

**Southern Maine Regional Planning Commission**

**Creating a Process for Reviewing  
Developments of Regional Impact (DRIs)  
in Maine**

**A RESEARCH REPORT**



**June 2004**

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## **Introduction and Background**

### **The Proposed Resort Casino—A Scary Prospect for Abutting Towns**

In November of 2002, 11 cities and towns in the Southern Maine Regional Planning Commission's district had similar referendum questions on their ballots that essentially asked the question, "Would you be willing to consider being the host community for a resort casino operated by the Penobscot Nation and Passamaquoddy Tribe?" When the votes were counted 10 of the 11 voted "no"—most by wide margins.

The eleventh, Sanford, voted "yes," by a margin of just 53 to 47 percent. The Sanford vote, while close, was enough to touch off the most contentious debate over the use of land in Southern Maine in recent memory. Over the next year, residents of Southern Maine were bombarded with hundreds of arguments both for and against the casino project.

One of the major concerns raised by opponents of the plan was that, if the statewide referendum on the casino were to pass, abutting communities would have little if any ability to influence the project and would realized no direct benefits from the applicant, whereas the Town of Sanford controlled the land use planning process and could assess impact fees. This was a particularly important issue in the casino debate as the proposed project site was located within three miles of the borders of five other towns (Kennebunk, Wells, Alfred, Lyman and North Berwick).

In short, the idea that a major resort casino that would draw thousands of visitors per day would be built with almost no input from people who lived five minutes away was a wake-up call to many municipal leaders in Southern Maine. Though the Town of Sanford assured other towns that it would try to address regional impacts when assessing impact fees to the casino developer, there was some question as to Sanford's legal ability to do this. Even with the good will of the host community, the development still may have been able to go forward with little attention to regional impacts.

When the statewide casino referendum was defeated in November 2003, the towns around Sanford were relieved that this project was off the table. However, the structural problem that caused them to be so concerned still existed, and would still come into play if some other large development plan were to come along. The basic question that was in need of answering was: "how do we deal with developments that have impacts beyond town borders?"

### **About This Report**

In response to the concerns raised during the Casino debate, the Southern Maine Regional Planning Commission (SMRPC) secured a grant from the Maine State Planning Office to explore the regional impact review issue in greater detail. SMRPC's grant proposal called for three tasks on this front:

1. Assessing the current situation
2. Review national best practices on regional impact review
3. Create potential alternatives for regional impact review in Maine

This report is structured around the three tasks and then takes the additional step of evaluating the various alternatives to put forth a suggested approach to regional impact review.

The information presented here was assembled in several different ways:

- Internet research on national best practices
- Interviews with program managers of regional impact review programs
- A roundtable discussion with officials from Maine state agencies (DEP, SPO, DOT) and municipal planners to evaluate the situation and put forth suggestions for addressing gaps in the process
- One-on-one follow-up interviews with attendees of the roundtable discussion
- Internal staff work sessions at SMRPC to create and evaluate the alternatives.

## **Assessment of the Current Situation**

### **Existing State Review Mechanisms**

At the present time in Maine, the only regulatory authorities for reviewing of large projects that affect more than one municipality are the DEP's Site Location of Development Law Review (Site Law) process and the DOT's Traffic Movement Permit Process. These two processes do exert some control over larger developments, but they do not offer any official role to abutting towns or regions.

Maine's Site Law review process was established over 30 years ago to address the impacts of larger developments and was, for its time, an innovative and progressive approach to examining the impacts of larger projects. But this system only allows for authority at the individual municipal level and the state level, with no explicit authority granted to nearby municipalities or any sort of regional entity. The only official capacity that abutting jurisdictions have as part of the Site Law review is to attend a public scoping meeting at the outset of the process.

The Site Location Law focuses on direct environmental issues related to the suitability of individual development sites and the direct environmental effects of building on a site. It does not address human impacts (housing, social services, etc.) nor does it address indirect environmental impacts.

According to the Site Law's statutory language, DEP is authorized to apply the following standards when conducting a Site Law review:

- Financial Capacity
- No adverse effect on the natural environment
- Soil Types
- Storm water management and erosion and sedimentation control
- Ground water
- Infrastructure; and
- Flooding

The Maine Site Law's thresholds for review are as follows:

- Single-Family Subdivisions – At least 15 lots on a parcel of 30 or more acres (higher thresholds apply for municipalities deemed to have the capacity to review developments)
- Any Other Development on a Parcel of 20 or more acres
- Any Development with Permanently Cleared Areas of 3 or more Acres (buildings, parking lots, roads, paved areas or wharves)
- Mining and Oil Terminal Facilities

The Traffic Movement Permit process examines to what extent a new development will impact existing roads and bridges. It does offer the state government a fairly strong role in addressing the traffic impacts of new developments, but it is narrowly focused on the movement of automobiles and trucks. The process presently has no authority to require transit or pedestrian improvements related to new development.

A third structural means of considering the regional impacts of development is the state’s Growth Management statute, which are administered by the State Planning Office. Under the Growth Management law, municipalities that have Comprehensive Plans which are consistent with the law and then institute Certified Growth Management programs are exempted from the Site Law. According to the statute, a Certified Growth Management program must include the following elements:

- A Comprehensive Plan found consistent by SPO that includes four elements:
  1. Inventory and Analysis
  2. Policy Development
  3. Implementation Strategy
  4. Regional Coordination Program
- An Implementation Program that is consistent with the Implementation Strategy outlined in the Comprehensive Plan

The reasoning behind this system is that SPO’s review of plans and planning activities will ensure that regional impacts are considered in the local process of reviewing new development proposals. However, to date, just five municipalities in Maine have Certified Growth Management Programs—all five are located in Aroostook County.

## **Gaps in the Existing Process**

The chaos created by the resort casino debate illuminated a number of gaps in the reviewing process that need to be considered in greater detail. From a regional planning perspective, the central concern is that, in the absence of regional land use control and planning authority, a development of the casino’s magnitude would have likely caused each town in the region to act *independently* and in a largely *reactive* manner to address its impacts.

Some of the key gaps in existing processes identified by municipal and state staffers are as follows:

- **Multi-jurisdictional residential projects** – In addition to dealing with large commercial developments, the Southern Maine region has experienced another phenomenon that speaks to the potential need for regional review of development plans. As developable land has become more and more scarce, there has been a flurry of residential

development proposals for properties that sit in more than one municipality. Under today's system, the portion of each project that lies in each town falls under that town's jurisdiction, with the neighboring towns having no control over the process, meaning that portions of the same project could be reviewed in very different ways.

- **Impacts that are not site specific** – Site Location Law focuses on direct environmental issues related to the suitability of individual development sites and the direct environmental effects of building on a site. It does not address human impacts (housing, social services, public safety, etc.) nor does it address indirect environmental impacts.
- **Limited public input** – Scoping meetings are usually well attended by municipal officials, but not always by citizens. Usually, the only citizens who attend are abutters.
- **Rigid standards for traffic movement permits** – The granting of a movement permit is predicated on a project not reducing the level of service of any roads to D or F, but in service center downtown areas, having a low level of service may not be catastrophic. Redevelopment or infill projects in service centers may be worthy of a different set of standards from greenfield developments.
- **Cumulative Impacts are not considered** – DEP and DOT reviews are tied to specific projects, and not to larger areas that are being affected by more incremental development. In recent years, there have been very few residential developments in Southern Maine that have triggered either Site Law or Traffic Movement Permit reviews, as most development occurs in smaller projects. In this system, the cumulative environmental and traffic impacts of development over time are not being considered. In effect, the current system is punishing developers who dare to “think big.”
- **Little effect of Growth Management program on regional development** – Though the Growth Management program has been somewhat effective on the municipal level, as over 200 municipalities in Maine have consistent Comprehensive Plans, the limited use of the Certified Growth Management program and the lack of multi-municipal plans shows that regional land use planning activities have been few and far between.

