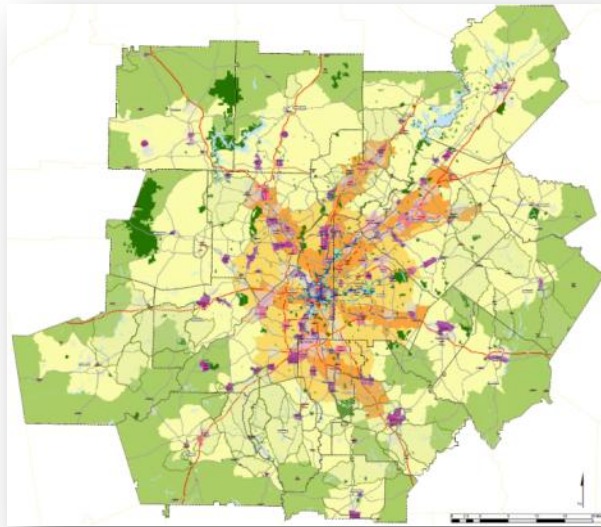


Implementation Report



October 8, 2010

PLAN 2040 Implementation Strategy

White & Smith, LLC | Parsons Brinckerhoff

Final Recommendations Report

PLAN 2040 IMPLEMENTATION STRATEGY

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INTRODUCTION

The Atlanta region’s story over the past several decades is one of rapid growth and change. Over the past eight years, the region has experienced the second fastest growth rate in the nation, adding over 1.1 million persons since 2002.¹ The region’s growth has expanded employment opportunities and solidified its position as an international economic powerhouse. While growth has slowed due to the national recessionary climate, the area’s status as a Sunbelt leader, airport hub, home to Fortune 500 companies and system of colleges and universities provide much room for optimism.

Atlanta’s growth has created economic benefits, but this has come at a cost. The pace and location of population and development have strained the region’s infrastructure, creating significant congestion and unsustainable development patterns. During the 8-year period from 2001-2008, the region converted over 225 square miles to development.² The absence of physical barriers to development has created a spread-out development pattern, with one real estate expert claiming that the region is experiencing the “fastest rate of human settlement in history.”³ According to the draft Regional Assessment, this low-density, dispersed pattern of residential development has several adverse impacts, such as:

- Traffic congestion
- Lack of access to transit or other transportation modes
- Displacement of environmental and natural resources
- An imbalance between jobs and housing
- A reduction in quality of life, which discourages economic development
- Increased public costs to expand and maintain infrastructure

The pace of development has slowed during the economic downturn, and the slower rate of growth is expected to continue. However, more sustainable development patterns will minimize the adverse effects of growth, while providing opportunities to retrofit past development patterns. In addition, the region’s demographic profile is changing, with a more diverse racial and ethnic population and aging households. This will stimulate demand for a broader mix of housing types and living arrangements for individual communities than in the past.

Local governments are historically the stewards of new land development and redevelopment. Cities and counties adopt zoning and land development regulations that shape the form and character of new development. Georgia is unique in that local governments derive their zoning powers directly from the state constitution. In other states, zoning authority is derived either from state enabling legislation or from home rule that is subject to preemption by the state legislature. The strength of local authority in Georgia, along with competing visions of land use and development, can result in incompatible development and growth patterns. Local governments also provide new infrastructure, such as water, sewer, law enforcement, and local road networks. However, the regional growth and development patterns described above were not created by any individual community, and cannot be shaped by a single city or county. Land development and infrastructure policies work most efficiently when they can be coordinated regionally. Balkanized land development policies can be ineffective, creating impacts and secondary market and environmental effects that do not stop at the host community’s borders.

The Atlanta Regional Commission (ARC) is the Atlanta Metropolitan Area’s regional planning agency. The ARC provides a variety of land use, transportation, and human resource functions in one of the nation’s fastest

growing regions. (see Table 1, below) The ARC is the Metropolitan Area Planning and Development Commission (MAPDC) for the Atlanta area as well as the region’s Metropolitan Planning Organization (MPO) for federal transportation planning. As Georgia’s only MAPDC, the ARC has implemented a successful set of programs, policies, and activities to assist the Atlanta area’s local government community in both managing and accommodating growth. Initiatives such as the *Envision6 Regional Development Plan* and the *Livable Centers Initiative* (LCI) have successfully encouraged the use of more sustainable development patterns.

