California should have the option of using rather than a statewide requirement.

D. Integrated Growth Management System

Florida has a highly integrated growth management system. It does not have fragmented laws on regional planning, local planning, growth management, zoning, and subdivisions. It has more of a comprehensive system, rather than the patchwork collection of statutes prevalent in California.¹²³ The Florida system also has vertical integration among the three major planning levels—state, regional, and local—because of the requirements that the regional plans must be consistent with the State

122. FLA. ADMIN. CODE ANN. r. 9J-5, 9J-5.016 (1990).

123. See *supra* notes 98-99 and accompanying text.

Comprehensive Plan and local plans must be consistent with both the State Comprehensive Plan and the applicable regional policy plan.¹²⁴

Florida has integrated growth management into the comprehensive planning process of its local governments. All local plans must have an intergovernmental coordination element and a capital improvement element, and all other elements of the plan must be internally consistent with these elements and with each other.¹²⁵ In addition, all local plans must be followed by a concurrency management system that ensures a coordination of public services with development approvals¹²⁶ and land development regulations that must be consistent with the comprehensive plan.¹²⁷ These features, along with the state and regional review of the plans, make up Florida's growth management system.

While Florida has equated growth management with sound planning, the relationship between comprehensive planning and growth management has been unclear in many states, including California. One core problem is that no agreed-upon definition exists for growth management in California. Some believe that growth management is synonymous with limiting growth, while others take a broader view. David Brower and David Godschalk have defined growth management as "a conscious government program to influence the rate, amount, type, location, and/or cost of development."¹²⁸ This definition appears to include much of what comprehensive planning is supposed to be about. If it were adopted in California and supported by state legislation and guidelines, the general plan process would begin to address the timing of development. This would make the planning process useful and respected. Growth management systems would not be considered by some to be a concept independent of the general plan.

In addition to integrating planning and growth management, Florida has made significant steps toward integrating planning and impact assessment. It adopted a system for reviewing developments of regional impact, 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."¹²⁹ The regulations that implement this legislation deal with environmental, traffic, en-

124. See *supra* notes 74-93 and accompanying text.

125. FLA. STAT. ANN. § 163.3177 (West 1990).

126. *Id.*

127. *Id.* § 163.3202.

128. Godschalk & Brower, *A Coordinated Growth Management Research Strategy*, in UNDERSTANDING GROWTH MANAGEMENT: CRITICAL ISSUES AND A RESEARCH AGENDA 159, 163 (1989).

129. FLA. STAT. ANN. § 380.06(1) (West 1988).

ergy and economic impacts of the proposed development.¹³⁰ These reviews are conducted by the regional planning council, with a provision for appeal to the state.¹³¹

One feature of this system is that it establishes a threshold for determining which proposed projects are subject to a special assessment procedure. Projects not having a regional impact are evaluated for consistency with the local comprehensive plan and its implementing regulations, including the consistency management system and the land development regulations, but do not go through a separate review process. A second feature is that an agency that has more than a local perspective reviews all major projects. Unlike California, the Florida projects are not reviewed by one local government that is simply obligated to acknowledge the comments of other local governments that may be affected by the decision.¹³² A third feature of the Florida plan is that the set of policies for reviewing the DRIs are the same as those for reviewing the local comprehensive plans; this produces a close coordination of planning and impact assessment.

In contrast, California's system does not coordinate local planning and environmental impact assessment. They are separate processes in California, often conducted by separate staffs.¹³³ Moreover, some observers feel that the processes are not complementary because they believe the California Environmental Quality Act (CEQA)¹³⁴ process turns planning into an ad hoc review process at the expense of comprehensive planning principles.¹³⁵ While California courts continue to stress the primacy of the general plan in the local land planning and regulatory process,¹³⁶ the CEQA process may have the effect of diverting resources and public attention away from planning by focusing on environmental impact exclusively. It certainly has shown the potential for delaying projects by holding up construction until environmental impact statements are completed. Although California appears to have a limited constituency advocating a limit on the number of environmental impact reports on small projects and a greater reliance on the local planning

130. See FLA. ADMIN. CODE ANN. r. 9J-2 (1990).

131. See *supra* notes 54-58 and accompanying text.

132. See CAL. PUB. RES. CODE §§ 21000-21069 (West 1986).

133. *Id.*

134. *Id.*

135. See, e.g., Sedway, *The Environmental Impact Report*, CRY CAL. 10 (1974); D. Booher, Presentation of California Comprehensive Planning 1990: The First Wave in California, to the American Planning Association, California Chapter, Newport Beach, Cal. (Sept. 14, 1990).