## **A Note of Caution**

While most municipal leaders in Southern Maine were eager to conduct a strong regional impact review for the proposed casino project, there may not be a strong desire to institute a universal regional impact review process. The casino proposal was seen by many as more than a real estate development—it was viewed as something that could permanently and fundamentally alter the character and the culture of the region. The buildings and roads that would be erected to serve the casino were not necessarily the issue at hand. Rather, the *use* of the property was what caused so much debate.

As proof of this fact, there is presently a proposal for a development of nearly the same size—a major retail power center in Biddeford. This project is not meeting with much resistance, though, as people are generally supportive of having more retail services available in York County.

It is therefore important to keep in mind that, just because the casino proposal produced an outcry of support for reviewing impacts on the regional level, it does not mean that Southern Maine truly desires a permanent system for regional impact review. Many towns may, in fact, be against the idea, as it could be seen as infringing on home rule and installing an unnecessary layer of governmental review. SMRPC staff was careful to keep this sentiment in mind while conducting research for this report.

## National Best Practices for Regional Impact Review

Throughout most of the United States, the review of major developments falls under the jurisdiction of the host locality. Depending on the location and the form of government, development review is the responsibility of village, town, city or county government. The majority of new developments are reviewed only by one jurisdiction.

In addition to the local review process, many regions and states have enacted additional layers of development review to address issues of regional concern. These regional reviews are most often aimed at addressing environmental issues, traffic and other site-specific concerns. Maine's Site Law is an example of this. The thresholds for triggering such reviews are typically far higher in other states, though, especially in the more urbanized states.

Some regions and states have another layer of Regional Impact Review. In these cases, the process addresses general development impacts such as housing affordability, public facilities and effects on regional character. Typically, only projects that exceed certain thresholds for size (number of housing units, square feet of commercial space, trips generated, etc.) are subject to these additional layers of review.

Generally speaking, these processes fall into four different categories:

1. **Mandatory Statewide Process** (Vermont, Florida) – Legislatively created with requirements that localities must address regional impacts of development
2. **Voluntary Statewide Process** (Georgia) – Legislatively created with a review process that still leaves final authority with localities
3. **Mandatory Regional Process** (Cape Cod Commission) – Delegation of municipal regulatory authority to regional entity by mutual agreement
4. **Voluntary Regional Process** (MetroWest Growth Management Committee, Minuteman Advisory Group on Interlocal Coordination [MAGIC]) – Municipalities agree to undergo regional impact study but retain final decision-making authority on how to address impacts.

This review examines the origin, application and effectiveness of these four different models and highlights the strengths and weaknesses of each model.

# MANDATORY STATEWIDE PROCESS

## Vermont Act 250 (State Land Use and Development Law)

### Background

Act 250 was Vermont's response to mounting development pressures that resulted following the completion of Interstates 89 and 91 earlier in the decade and the inability of many small municipalities to effectively handle these pressures. Enacted in 1969, it was the first statewide law to address the regional impacts of development. According to the *Vermont Act 250 Handbook*, there are three main goals of the Act 250 program:

- “To protect the environment;
- [To] balance development with local, regional and state issues; and
- [To] provide a forum for neighbors, municipalities and other interest groups to voice their concerns.”

### Structure

The basic structure of the Act 250 program is that applicants seeking approval for projects that exceed its thresholds must obtain a land use permit. In municipalities with local land use or site plan ordinances, a project must first gain approval at the local level before the applicant may even apply for a land use permit from the state.

Permit reviews are conducted by the nine Regional Environmental Commissions, with each being responsible for projects in its region. Oversight of the program comes from the Vermont Environmental Board, a state agency that manages the program. Until 2004, the Environmental Board heard appeals, but a recent change to state law has shifted this authority to a new state Environmental Court, which will operate on equal footing with the state Superior Court. The Environmental Board is now transitioning to becoming exclusively a rulemaking and policy board.

During the review process, the regional commission coordinates with several different state agencies as well as with the host municipality. Citizen participation is a critical aspect of Act 250 reviews, as each review requires at least one public hearing to discuss the project in an open, regional forum.

### Thresholds

Any development application that exceeds the following standards is subject to Act 250 review:

- Subdivisions – At least 10 lots on one parcel or more than 10 lots by the same applicant within a radius of 5 miles.
- Commercial or Other Developments – Any development on a parcel of 1 or more acres except in municipalities with permanent zoning ordinances in which the standard is 10 acres.
- Construction of Roads – A road that provides access to 5 or more lots or is longer than 800 feet.
- High Elevations- Any construction located more than 2,500 feet above sea level.
- Governmental Projects – Any project by a state or local government on a parcel 10 acres or larger.

- Revisions – A change or addition to any project previously approved under Act 250.

### **Coordination With Other Programs**

Act 250's original language called for all developments to be consistent with a State and Regional land use plans. In practice, regional plans have been enacted throughout the state and all reviews do examine the consistency of new development with them, but a state plan was never completed and this provision was later stricken from the Act.

In the 1980s, the Legislature passed the Vermont Growth Management Act, more commonly known as Act 200. This statute was intended to bolster Act 250 by encouraging municipalities to adopt Comprehensive Plans that are consistent with regional plans. The idea was to have municipalities conduct advance planning so that future development would be more predictable and proactive and that a reactive review process like Act 250 would not be the only means of planning.

Projects granted land use permits under Act 250 gain vested rights, but these rights do not become permanent until the approved project is constructed. By law, an applicant loses vested rights on an approved project three years after approval. However, there is an extension process. If an applicant can prove to the Environmental Board that due to mitigating circumstances (litigation, changing market conditions) the project cannot be built within three years, an extension of vested rights may be granted.

### **Evaluation**

The Act 250 program has been extremely successful over the years at ensuring that important regional and statewide resources are protected from development. Act 250 has been particularly in effective in rural towns, many of which lack even basic land use or site plan review ordinances. Even in areas where municipalities have land use ordinances, Act 250 has been successful in that local jurisdictions typically lack the authority, interest and capacity to consider the regional impacts of new development.

The delegation of the state's authority to Regional Environmental Commissions has been a success as well, as applicants and town governments are able to deal with citizen-based groups in their own regions. The process has been very successful in getting input from citizens and officials of abutting towns and most communities have come to accept (if not embrace) Act 250. There has been some resistance in the state's more rural areas, but it appears that the program is in place to stay.

One issue with the program is that its structure often sets up conflicts, not only between towns and the state, but also within an individual town. Since a project must clear the local review process before an Act 250 application may even be submitted, many localities become advocates for projects that they have approved, thus creating friction with the Environmental Commission and/or the state. More troubling is when a town that is unsatisfied with its own ordinance comes to an Act 250 hearing to speak *against* a project that it has already approved. This latter scenario has happened many times in Vermont.