In 2009, ARC initiated the *PLAN 2040* process. *PLAN 2040* will serve as the region’s Regional Transportation Plan (RTP) and Regional Development Plan (RDP). ARC has prepared a draft *Regional Assessment* that analyzes the growth, transportation, economic, and environmental issues facing the Atlanta metropolitan area. Because the plan is in process, *PLAN 2040* does not yet include a comprehensive list of implementation tools. However, it does identify 3 key themes that suggest the development of future implementation tools. These are:

1. Solutions should address social, environmental and economic needs of the region while protecting the region’s resources and prosperity for future generations.
2. Provide access to safe, affordable and efficient transportation choices.
3. Governing collaboratively to address funding issues and effectively implement regional plans.

PLAN 2040 will continue the region’s recent initiatives relating to land use and transportation. ARC adopted Regional Development Plan (RDP) policies as the MPO in 1999. The 2025 Regional Transportation Plan (RTP) and a Land Use Strategy were adopted in 2000. The Land Use Strategy specified eight innovative initiatives to encourage successful execution of the 2025 RTP and RDP, and more broadly, to link transportation and land use planning in the Atlanta region. The Land Use Strategy was a significant factor in the issuance of a federal conformity determination for the 2025 RTP in 2000. Ten years after the adoption of the Land Use Strategy, the region has seen new examples of new urbanism, redevelopment, mixed use projects, transit-oriented development (TOD), and growth management.

During 2005 ARC undertook a land use scenario and RTP development process known as “Envision6”. ARC’s Envision6 planning process resulted in a resolution that was approved by the ARC Board in May 2006 to adopt:

Table 1 ARC Authority by County

Authority → County / Jurisdiction ↓	Regional Planning /	MPO	Data Collection	Area Agency on Aging	Workforce Development Area
City of Atlanta	■	■	■	■	
Barrow		□	■		
Bartow		□	■		
Carroll			■		
Cherokee	■	■	■	■	■
Clayton	■	■	■	■	■
Cobb	■	■	■	■	
Coweta		■			
Coweta		■			
Coweta			■		
DeKalb	■	■	■	■	
Douglas	■	■	■	■	■
Fayette	■	■	■	■	■
Forsyth		■	■		
Fulton	■	■	■	■	
Gwinnett	■	■	■	■	■
Hall			■		
Henry	■	■	■	■	■
Newton		□	■		
Paulding		■	■		
Rockdale	■	■	■	■	■
Spalding		□	■		
Walton		□	■		

- Regional Development Plan Land Use Policies,
- A Unified Growth Policy Map (UGPM), and
- A Regional Place and Development Matrix

A Board supported Envision6 Implementation Strategy was developed based on programs and activities that ARC would undertake during the 2006 to 2009 period to better coordinate and integrate land use, transportation, water and associated regional and local plans.

Even with this recent success, the region must do more to strongly move towards patterns of growth that are more in line with the most progressive regions of the U.S. and world. The Atlanta metropolitan area remains dependent on the automobile for most transportation needs. The region's housing stock is dominated by low density, single-use development. Additional development options and strategies will be needed as demographic trends create smaller households and buyers seeking new lifestyle choices. Defining the legal framework and authority of regional and local agencies to pursue innovative planning and development strategies is needed to help guide the implementation of the PLAN 2040 Regional Agenda.

ARC and its constituent communities are undertaking this study to:

1. Facilitate the type of development that meets their goals for design, sustainability, economic development and housing capacity, and
2. Channel development into appropriate locations.

This will require adequate legal authority by ARC to plan and influence local action, and for local government to implement regional initiatives.