136. See, e.g., *Leshner Communications v. City of Walnut Creek*, 52 Cal. 3d 531, 802 P.2d 317, 277 Cal. Rptr. 1 (1990); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990).

process to assess impacts,¹³⁷ such changes should be considered as part of a comprehensive revision of the California planning law.

E. Administrative Hearing Process

Florida has established a set of administrative procedures to handle appeals concerning the consistency of the local comprehensive plans with statutory requirements and the consistency of the land development regulations with the adopted comprehensive plans.¹³⁸ Any affected "person," including the local government, any resident of the local jurisdiction, property owner or business owner within the local jurisdiction, or any adjacent government, may appeal a finding by the Department of Community Affairs that a plan is in compliance with the statutes; this results in an administrative hearing.¹³⁹ If the Department of Community Affairs intends to find the plan not in compliance, it must initiate a procedure that leads to an administrative hearing.¹⁴⁰ An affected person may then intervene in this procedure.¹⁴¹ On the issue of consistency of the land development regulations with the comprehensive plan, an appeal can be made only by a substantially affected person.¹⁴² All of these issues are heard before an administrative hearing officer.¹⁴³

This process removes such disputes from the regular legal system. This causes two results: (1) disputes are resolved very rapidly; and (2) the administrative hearing officers, based on experience to date, are developing a very sophisticated knowledge of planning principles that manifest themselves in well-reasoned decisions. Making more use of these approaches appears to merit consideration in California for resolving planning and growth control issues.

F. Focusing the Debate and Efforts

Florida has shifted the debate from planning and growth manage-

137. See Sedway, *supra* note 135, at 14.

138. See *supra* notes 74-83 and accompanying text.

139. FLA. STAT. ANN. § 163.3213(2)(a) (West 1990).

140. *Id.* § 163.3213(5)(b).

141. *Id.* § 163.3184(9), (10).

142. *Id.* § 163.3213.

"Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; and adjoining local governments that can demonstrate that adoption of the plan as proposed would produce substantial impacts on the increased need for publicly funded infrastructure or . . . areas designated for protection or special treatment within their jurisdiction.

Id. § 163.3184(1).

143. *Id.* § 163.3213(5).

ment alternatives to implementation techniques. It has done this by prescribing, in general terms, how the planning and growth management system will work. Debate in Florida has moved away from attempting to define growth management or discussing the merits of various systems to developing implementing mechanisms, such as the concurrency management systems and land development regulations. Florida planners, politicians, and the public are becoming quite proficient in these areas. Also, the planning issues tend to change as the state deals with its highest priority problems. Attention has moved from integrating capital improvements programming with comprehensive planning to issues such as how to combat urban and suburban sprawl and how to develop an effective state approach to affordable housing. Standardization in planning, like that in other fields for which standards are established, may inhibit innovation to some extent, but it does tend to focus efforts and lead to synergistic solutions. Florida has found that, at some point, it is useful to make a decision and then move on to other issues needing attention, rather than continually dissipating energy discussing a wide variety of planning topics.

V. CONCLUSION

Florida is just beginning to test its new system of growth management. In spite of its newness, the process is moving forward with a reasonable amount of success and acceptance. Most of the components of the system, with the exception of concurrency, appear to have the continued support of the people, local and state governments and businesses. Although Florida is a smaller, but not necessarily less complex state than California, the problems of high rates of uncoordinated growth are similar. Thus Florida's approaches deserve to be considered in California.

Many of the techniques used in Florida could be adopted by cities and counties in California. For example, a local government could adopt a concurrency management system, or a county and all cities within it could adopt intergovernmental coordination elements in their general plans. However, one of the primary lessons to be learned from Florida is the value of an integrated state-wide system for managing growth. Many observers, including the author, believe that we have reached the point where action must be taken. The time is ripe for effective growth management legislation in California.