## **Florida Developments of Regional Impact Program**

### **Background**

The Developments of Regional Impact (DRI) Program was established in Florida in 1972, making it one of the first states to look at regional and statewide impacts of development. During the same legislative session, a parallel program was installed to protect areas of critical state concern.

In the statute, a Development of Regional Impact is 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.”

The Florida Department of Community Affairs, the state agency responsible for the DRI program, estimates that over 1,100 DRIs have been approved in the state over the past 30 years.

### **Structure**

State law delegates the review authority for DRIs Florida’s regional planning councils (RPCs). The process is overseen by the state’s Department of Community Affairs, which also has jurisdiction over the state’s Growth Management program. For projects that exceed the thresholds defined below, development may only proceed once the DRI process is completed and the RPC issues a Development Order (D.O.) authorizing the construction of the project.

Applications that are rejected by RPCs may be appealed to the Florida Land and Water Adjudication Commission, a statewide board appointed by the Governor.

### **Thresholds**

Florida’s DRI statute sets out a very long and complicated set of thresholds for different types of development. The statute establishes different thresholds for each county in the state, based on the jurisdiction’s existing population base. In addition, it allows individual RPCs to petition the state in order to establish a different standard for a development type within its region.

For residential development, the DRI threshold ranges from as low as 250 units in the most rural counties of the state to as much as 3,000 in the Jacksonville, Miami/Ft. Lauderdale, Orlando and Tampa/St. Petersburg areas.

For non-residential developments, there are different thresholds established for many different types of projects. Many of these categories are specific to large public projects such as airports, sports stadia, port facilities, hospitals and schools. However, there are also criteria for commercial and industrial development of different types. These thresholds are:

- Office Parks: 30 acres of land or 300,000 square feet of gross floor area
- Retail and Service Development: 40 acres of land, 400,000 square feet of gross floor area or 2,500 parking spaces
- Industrial Facilities: 320 acres of land or 2,500 parking spaces

These thresholds are all benchmarks, with DRI regulations written so as to give each RPC some flexibility as to whether or not the DRI law actually applies. The statute defines four different types of projects based on their relationships to the benchmarks:

- A development that is at or below 80 percent of all numerical thresholds shall not be required to undergo development-of-regional-impact review.
- A development that is between 80 and 100 percent of a numerical threshold shall be presumed to not require development-of-regional-impact review.
- A development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be presumed to require development-of-regional-impact review.
- A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

### **Coordination With Other Programs**

Florida's Growth Management statute, established in 1985, is probably the strongest statewide comprehensive planning program in the nation. This statute requires all jurisdictions in the state to have a comprehensive plan and, unlike in Maine and many other states, the future land use maps in comprehensive plans are binding. As a result of the Growth Management program, a DRI decision now must coincide with an amendment to a locality's comprehensive plan.

A recent change to the Growth Management law has given localities the ability to complete Optional Sector Plans (OSPs) that allow for specific areas to grow without subjecting individual projects to DRIs. OSPs are effectively overlay comprehensive plans for areas up to 5,000 acres (about 8 square miles) and, once an OSP is found consistent with the regional plan by an RPC, all projects within the Sector are exempt from DRI review as long as they are deemed consistent with the OSP.

Another recent innovation in Florida is the Florida Quality Developments (FQD) program. This program established a statewide scoring system by which a large project could earn a certain number of "points" based on its compliance with regional and state goals for environmental protection, land use and design. Projects earning the FQD designation were automatically exempted from the DRI process. In its first few years, 18 projects earned the FQD designation, but developers quickly determined that it was no faster or easier than the DRI process, so interest has waned.

One key aspect of DRIs, OSPs and FQDs is that, once they are approved, all parcels of land within them gain vested rights and are therefore exempted from being altered by future comprehensive plan updates. Developers have therefore come to appreciate them, as an approved DRI provides an ironclad guarantee that the rules cannot change in the future.

### **Evaluation**

After 30 years of use, the Florida DCA feels that the DRI program and its later variations has been very successful in addressing the regional impacts of large developments, particularly in rural jurisdictions that lack the capacity to conduct thorough reviews. The two areas in which DCA staff feels that the program has been most successful are in ensuring that road

improvements get made and in protecting upland wildlife habitats that are not protected under other laws.

One criticism of the program is that it does not truly address all three aspects that it seeks to (magnitude, location and character). The actual application of Florida's DRI process is really aimed at magnitude only. Location does play somewhat of a role, though, as a residential development located within two miles of a county boundary is subject to the threshold of the smaller county (i.e., the lower threshold). Another weakness of the program has been the removal of certain types of large projects from the DRI program, especially airports, seaports, sports stadia and college campuses. These projects now are overseen directly by the state, and not by RPCs, thus diminishing the value of regional input.

## **VOLUNTARY STATEWIDE PROCESS**

### **Georgia Developments of Regional Impact Program**

#### **Background**

In response to rapid development during the 1980s, the Georgia State Legislature enacted the Georgia Planning Act in 1989. This Act established many planning tools on a statewide basis, including a statewide comprehensive planning program. It also directed the Georgia Department of Community Affairs (DCA) to create a system for evaluating the regional impacts of large-scale developments, and the act called these Developments of Regional Impact (DRIs).

Georgia defines DRIs as "large-scale developments that are likely to have effects outside of the local government jurisdiction in which they are located." There are two stated purposes of the DRI review process:

- To improve communication both between local governments and local, state and regional entities; and
- To provide a means of understanding and addressing the impacts of large-scale developments to avoid inter-jurisdictional conflicts.

#### **Structure**

When a development application is submitted to a city or county government in Georgia, that entity is charged with identifying whether or not the proposal may exceed the DRI thresholds set by the state. If the local government determines that a project may in fact be a DRI, it then must notify its Regional Development Center (RDC) and have the applicant fill out a DRI submittal form and send it to the RDC. RDCs are also supposed to be vigilant in keeping an eye on its jurisdictions in order to ensure that all DRIs are reviewed.

The role of the RDC in the DRI process is advisory. The statute requires all DRIs to be reviewed by RDCs, but the final decision on a DRI is left to the host city or county in most of the state. The one exception to this rule is in the Atlanta metropolitan area, where the Georgia Regional Transportation Authority (GRTA) has jurisdiction over all federal road money to be spent and can therefore withhold it from DRIs that it deems to be unacceptable. GRTA was created in

1998 in response to a Federal DOT decision to withhold road funding from the Atlanta region due to excessive pollution. In GRTA's region, the Atlanta Regional Commission's DRI reviews take on much greater weight than those of other RDCs in the state.

## **Thresholds**

DRI thresholds in Georgia are set at different levels in the state's metropolitan and non-metropolitan counties. A third set of standards only applies to the Atlanta region, but these are not presented here, as they are not applicable for Maine. Thresholds for the rest of the state are as follows:

- Subdivisions
  - Metro: 400 lots or units
  - Nonmetro: 125 lots or units
- Office
  - Metro: 400,000 square feet
  - Nonmetro: 125,000 square feet
- Retail
  - Metro: 300,000 square feet
  - Nonmetro: 175,000 square feet
- Industrial
  - Metro: 500,000 square feet, 1,600 employees or 400 acres
  - Nonmetro: 175,000 square feet, 500 employees or 125 acres
- Any project with 1,000 parking spaces (metro or nonmetro)
- Public projects – varied thresholds for hospitals, schools, airports, solid waste facilities, water or sewer plants, oil storage, intermodal facilities, etc.