ARC has retained a consultant team consisting of White & Smith, LLC and Parsons Brinckerhoff to review ARC's previous actions to implement regional plans during the past decade (2025 Land Use Strategy and Envision6), Georgia Department of Community Affairs (DCA) local and regional planning rules, and Georgia laws related to local planning and development authority (including zoning and subdivision rules). The first phase of the project reviewed plan implementation authority for ARC and local governments in the region. The second phase examined five (5) peer agencies to assess their implementation practices, along with the lessons those practices might have for ARC. At the suggestion of ARC, the agencies reviewed were the Denver Regional Council of Governments (DRCOG), Delaware Valley Regional Planning Commission (DVRPC) in Philadelphia, Metropolitan Council in Minneapolis-St. Paul (the "Met Council"), the North Central Texas Council of Governments in Dallas-Ft. Worth, and the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC) in San Francisco.

This report summarizes our research by outlining final recommendations to implement PLAN 2040's land use component. The recommendations build on the findings of ARC's legal authority and lessons from our study of the peer agencies. We also consider past ARC strategies, issues and implementation measures as discussed in the 2025 Land Use Strategy, Envision 6, and PLAN 2040 Regional Assessment. The recommendations emphasize the types of regional plan implementation tools that could occur through the existing legal authority of ARC and local governments. We also identify the potential for new laws or the removal of barriers in existing laws.

ATLANTA REGIONAL COMMISSION'S LEGAL AUTHORITY

Summary

ARC operates under two major sets of laws. The first is Georgia's comprehensive planning legislation. This designates ARC as the Regional Commission (RC) and MAPDC for the Atlanta metropolitan region. This gives ARC the principal role for coordinating regional land use planning. As an RC, the ARC's powers are **liberally construed** to achieve their purposes.⁴ In addition, ARC has all power and authority necessary or convenient to perform and carry out its duties and responsibilities.⁵ The Georgia Department of Community Affairs (DCA) prepares minimum standards and procedures for the development of regional plans.⁶

The second is the federal planning legislation. As the Atlanta region's MPO, ARC prepares a long range transportation plan (LRTP) and transportation improvement program (TIP) under the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU).⁷ The federal transportation planning legislation expressly recognizes the linkage between transportation and land use. These include growth and economic development patterns, efficient system management, and quality of life.

Key Aspects

ARC does not have zoning authority and does not enforce land development regulations.⁸ The state constitution assigns this function to local governments. However, it does have authority to craft regional policies, to direct transportation investments, and to facilitate the implementation efforts of its constituent local governments. Regional planning under the DCA's minimum standards and procedures has the following components:

Table 2 Regional Plan Components

Regional Assessment	This is the factual and conceptual foundation upon which the regional plan is built. ⁹ ARC completed the draft Regional Assessment for PLAN 2040 in January 2010.
Stakeholder Involvement Program	The RC involves stakeholders through a variety of public participation techniques, in order to ensure that the regional plan reflects the full range of regional values and desires. ARC has engaged in extensive public outreach, including workshops, surveys, online public meetings, and a robust website for PLAN 2040. ¹⁰
Regional Agenda	This is the key planning document. It includes a Regional Vision, Regional Issues and Opportunities, an Implementation Program (including Guiding Principles for all actors to use in making decisions, and a 5-year Work Program), an Evaluation and Monitoring Program, and implementation measures. ¹¹ Once the regional plan is completed, ARC reviews local government comprehensive plans for compliance with the regional plan. ¹² This is required in order for a local government to obtain Qualified Local Government (QLG) certification from the DCA. While local governments are not required to implement the plan, QLG status may be required for a local government to receive state grants and loans. ¹³

ARC’s powers are principally related to planning, technical assistance, and persuasion. However, its power to review local plans for compliance with regional goals and policies, and the ability to prepare development guides for local governments, can have a profound impact on local policies, codes and infrastructure investments. It can also play an important role in the delivery of regional infrastructure. It can act as an agent for the planning, expenditure of funds and construction of multijurisdictional projects, but it cannot levy taxes or incur debt on its own.¹⁴ It can provide direction for plan implementation through the Regional Plan and development guides, but does not exercise, limit or compromise local zoning regulations.