## **Coordination With Other Programs**

As outlined above, Georgia's DRI laws were enacted concurrently with the state's comprehensive planning laws. While the planning laws do require all jurisdictions to have land use plans, plans are non-binding and land use decisions do not necessarily need to conform with even local comprehensive plans.

Aside from the Atlanta region, where GRTA maintains control over funding for any major road improvements, there is little further coordination of the DRI process in Georgia with other regional or statewide planning efforts.

## **Evaluation**

The prevailing sentiment in Georgia is that the DRI program is only as effective as city and county governments allow it to be. Those that heed the findings of their regional development councils benefit by gaining a full understanding of the impacts of new development and by addressing those impacts from the outset. Those that do not suffer no legal consequences, but they do often struggle to address the effects of new developments once they are completed.

Though there are some success stories from the DRI process, Georgia DCA staff indicates that there are a number of inherent flaws in the system. These include:

- If a locality neglects to file a DRI application form, there is no recourse for the RDC or state, as there are no official checks and balances in the system. Many rural jurisdictions simply do not realize when a large project comes through that a DRI review is necessary and others choose to ignore this fact.
- Developers often split up projects into phases to get under DRI thresholds and many localities do not pick up on such tactics.
- Public awareness in most of the state is not very good, as many local officials still don't know what a DRI is even after more than 10 years of the program's existence.
- Findings issued by RDCs are non-binding, and many communities ignore them.
- There is no established procedure for projects located on the fringe of one RDC's region to be jointly reviewed by the neighboring RDC.

On the positive side, the media has been very proactive about reporting on new development, especially in the rural fringes of the Atlanta area. The result of the media's vigilance is that several projects that may have otherwise escaped DRI reviews were brought to the attention of RDCs.

A final bit of advice offered by staff is that city and county officials must be convinced that DRI reviews are beneficial to them, as they offer an honest assessment of a project's potential impacts and that their localities can be protected from the negative effects of growth by a strong DRI review.

## **MANDATORY REGIONAL PROCESS**

### **Cape Cod Commission**

#### **Background**

The Cape Cod Commission was originally established as a regional planning council in the 1960s and it functioned like the other regional planning groups in Massachusetts for its first 20 years—an advisory organization that was subordinate to its member towns. In the mid-1980s, the old organization conducted a regional visioning exercise in which many citizens expressed the desire for stronger regional control over land use and development decisions.

The notion that a regional entity would have authority over municipalities was not popular at first. However, soon after the vision statement came out, a statewide blue-ribbon environmental commission concluded that development was so out of control on Cape Cod that a strong regional authority should be created. A non-binding referendum on this issue was held in 1988 and it passed by a wide margin in all 15 towns on the Cape.

In 1990, the Massachusetts Legislature approved the creation of the Cape Cod Commission, but placed the condition on it that a majority of voters in the region itself must re-vote on the issue before the Commission could be established. In this binding referendum, the margin of victory was slim and, in fact, five of the 15 towns voted it down. However, the legislation was written so that only a simple regional majority was necessary.

The Cape Cod Commission defines Development of Regional Impacts as: “Certain development projects, due to their size, location or character [that] affect more than one community.” In the DRI review process, the Commission examines potential impacts on the following items:

- Water quality
- Traffic flow
- Historic values
- Affordable housing
- Open space
- Natural resources
- Economic development

## **Structure**

The structure for DRI review by the Cape Cod Commission is that of “referrals” from municipalities. Under this arrangement, all development applications must be filed with municipalities and then the municipalities refer the application to the Commission if a project exceeds DRI thresholds. Municipalities are also given the right to request that the Commission conducts a DRI review even if a proposed development does not exceed DRI thresholds. This so-called “discretionary referral” process may be used if a town wants to have a regional review done for a particular project and the Commission agrees to do the review.

The DRI process is set up so that it interrupts the municipal review process. When a project is referred from a town to the Commission, the town’s time limits on reviewing are suspended until the DRI process is completed. If the Commission grants approval to a DRI, the project is then referred back to the town for final approval. The process was set up in this manner for two reasons:

- To allow towns to have conditions for development that are more restrictive, but not less restrictive, than the regional conditions.
- To avoid potential conflicts when towns become “advocates” for projects they have already approved.

The Commission itself is structured as a regional legislative body under the umbrella of the Barnstable County government. It was originally proposed to be a stand-alone authority, but many municipal officials worried about it having too much authority. Its Board has 19 members: one from each of the 15 towns and four state appointees.

## **Thresholds**

- Residential Subdivisions – 30 units/lots or 30 acres
- Commercial Subdivisions – 10 lots or 30 acres
- Commercial Development – 10,000 square feet
- Mixed-use Development (Residential and Commercial) – 20,000 square feet
- Roads/Transportation – Any construction providing access to water bodies or wetlands, any transportation facilities providing passage to or from Barnstable County
- Any site disturbance of 2+ acres
- Communications Towers – 35 feet in height
- Historic Structures – Major alterations to national or state-recognized structures

## **Coordination With Other Programs**

One of the conditions of the establishment of the Cape Cod Commission was that a Regional Plan would be created to set standards for future development. Following ratification of the legislation in 1990, a committee installed interim standards for DRIs and then the Commission set about creating a permanent regional plan. The Plan, adopted in 1991, laid out 100 specific standards for developments on Cape Cod that are used as measuring sticks during the DRI process. Thus, all DRI decisions are consistent with the Regional Plan.

The Commission, in addition to its role as the DRI authority, still acts as a more traditional regional planning commission and conducts consistency reviews of municipal comprehensive plans for its 15 towns. Towns that complete plans and have them certified by the Commission are granted extra-municipal powers in exchange. The Commission also has worked with its towns to ensure that areas of critical planning concern (i.e., critical natural resources) are protected in municipal plans.

Perhaps more so than any other region in the country, Cape Cod's planning activities are strongly coordinated with state and federal goals. This is because the entirety of Barnstable County is designated as a Coastal Zone, thus requiring it to have policies that are consistent with those of the state and federal governments. The Commission also coordinates with the Massachusetts Department of Environmental Affairs on its environmental reviews of large developments, as the DRI process serves as the regional review that is sent on to the state.

## **Evaluation**

After nearly 15 years of existence, both municipalities and Commission staff feel that the program has been largely successful. According to staff, the strongest points of the DRI process are:

- Turns down or improves bad projects
- Offers region a chance to speak in a unified voice about state/federal issues
- Both large and small towns are very happy overall with the process
- Developers quickly figured out how to work with the process and are now happy with it due to its consistency and flexibility
- Bottom-up public support for process was absolutely critical—public resentment has been minor

Early on in the Commission's history, there were some complaints about the DRI process' efficiency, as a substantial backlog of projects piled up while the organization was being set up and staff was being hired. Additionally, many developers and towns were upset that projects that had gained local approval prior to the Commission's creation but had not yet been built were subjected to DRI review. A final complaint was that some town standards were fundamentally at odds with regional standards, making it impossible to approve projects, but the Commission subsequently drafted separate Memoranda of Understanding with each town to make special arrangements to address certain standards.

# VOLUNTARY REGIONAL PROCESS

## MetroWest Growth Management Committee

### Background

The MetroWest Growth Management Committee is one of eight sub-regional planning entities that comprise the Boston Metropolitan Area Planning Council. MetroWest's region contains 10 towns along the Mass Pike corridor between the two ring roads around Boston (Routes 128 and 495). The two largest towns in the sub-region are Framingham and Natick.

In the mid-1980s, concerns about large-scale suburban development in the MetroWest region led the towns to come together to develop a Regional Impact Review (RIR) process. The RIR process produces a findings memorandum that is delivered to local and state decision-making authorities outlining the expected regional impacts of new development.

The RIR process is designed to fit into the gap between municipal review and state review of large projects under the Massachusetts Environmental Policy Act (MEPA). The three key categories addressed by the RIR that are not addressed by local or state reviews are housing, public safety and transit.

### Structure

When a town receives a development application for a project that exceeds RIR thresholds, the town informs MetroWest staff. At that point, staff coordinates with the host municipality to appoint a four-member review subcommittee. The four members of the subcommittee include one from the host town, two from abutting towns and one from a non-abutting town in the subregion.

The four-member subcommittee, working with MetroWest staff, meets to review the application and then writes a comment letter that identifies the types and magnitudes of regional impacts of the proposal. The applicant is welcome to come to subcommittee meetings in order to have a dialogue about what impacts it may be willing to address. The letter is sent to the host community, as well as to the applicant and to the Massachusetts Department of Environmental Affairs to assist with the state's environmental review process.

### Thresholds

Thresholds for RIR are as follows:

- Residential – 50 units
- Commercial/Industrial Development – 50,000 square feet or 100 parking spaces
- Any Development within 400 feet of another MetroWest town
- Any other Development deemed by a local board or MetroWest's board to be of "more than local significance."

### Coordination With Other Programs

MetroWest's Regional Impact Reviews do not have an official link to other planning programs, but they are informally linked to both local land use planning and the MEPA process at the state

level. MEPA staff does incorporate the findings of the RIR reviews into its findings on projects in the MetroWest region, and local planning boards have generally been responsive about doing so as well.

## **Evaluation**

By design, MetroWest's RIR program is not a strong review, so its purpose is really just to raise awareness about regional impacts of development and to help influence communities to think regionally. From that perspective, the program has been very successful. Perhaps its greatest success is that all 10 towns in the region are supportive of the RIR after nearly 20 years of its use. Staff cites two reasons for continued local support:

1. Recommendations aren't binding, so towns retain final authority; and
2. Towns have input on projects in other towns and thus feel like they have a voice

Another success of the RIR program is that it has allowed municipal planners and planning board members to work together in ways that they otherwise would not. Just having an ongoing dialogue among town staff and officials has helped build good will in the region. MetroWest staff also is appreciative of the interest taken by newspapers in the region and how the press has helped raise public awareness of the need to think regionally.

The one obvious drawback of the RIR system is that it is designed to be an advisory process, and not a regulatory one. The other drawback is that the review-by-committee approach produces recommendations that are typically short and not very detailed, as clarity takes precedence over volume. Still, given the intent and the structure of the RIR program, it has been of value to the MetroWest region.

## **Minuteman Area Group on Interlocal Coordination (MAGIC)**

### **Background**

The Minuteman Area is another subregion of MAPC and encompasses 12 towns located in the Route 2 corridor northwest of Boston, stretching from Lexington to Boxborough. It sits just to the north of the MetroWest region. The region has seen not only substantial residential development in the past 20 years, it has also seen a great deal of retail and office development as well due to its location between Routes 128 and 495 along a major hub road like Route 2.

MAGIC was formed in the mid-1980s to address regional growth management concerns and to provide a means for addressing what were termed "interlocal" issues that were not covered by the statewide MEPA process. The concern at the time was that MEPA, while acting as a check against larger regional impacts, was not addressing issues that may only affect two or three towns. One particular concern was for commercial projects located near town lines, as these projects enrich one town while raising traffic congestion in nearby towns without adding to their tax bases.

MAGIC's first project was to get a handle on land use changes near town boundaries, and it obtained a state grant to research land use patterns and zoning in areas near town lines. This project gave staff and communities a clearer idea of both the need for a regional review and the

risks of not looking at interlocal impacts of development. A Developments of Regional Impact (DRI) process was instituted on the heels of this research project.

## **Structure**

The original hope for MAGIC was that it would not only address the more local impacts of larger projects—it would also review moderately-sized projects that fell short of MEPA thresholds. In practice, however, MAGIC has taken a “second position” to MEPA, as nearly all projects that it reviews under its own DRI process are part of the state’s review.

The basic reason for this is a lack of funding. MAGIC has very limited staff resources and no mechanism exists to pass the costs of the DRI process through to developers. As a result, MAGIC staff has to be very judicious about which projects it decides to review, which typically means that it defers to MEPA thresholds.

For projects that MAGIC does review under the DRI process, it typically receives them from MEPA rather than directly from towns. MAGIC staff then contacts the host community and representatives of any towns that it feels may be affected by the project to solicit comments (towns are identified at staff discretion). In some cases, a meeting is convened, but time constraints usually prevent this from happening—the MEPA process is only allotted 30 days, but MAGIC doesn’t usually receive materials for about a week, thus leaving only about three weeks for review.

After completing its review, MAGIC sends a memo on interlocal impacts to MEPA staff for inclusion in its review. MEPA has been receptive to these comments and MAGIC’s participation in the process has often helped raise issues that would have otherwise not been addressed. The memo is also sent to the host town and the other affected towns.

## **Thresholds**

Though MAGIC did establish its own development thresholds, in practice MEPA thresholds are what it uses. Thus, MEPA thresholds are listed below.

- Land Development – 50 acres of gross area or 10 acres of impervious area
- Wetlands – alteration of 10 acres or construction of a dam
- Water/Wastewater – New water or wastewater facilities of 2.5 million gallons per day (1.5 million for groundwater)
- Transportation – Road 2 miles or longer, 3,000 trips, 1,000 parking spaces, new interchanges

## **Coordination With Other Programs**

As with MetroWest, MAGIC’s DRI reviews are not officially linked to other planning programs, but they are informally linked to both local land use planning and the MEPA process at the state level. As outlined above, MEPA staff does incorporate DRI findings into its findings on projects in the Minuteman Area. Local planning boards have been receptive to MAGIC’s reports, but the level of coordination has been hampered by the short window of time available.

## **Evaluation**

The goal of MAGIC's DRI process was fairly humble, as it was simply designed to raise the awareness of the interlocal impacts of development among its communities. From this standpoint, the program has been somewhat successful. However, there are three structural shortcomings in the program that greatly limit its effectiveness.

1. Lack of funding/staff time for reviews
2. Little time for reviews (30-day MEPA limit)
3. Reluctance of towns to voluntarily submit to review for projects that meet MAGIC' thresholds but fall short of MEPA standards

Even to achieve the moderate success that MAGIC has, there was a good deal of salesmanship involved. When the DRI was established in the mid-1980s, MAGIC staff made presentations to Boards of Selectmen and Planning Boards in each of its member towns to alert them to the importance of understanding interlocal impacts and educate them about the new DRI review process. This active engagement was appreciated by towns and laid the groundwork for a greater level of cooperation.

Another early step by MAGIC was to develop a regional land use plan. While this plan is not prescriptive, it does allow the DRI review process to occur within a larger regional framework that gives staff a clearer idea of how individual projects do and do not mesh with regional goals and objectives.