ARC’s plan implementation functions include the following specific powers:

- provide technical assistance for local governments
- conduct research and studies
- prepare performance standards
- prepare recommendations for local planning and implementation
- review developments of regional impact
- contract with local governments to administer funds
- engage in cooperative undertakings with cities and counties
- provide incentives as part of the plan implementation program

Examples of Current Programs

ARC has developed a wide variety of plan implementation assistance tools. A more detailed summary of land use strategies is described under “What’s Working” (page 18, below). The most prominent example is the award-winning Livable Centers Initiative (LCI). ARC uses this program to encourage local governments to develop studies and plans for transportation-efficient land development patterns. Under its authority as an MPO, ARC has targeted over \$500 million to projects that resulted from LCI studies.¹⁵

ARC’s programs fall into several categories: collaboration, technical assistance, planning, education, and incentives. **Collaboration**

Table 3 ARC Programs

Program	Collaboration	Technical Assistance	Planning	Education	Incentives
Atlanta Fifty Forward	✓				
Atlanta Regional Housing Website		✓			
Community Choices		✓			
Community Planning Academy				✓	
CREATE Community Awards					✓
Developments of Excellence Awards					✓
Green Communities					✓
Lifelong Communities		✓			
LINK	✓				
Livable Centers Initiative		✓	✓		✓
Local Government Training Institute				✓	
Management Development Program				✓	
Model Atlanta Regional Commission				✓	
PLAN 2040			✓		
Regional Development Plan (RDP)			✓		
Regional Leadership Institute	✓			✓	
Regional Transportation Plan (RTP)			✓		✓
Transportation Improvement Plan (TIP)			✓		✓
Water Conservation	✓	✓	✓		

programs bring regional stakeholders together for visioning, sharing of experiences, or education. **Technical Assistance** programs provide resources or guidance for stakeholders or program beneficiaries. **Education** provides information or training for planning or program stakeholders or program users. **Incentives** range from awards programs that recognize excellence in planning or implementation, to financial assistance for planning or infrastructure.

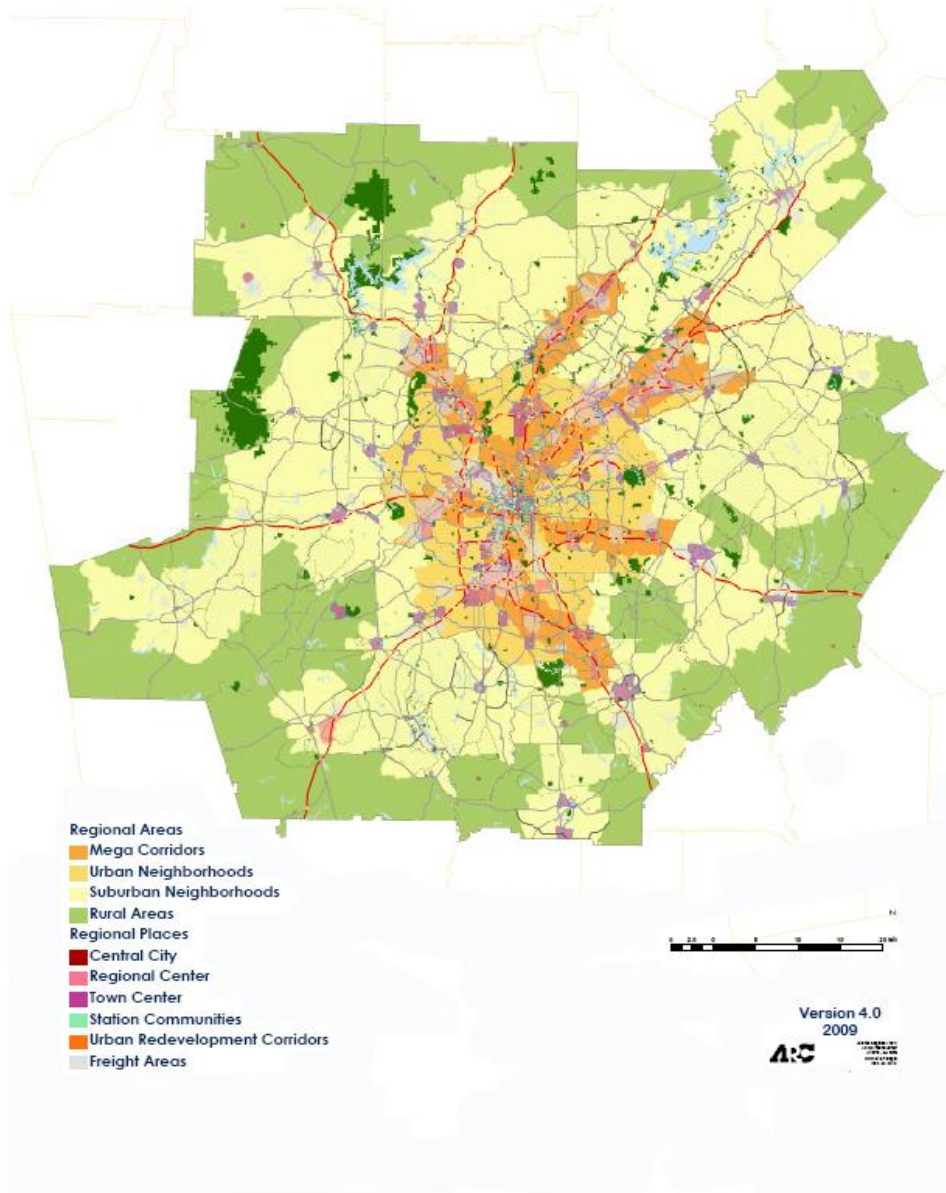


Figure 1 Unified Growth Policy Map (UGPM)

The Unified Growth Policy Map (UGPM) adopted in 2006 as part of Envision 6 establishes 17 different “Regional Places.” These include high-intensity centers (such as the Downtown and Midtown Atlanta Central City), nodes and corridors for economic development, urban and suburban neighborhoods, and Rural or Regional Environmental Protection Areas that have little development.

The “Regional Development Types Matrix” describes development patterns by density (in residences and jobs) and average height that are appropriate for the Regional Places.

Lessons from Other Regions

Our review of other regions found several examples of tools that fall comfortably within ARC's legal authority. These include:

- **Designation of Centers.** ARC maps centers in the UGPM, including the Central City, Regional Centers, Town Centers, and Station Communities. The Development Types Matrix suggests ranges of development density, intensity and height for these centers. There is no other description of design controls or procedures, and no comprehensive infrastructure extension policy for these areas.

Other regional agencies, including **DVRPC (Philadelphia)** and **ABAG (San Francisco)**, designate centers as well. DVRPC's long range plan designates around 100 centers (which range from center city Philadelphia to village hamlets) that exhibit core livability aspects. Most are existing places, although a few are planned. ABAG's "FOCUS" program works with a state agency to encourage transit-oriented development (TOD) in station areas. The program is similar to ARC's LCI program, except that it works from a more discrete set of policies. The program awards planning grants based on a point system, and the program is limited to TOD. LCI is broader in scope, and awards are not subject to a tight set of criteria such as a point system.

In Denver, DRCOG serves as a resource and information clearinghouse to local governments on TOD projects, and has a website (tod.drcog.org) devoted to TOD development. DRCOG assists with funding local planning and public participation efforts. Local communities have used public-private partnerships involving special taxing districts ("metro districts") to assist with project development.

Figure 2 Englewood City Center TOD (Englewood, Colorado)



Englewood City Center is a public-private partnership that redeveloped an obsolete, enclosed shopping mall into a transit-oriented development. The project currently includes 528 residential units (483 apartments and 45 condominiums) 663,257 square feet of retail, 50,000 square feet of office, 100,000 square feet of government space, and 40,000 square feet of cultural space.¹⁶ The City of Englewood moved its offices to the project's center adjoining a light rail station.