## **Summary of National Best Practices**

The most basic conclusion that can be gleaned from the review of six existing regional impact review processes is that each has achieved exactly what its authority has allowed it to achieve. A process with strong authority succeeds not in stopping development, but in making development better. A process with weak authority is only as effective as local jurisdictions allow it to be.

The three mandatory processes (Florida, Vermont, Cape Cod) have all been successful at making developments better for communities and for the environment. In these cases, while there was resistance initially, developers have generally "figured out" each system and realized that they can develop good projects and earn profits within the bounds established by these programs.

The three voluntary processes (Georgia, MetroWest, MAGIC) have proven to be useful in raising issues of regional concern. However, due to their structures, they only succeed if the municipalities or counties that receive their impact review statements actually incorporate findings into their own local processes. In some cases, localities do appreciate the insight and do require new developments to address regional impacts. In other cases, the reviews are filed away and not heeded at all.

In considering which of these six models provide good lessons for Maine, it is useful to look at the strengths and weaknesses of all six in order of the level of authority vested in each program. This analysis shows that there are pitfalls in any DRI process, regardless of whether it is very powerful or purely advisory. In descending order of effectiveness, the six processes are:

## 1. Vermont Act 250

- Type: Mandatory Statewide
- Assessment: Very effective
- Positives:
  - Very effective at addressing regional impacts of all types
  - Very low thresholds in rural areas—few projects avoid review
  - Citizen participation is integral part of process
  - Abutting towns have ability to influence process
  - General acceptance throughout the state
  - Well integrated with other growth management programs
- Negatives:
  - Subject to alteration by state legislature—political issues can affect it
  - Structure sets up conflicts between towns and state

## 2. Cape Cod Commission

- Type: Mandatory Regional
- Assessment: Very effective
- Positives:
  - Enabling legislation makes process difficult to eliminate once in place
  - Allows towns to be more restrictive but not less restrictive than region
  - Consistent standards are appreciated by towns and developers
  - Well coordinated with local, regional and statewide planning goals
  - Flexible in dealing with quirks in local ordinances
  - Eliminates local vs. regional conflicts by putting regional review first
- Negatives:
  - Establishment resulted in a chaotic situation as mechanisms were put into place
  - Until agreements were made with each town, many projects were impossible to approve due to conflicting local and regional standards
  - Doesn't fulfill all goals set out, especially for projects near town lines
  - Very difficult to institute—expensive and contentious campaign

## 3. Florida Developments of Regional Impact Program

- Type: Mandatory Statewide
- Assessment: Effective
- Positives:
  - Successful at addressing impacts that other statutes don't—upland habitat and transportation in particular
  - Vested rights are greatly appreciated by developers
  - Well coordinated with growth management laws
  - Very successful in rural counties with limited review capacity
  - Applies tougher standards to projects near county boundaries
- Negatives:
  - Subject to alteration by state legislature—political issues have affected it
  - Complicated rules that smaller developers often find it confusing

- Subsequent laws have weakened authority of DRI over certain types of projects
- Thresholds are very high in urban areas and miss many large projects

#### **4. Georgia Developments of Regional Impact Program**

- Type: Voluntary Statewide
- Assessment: Somewhat effective
- Positives:
  - Results in production of very thorough impact assessments by regional councils
  - Has raised awareness of impacts of large developments, especially in counties on the metropolitan fringe
  - Is an essential part of the strong state review in the Atlanta region
  - Has helped some rural counties effectively address development impacts
- Negatives:
  - Impact reports are often ignored by local governments
  - No checks and balances in system—if local governments neglect to file DRI applications, there is no recourse by the state
  - Thresholds can be easily circumvented by creative developers
  - Awareness of program among local officials is very low in rural areas

#### **5. MetroWest Growth Management Committee – Massachusetts**

- Type: Voluntary Regional
- Assessment: Somewhat effective
- Positives:
  - Fills in gaps between local and state review of larger projects
  - Equitable regional representation on impact review committees
  - Raises important regional and interlocal issues that would otherwise be neglected
  - Encourages ongoing collaboration between municipal planners
  - State MEPA reviews incorporate findings of regional reviews
  - Addresses projects located near municipal boundaries
- Negatives:
  - Impact reviews are cursory and do not produce detailed findings
  - Process is advisory, so findings are frequently ignored by localities
  - No requirement for towns to alert regional council of projects that exceed regional thresholds but fall short of state thresholds
  - Not linked to local planning initiatives

#### **6. Minuteman Area Group on Interlocal Coordination (MAGIC) – Massachusetts**

- Type: Voluntary Regional
- Assessment: Ineffective
- Positives:
  - Fills in gaps between local and state review of larger projects
  - Raises important regional and interlocal issues that would otherwise be neglected
  - State MEPA reviews incorporate findings of regional reviews
- Negatives:
  - Impact reviews are cursory and do not produce detailed findings

- Very short time frame allotted for reviews
- Limited funding and staffing often causes potential reviews to be skipped
- Process is advisory, so findings are frequently ignored by localities
- Not linked to local planning initiatives
- Regional thresholds have been essentially abandoned due to lack of staff resources

## **Four Regional Impact Review Alternatives for Maine**

This section offers four alternatives for regional impact review systems in Maine. Three of the alternatives are based on the national best practices, while the fourth is tailored to Maine’s existing Site Law review process.

### **Alternative #1: Regional Reviewing Authority**

#### **Model: Cape Cod Commission**

##### **Structure of Body:**

A nine-member, appointed board with mandated oversight of all developments that exceed DRI thresholds. The board would be made up seven York County members—one from each County Commission district and two at-large members—and two from the 10 non-York County towns. The York County members would be appointed by the County Commission, and the remaining members would be appointed by the SMRPC Executive Committee.

The Authority would conduct a technical review of each project and would therefore need staff. Staff could be independently hired or contracted from SMRPC or a private consulting entity.

The Authority would base its decisions on Regional Goals and Policies (see below). Municipalities would be able to enact provisions that are more restrictive than the regional criteria.

##### **Scope of Authority:**

For a project that qualifies as a DRI, municipalities would cede control to the Authority, which would render a decision on whether or not to approve the project based on its compliance with Regional Goals and Policies (see below). The Authority would also be able to assess regional impact fees for specific purposes based on the impacts of each project.

##### **Process Needed to Establish:**

Enacting a Regional Review Authority could be done in one of two ways:

#### **1. Municipal Ceding of Authority to Regional Planning Commission**

Title 30-A MRSA §2313 states: “The council, on behalf of one or more member municipalities and upon appropriate action of the legislative bodies of one or more member municipalities, may exercise any power, privilege or authority capable of exercise by a member municipality and necessary or desirable for dealing with problems of local or

regional concern, except essential legislative powers, taxing authority or eminent domain power.”

Thus, if municipal legislative bodies (Town Meetings or Councils) vote to cede authority for DRIs to the regional planning commission, then the commission could already legally claim such authority under state law.

## **2. Enact State Law via Region-wide Referendum**

The Cape Cod Commission was established by the passage of a state law that required approval both by the state Legislature and by a regional referendum. To do this, legislation would need to pass both houses of the Maine Legislature, be signed into law by the Governor, and then pass by a simple majority of residents in the SMRPC region.

Whichever method is chosen, a statement of Regional Goals and Policies would need to be written to provide guidance to the Authority as it makes its decisions. It is recommended that the Authority not be allowed to use its powers until the Regional Goals and Policies statement has been completed and approved by the Board.