(Source: White & Smith, LLC)

- **Technical Tools.** Other agencies, such as DVRPC, publish technical toolkits to assist local governments in implementing local plans. The tools presented are similar to ARC's Community Choices toolkit. Some additional tools addressed by DVRPC include:

Brownfields	Multi-Municipal Planning
Food System Planning	Municipal Tree Management
Form-Based Codes for Big-Box Retail	Overlay districts
Impact Fees	Public involvement
Inclusionary Zoning	Quality Growth Audit
Infill development	Road Diets
Jobs-housing balance	Safe Routes to School
Main Street Programs and Business Improvement Districts	Traffic Calming
Mixed income housing	Transfer of Development Rights
Mixed use development	Transit-Oriented Development

- **Grant Programs.** DVRPC, Met Council and ABAG have planning grant programs that are similar to the LCI initiative. DVRPC has separate programs for older core cities/first tier suburbs and emerging suburbs, and a funding program to market "classic towns." The NCTCOG (Dallas-Fort Worth) Sustainable Development Funding Program leverages public/private partnerships for land use projects that promote alternative transportation modes or reduced automobile use. The Met Council's livable communities fund awards grants through three separate grants programs to participating communities, and has leveraged millions of dollars in additional public and private investment.

The similarities between the policy focus in other regions and the Atlanta region is striking. The major differences lie in the degree of regional and local implementation. While the Met Council in Minnesota's Twin Cities is a top-down planning structure with some regional implementation, most regions rely on local governments to carry out land development regulations. The next section explores the nature of local land development authority in Georgia.

LOCAL AUTHORITY

Summary

Generally, local land use controls are legal if they are authorized by law and consistent with state and federal constitutional protections. Georgia is like most states in that zoning and land development regulation authority is assigned to local governments – i.e., cities and counties. Local governments in Georgia have home rule authority. In other words, local governments can generally implement any development control unless the power is denied by the state constitution or statute.

While there are other home rule states, Georgia is unique in that local planning and zoning powers are derived from the state constitution (see sidebar). While locally empowering, it also limits the authority of other entities like an MPO to intervene in land use matters. Local zoning in Georgia is governed by three primary statutes, along with several additional statutes that augment local governments’ basic planning and zoning authority:¹⁷

“The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.”

- Georgia Constitution Article IX, Section II, par. IV

Table 4 Georgia Planning and Zoning Statutes

Act	Citation (Georgia Code)	Description
Primary Statutes:		
Georgia Planning Act	50-8	Establishes planning framework, including both regional commissions and local planning policies.
Zoning Procedures Law (ZPL) & Steinberg Act	36-66 36-67	Establishes procedures for processing, notice, public hearings, and decision making for discretionary zoning decisions. It also requires the local government to establish standards for those decisions. Establishes procedures and zoning standards for counties with a population of 625,000 and municipalities in those counties with a population of 100,000. Based on the 2000 Census, this includes Fulton and DeKalb counties, and the City of Atlanta. Based on the Census Bureau’s latest population estimates, this will likely also include Gwinnett County and Cobb County after the 2010 Census is completed. ¹⁸
Conflict of Interest in Zoning	36-67A	Requires disclosure when decision makers in zoning cases have a financial interest in the application.
Ancillary controls:		
Impact fees	36-71	Establishes procedures for local governments to assess fees that defray the impacts of development on public facilities such as water, wastewater, roads, stormwater, public safety and library facilities.
Transfer of development rights	36-66A	Allows property owners to transfer development rights, allowing the marketplace to allocate development potential away from areas that are subject to development constraints.

Zoning typically refers to the division of an area into districts for a variety of use, dimensional, and design regulations. The zoning power is very broad, particularly in a home rule state such as Georgia. In exercising the power to zone, a local government may:

- Establish any number of districts that it determines are appropriate
- Rezone property that is already zoned,¹⁹ including changing the districts to increase or adjust development potential
- Change the districts, where appropriate, to reduce development potential
- Establish conditions for rezoning

Zoning is not a static tool. While most zoning districts are designated without a sunset period, communities should prepare to revise zoning districts when needed to keep up with the demands of new growth and development trends.

In addition to their zoning authority, both cities and counties have general police power authority.²⁰ Local governments can adopt subdivision regulations under their general home rule and police power powers.²¹ In addition, local governments have specific constitutional authority for other regulatory tools that have indirect land use impacts, such as building construction codes and air quality.²²

Major Issues

Plans are not self-implementing. Local zoning, subdivision and other land development regulations are the principal legal tools that local governments use to implement plans. Land development regulations affect the use and intensity of property, and can authorize development that changes the character of a neighborhood. Therefore, they can be controversial, and end up in court.

Local governments in Georgia have very broad powers to regulate development and to approve housing and economic development patterns that are appropriate for their communities. However, local zoning and land development regulations should consider the legal consequences of how they adopt the regulations, the district and regulatory standards, and how the regulations are implemented.

This section describes the types of land development regulations that are allowed in Georgia, and issues relating to their implementation. The broad authority of local governments in Georgia creates numerous opportunities for implementation of regional solutions to growth issues. While local – and not regional – agencies are the stewards of local zoning authority, there is ample authority to put land development regulations that reflect regional objectives into practice. The discussion below addresses the major legal issues relating to local land development regulations.

What procedures do communities need to follow when adopting or amending land development regulations?

The Zoning Procedures Law (ZPL) sets out procedures for adopting and amending zoning regulations. These include notice, the taking of public testimony, and the requirement to include standards for the exercise of zoning power. The Steinberg Act supplements the procedures with an analysis of the zoning application under compatibility criteria set out in the statute.

For comprehensive zoning updates that implement a plan, many communities choose a longer term stakeholder participation process. This allows the community to build a broad constituency for the update, and to mediate those policies with the various stakeholders.

Can local governments change existing zoning for more or less intense development?

Local governments can rezone property to increase or decrease development potential. They cannot do so arbitrarily. However, a decision to rezone is difficult to overturn in the courts because it is considered legislative. Property owners are not entitled to the most profitable use of their property. On the other hand, it is difficult for third parties (such as neighbors) to overturn a rezoning that increases the intensity of development. Compliance with comprehensive planning policies is particularly important. It is difficult for either property owners or neighbors to overturn a rezoning that is designed to implement broad planning policies.

How do land development regulations affect property rights?

Zoning and land development regulations affect property rights, either by controlling how property is developed or allowing more dense development in an existing neighborhood. Property owners have a right to the reasonable use of their property. Regulations that confiscate all reasonable use of property are subject to invalidation or monetary compensation to the owner. However, a regulation must severely impact property values in order to result in a taking. Courts have tolerated large reductions in property values, particularly for comprehensive regulations that implement broad planning policies.

(the “takings” issue)

Most communities include a variance or appeals procedure to mediate property rights claims before they reach the courts. The transfer of development rights procedure – expressly allowed in Georgia – creates a framework for transferring development potential that is otherwise restricted to areas where it is appropriate. For example, property owners in rural areas that are subject to low density zoning restrictions could sell their unused development rights to owners in areas that are suitable for dense development, such as City Centers or Station Communities designated on the UGPM.

What other constitutional issues are involved with plan implementation regulations?

Stakeholders often raise due process issues when a community tries something new or pushes the margin in its regulations. Affected property owners may question whether the regulation serves its intended purpose in a rational way. If the regulation creates exemptions or has narrow applicability, the jurisdiction may face charges of discrimination. For example, a county impact fee extends to all development in unincorporated territory, but not to development in incorporated areas. Therefore, new developments in incorporated portions of the county do not pay impact fees, even though those developments may benefit from the fees paid by new developments in unincorporated portions. This operates in a way that “distinguishes” development in the unincorporated and incorporated areas. However, it does not necessarily violate equal protection because the county does not make an irrational distinction. Instead, it simply applies the fees to developments that it has the authority to regulate.²³