### **Description of Review Process:**

The following process is suggested:

1. Applicant submits plans to municipality
2. If project meets at least one DRI threshold, municipal planning board interrupts local review and refers the application to the Regional Authority
3. Regional Authority conducts technical review and prepares impact statement
4. Regional Authority offers one of three rulings: approval, conditional approval (which would require applicant to pay impact fees or make changes), or rejection.
5. If Regional Authority rejects a project, an appeal may be filed in Superior Court
6. If Regional Authority approves a project, it is then returned to the host municipality, which then completes its review and renders a decision.

### **Suggested Review Thresholds:**

Since this is a very strong model of regional impact review that requires municipalities to cede home rule authority to a regional decision-making body, it may meet with resistance from the public. It is therefore recommended that the thresholds be set high to only address large projects that truly will produce major impacts beyond municipal boundaries. This system is also set up to address projects that cross municipal boundaries or impact areas of critical regional concern, as defined in the Regional Goals and Policies.

The suggested thresholds are as follows:

- Multi-jurisdictional developments:
  - Any development that is either located in more than one municipality or borders another municipality.
  - Any development for which the primary means of transportation access is in an abutting municipality.
- Affecting Critical Regional Resources: Any project located within an impact area defined in the Regional Plan

- Traffic impacts: Any project that produces more than 1,000 daily trips
- Residential Developments: 50 lots or units
- Commercial/Industrial Developments: 100,000 square feet of building area

## **Alternative #2: Statewide Review Board with Delegated Regional Authority**

### **Model: Vermont Act 250**

#### **Structure of Body:**

An 11-member statewide Review Board with one member from each of the state's 10 planning regions and a Chair appointed by the Governor. The Board would delegate its authority to each of the 10 regional planning councils throughout the state, with each regional council having the ability to render a decision on a DRI project application.

The Review Board would be set up to serve two purposes:

1. Administrative: rulemaking and statewide coordination
2. Judicial: hearing of appeals of decisions by regional councils

Some decision-making criteria would differ for each region, as each regional council would have to review projects in light of both state law and regional plans.

#### **Scope of Authority:**

For a project that qualifies as a DRI, regional councils would have the authority to approve or reject projects based on their compliance with state law and regional planning goals. Approval of a project would grant the applicant a land use permit that carries with it vested rights. Since much expense to the applicant would go into this process, it is imperative that land use permits granted under this program be immune from retroactive citizen petitions.

As part of the process, when a project comes in, the council would convene a meeting at which non-host municipalities may weigh in about regional impacts. Based on this meeting and the subsequent review, the regional council would have the authority to assess impact fees for specific purposes based on the impacts of each project.

#### **Process Needed to Establish:**

Enacting a statewide Review Board would require the passage of a new statute by the state Legislature. The suggested statute would contain the following provisions:

- Establishment of Review Board's authority
- Procedures for appointing members to the Review Board
- Delegation of Review Board's powers to regional planning councils
- Goals of the program and uniform statewide review criteria
- Vested rights of approved projects that take precedents over all future municipal decisions (including retroactive referenda) over a period of time

#### **Description of Review Process:**

The following process is suggested:

1. Applicant submits plans to municipality

2. Municipality reviews project and renders a decision
3. If project meets at least one DRI threshold and the municipality approves it, application is then referred to the application to the state Review Board
4. State Review Board processes the application and forwards to appropriate regional council
5. Regional council conducts technical review and prepares impact statement
6. Regional council offers one of three rulings: approval, conditional approval (which would require applicant to pay impact fees or make changes), or rejection.
7. If Regional Authority rejects a project, an appeal may be filed to the state Review Board; subsequent appeal would be to State Supreme Judicial Court (Review Board takes place of Superior Court)
8. If Regional Authority approves a project, applicant is granted a land use permit and municipality must allow project to process as approved

### **Suggested Review Thresholds:**

Since this is a very strong model of regional impact review under which the state shifts municipal home rule authority to a regional body, it may meet with resistance from the public. It is therefore recommended that the thresholds be set high to only address large projects that truly will produce major impacts beyond municipal boundaries. This system is also set up to address projects that cross municipal boundaries or impact areas of critical regional concern, as defined in the Regional Goals and Policies.

The suggested thresholds are as follows:

- Multi-jurisdictional developments:
  - Any development that is either located in more than one municipality or borders another municipality.
  - Any development for which the primary means of transportation access is in an abutting municipality.
- Traffic impacts: Any project that produces more than 1,000 daily trips
- Residential Developments: 50 lots or units
- Commercial/Industrial Developments: 100,000 square feet of building area

### **Alternative #3: Regional Advisory Board**

**Model:** MetroWest Growth Management Committee

#### **Structure of Body:**

A series of ad hoc committees that are formed for the specific purpose of reviewing individual DRIs. Each committee would be comprised of five members: one from the host municipality, two from abutting towns (one if project is in Old Orchard Beach, which only borders one other town in the region), and two from non-abutting towns (three if in Old Orchard Beach).

When a DRI review takes place, the committee would meet to evaluate the application and to determine what impacts should be reviewed. Technical review assistance would be provided by SMRPC staff. The committee would produce an advisory impact statement that would be sent to

the host municipality and to any state agencies that are also reviewing the application (DEP or DOT).

Aside from state Site Location of Development and Traffic Movement Permit approvals, final decision-making authority would rest with the host community and the committee's findings would be purely advisory.

**Scope of Authority:**

For a project that qualifies as a DRI, the host municipality would notify SMRPC. SMRPC would then form the committee to conduct the regional review. To ensure that towns do not avoid the mandatory review process, SMRPC will establish a system whereby DEP and DOT must notify it of any applications for Site Location of Development or Traffic Movement Permits in the region.

**Process Needed to Establish:**

Enacting a Regional Advisory Board will need to be accomplished by drafting a regional Memorandum of Understanding that will need to be signed by the Council or Board of Selectmen of each municipality in the region. By signing this Memorandum, each municipality pledges to allow the undertaking of a regional review for projects that exceed DRI thresholds and to fund the administrative costs of the review. Funding may be done by passing through the costs to project applicants as part of the municipal review process.

**Description of Review Process:**

The following process is suggested:

1. Applicant submits plans to municipality
2. If project meets at least one DRI threshold, municipal planning board refers the application to the regional council
3. Regional council convenes committee to discuss scope of review—applicant is invited to this meeting
4. Regional council conducts technical review and prepares impact statement
5. Committee sends impact statement to municipality and state agencies within the reviewing time frame required by municipal and state laws
6. Municipality renders a decision on the application and may choose which, if any, elements of the impact statement it wishes to consider

**Suggested Review Thresholds:**

This model of regional impact review is purely advisory and thus it would be much more feasible to have fairly low thresholds. Thus, it is recommended that the thresholds be comparable to those of the state's Site Location of Development and Traffic Movement Permit reviews. In addition, this model should also consider multi-jurisdictional developments. The proposed thresholds are as follows:

- Multi-jurisdictional developments:
  - Any development that is either located in more than one municipality or borders another municipality.
  - Any development for which the primary means of transportation access is in an abutting municipality.

- Traffic impacts: Any project that produces more than 500 daily trips
- Residential Developments:
  - 15+ lots on 30+ acres (in municipalities with Capacity, 30+ lots on 100+ acres)
  - Any development with 50+ lots, regardless of acreage
- Commercial/Industrial Developments: 50,000 square feet of building area or 20+ acres

## **Alternative #4: Regional Input to DEP Site Location of Development Review**

**Model:** None

### **Structure of Body:**

This process would simply integrate regional planning councils into the existing Site Location of Development review system overseen by DEP. At the present time, DEP asks for interagency comments on Site Law issues from other state agencies, but does not solicit input from regional planning agencies and only receives local input at the scoping meetings held at the beginning of the review process. This approach would produce more regional input and allow more planning issues to be addressed within the framework of existing statutes.

### **Scope of Authority:**

Regional planning council authority under this model would simply be in an advisory capacity to DEP. Regional planning councils would be tasked with examining other types of development impacts, including impacts on environmental resources not covered by the Site Law, such as forested wetlands, vernal pools, deer wintering areas and rare plant habitat. RPCs could also look at other types of planning-related impact of large-scale development, including housing, public safety, infrastructure, social services and education.

In this model, RPC comments would simply be used to inform DEP staff and municipal officials about regional impacts. There would be no ability to add these issues to DEP's decision on approval without amending the statute itself.

### **Process Needed to Establish:**

The only procedural step needed to establish this system would be a change to the Site Location of Development rules, which are set to be updated anyway in 2004. Amending the rules to allow RPCs to offer regional impact review comments would not violate the bounds of the existing statute.

### **Description of Review Process:**

The following process is suggested:

1. Applicant submits plans to municipality
2. If project meets Site Law thresholds, application must be sent to DEP for approval
3. DEP refers application to regional councils for review and comment
4. DEP renders decision and includes regional council comments in package sent back to municipality
5. Municipality renders a decision on the application and may choose which, if any, elements of the regional impact comments it wishes to consider

### **Suggested Review Thresholds:**

This model of regional impact review is tied to the Site Location of Development review, so the thresholds will be the same as those applied by DEP.

## **Evaluation and Recommendations**

### **The Importance of Public Opinion**

In order to evaluate which of the four suggested alternatives may be the most appropriate for further exploration, one lesson from the National Best Practices review is crucial to bear in mind: all of the existing regional impact review mechanisms are creatures born of political will. Here are some contrasts:

- In Vermont and Florida, there were statewide calls for growth control that were heeded with strong and centralized responses from state legislatures;
- In Georgia, a state less inclined to aggressive growth management, similar calls were met with a centralized, but weaker, response from the state legislature;
- On Cape Cod, public reaction to a report forecasting a “doomsday” scenario in the region forced politicians into action to form the Cape Cod Commission; and
- In suburban Boston, more mild urging from local officials to understand regional impacts of development led to the establishment of modest, non-binding review programs.

From a political perspective, Maine’s present situation falls more in line with those of Georgia and suburban Boston than with those of Vermont, Florida and Cape Cod. In Vermont, Florida and Cape Cod, development was occurring at a runaway pace all over the state or region and the long-term health of both natural resources and local character were viewed as threatened by the public. Though these statements are true in parts of Maine, to uniformly apply them to the state as a whole is not appropriate, as most communities in inland northern and western Maine are experiencing losses of jobs and population and are more concerned with economic survival than with growth management.

In Georgia, rapid development was occurring in urban, coastal and mountain areas, but most rural areas were not feeling development pressure. In suburban Boston, the concern was less about environment and character and more about the fiscal impacts of growth on local governments. These statements are true of Maine. Development pressure in the state is concentrated along the coast, in urban areas, and in inland recreational areas around lakes and mountains. In growing areas, there are mounting concerns about the effects of growth on the already-strained budgets of municipalities.

Thus, the two conclusions regarding the appropriate model (if there is one) for a regional impact review system in Maine at this time are:

1. It must be more of an advisory one than a regulatory one; and
2. It cannot be a uniform statewide system, as different parts of the state are experiencing far different pressures for development.

## Where is Our Public Opinion Now?

Since we have determined that any regional impact review system would need to be advisory and regionally based, the next question to address is where public opinion stands in Southern Maine. To answer this question, it is necessary to look back at what was learned from the resort casino debate in 2003, as that was the impetus for investigating this issue.

The most salient point regarding the casino, as stated earlier in this report, is that the casino proposal was viewed in Southern Maine as more than a real estate development—it was seen as a watershed project that would forever alter the fabric of the region. So many municipal leaders were eager to conduct a regional impact review of the casino project because it was seen as a project that would change the region in ways that could never be undone. Few, if any, other real estate developments could ever stir up such strong emotions in the way that the casino did.

Since the casino project was voted down in November 2003, other large-scale development proposals have been put on the table in Southern Maine, led by enormous retail projects in both Biddeford and Sanford. Residential growth in the region has continued to occur at a breakneck pace and there have been a number of proposals for residential subdivisions that cross municipal boundaries.

Even with all of this development activity, there has been little public outcry for a regional review of such projects and certainly not nearly as much opposition as to the casino. Interestingly, the one project that did stir up public opposition was a supermarket proposal in Kennebunk. In that case, though, opponents objected to the *local* effects of the supermarket, as they expressed concerns about its effects on the town's character and on an existing food market in the heart of its village area. In many ways, this debate highlighted why Mainers believe so strongly in municipal home rule on land use decisions—in a debate about the identity of an individual town, those who live further away may not have had a true appreciation for the issues.

This example, along with others in our region, underscores the need to work incrementally if a regional impact review system were to be enacted. In the absence of a strong public outcry for stronger regional authority, only an incremental solution will be possible at this time.

## Recommendations

Based on the review of national best practices and the reality of the political situation both in Southern Maine and statewide, SMRPC makes the following recommendations (in order of priority) regarding regional impact review:

### 1. Pursue Alternative #4 (Regional Input to Site Law)

The Site Location of Development Act enables the Maine Department of Environmental Protection to review impacts of development on environmental resources, but gives the DEP latitude as to *how* it does this. Enacting Alternative #4 would only involve altering the Site Law's rules, which is something that DEP is already gearing up to do.

DEP, other state agencies, and municipal representatives all feel that the existing process, for all of its successes, could do more to engage public input from abutting towns and

regional planning commissions. Alternative #4 would be useful both for DEP staff and for host municipalities, as it would provide a richer information base upon which local authorities can make decisions on land use issues.

Time Frame: Immediate, via input to DEP rulemaking

**2. Form Study Committee to Explore Alternative #3 (Regional Advisory Board)**

Alternative #3 recommends establishing a Regional Advisory Board to conduct reviews of projects that meet somewhat different thresholds than the Site Law. These reviews would be much more comprehensive, though, and would look at regional impacts on fiscal, social and other planning issues that Site Law and Traffic Movement permits are not legally able to do.

This recommendation is to form a study committee made up of municipal officials, real estate developers, state legislators, and community leaders in order to explore this alternative. The committee would issue a report within a year of its formation with recommendations regarding future actions.

Funding for the study committee would need to be obtained by SMRPC prior to its establishment.

Time Frame: 1-2 years

**3. Conduct Public Opinion Surveying**

The key ingredient in whether or not to establish a regional impact review system and determining its structure is public opinion. Simply put, if a majority of the public wants it to happen, then it can be accepted. As a concurrent effort to the study committee, SMRPC recommends conducting a public opinion survey of some sort to determine sentiment in the region regarding the possibilities of regional impact review.

Funding and/or in-kind support for the surveying would need to be obtained by SMRPC prior to its establishment.

Time Frame: 1-2 years, ongoing