Plan implementation regulations, and any distinctions made in the regulations, must rationally relate to a legitimate government purpose.²⁴ Communities have considerable leeway in developing their regulations. However, regulations have stronger legal standing when they further regional planning policies. For example, a recent Pennsylvania Supreme Court case upheld conservation and performance subdivision standards that limited development densities. The standards implemented a multi-jurisdictional growth management plan. The court noted:

“This Court has long recognized the need for and potential of multimunicipal planning and zoning. We fully realize that the overall solution to these problems lies with greater regional planning; but until the time comes that we have such a system we must confront the situation as it is. The power currently resides in the hands of each local governing unit, and we will not tolerate their abusing that power in attempting to zone out growth at the expense of neighboring communities.”²⁵

Georgia’s courts have not formally adopted this “regional general welfare” doctrine. However, court decisions in other states support the notion that regulations which promote regional interests stand on a sound legal footing.

How do land development regulations affect vested rights?

While new regulations are prepared, existing applications may be in process that are inconsistent with the community’s new standards. Applications that are “vested” may proceed under the former standards. In Georgia, rights vest when an applicant files a proper building permit application.²⁶ In addition, a landowner can vest by making a substantial change in position by expenditures in reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials.²⁷ This is earlier than in most states, where a project must be under construction in order for rights to vest. However, property owners must take some affirmative step to vest their rights. Uses that are merely contemplated, and not supported by any action to seek local permits as of the effective date of a regulation, do not constitute vested nonconforming uses.²⁸

While local governments must respect vested rights, there are several tools that can protect the planning process without intruding on property rights. First, some communities adopt moratoria while new plans or regulations are being prepared. These must follow the adoption procedures required by the ZPL, and cannot abridge vested rights. In addition, moratoria can be controversial and, in some cases, interfere with a community’s housing or economic development objectives. As an alternative, communities can develop interim development standards or procedures that stay in place while the plan is updated. These allow development to proceed, but apply a higher level of design control or scrutiny than the existing regulations. Finally, communities can update their application submittal requirements to ensure that applications that are filed are done so in good faith, rather than to avoid the application of new regulations. For example, a community that does not require traffic studies for discretionary zoning applications could add those to the application to ensure that it has complete information before making the decision.

In addition, the courts have held repeatedly that prior non-conforming uses are not absolutely protected from subsequent zoning regulations, and that a government authority can require a non-conforming use to terminate in a reasonable time, generally based on investment expectations. In other words, the property owner should have enough time to realize a decent return on the investment in the use.²⁹ This is a powerful tool, but is rarely used in Georgia.

Local Tools

Can communities implement innovative land development regulations?

Conventional zoning regulations divide a community into districts where some uses are allowed and others are not. Conventional zoning regulations may include minimum lot sizes, dimensional standards (such as setbacks, coverage and height restrictions), maximum floor area, and minimum parking requirements. This has its benefits and drawbacks. Conventional zoning is a familiar technique to many local governments, and can protect neighborhoods from encroachment by incompatible uses. However, single-use zoning and minimum parking requirements can interfere with mixed use development and compact, efficient development patterns.

Local governments are increasingly seeking new applications of zoning authority to more effectively control design outcomes, regulate the timing of development, or to accommodate development on a smaller footprint. These include form-based codes, conservation design regulations, and adequate public facilities standards.

Do local governments in Georgia have authority to adopt Form Based Codes?

Form based codes (FBC) and “traditional neighborhood development” de-emphasize the focus of conventional zoning regulations on use districts.³⁰ It places a higher emphasis on community design, including building-street relationships, scale, and context. A FBC can turn conventional zoning restrictions around. For example, maximum front setbacks may replace minimum front setbacks in order to bring buildings closer to the street and to eliminate front-loaded parking. Transit oriented development (TOD) regulations also use design based zoning approaches in order to create a more compact development pattern.³¹ Some TOD regulations now require a minimum – rather than a maximum – level of density or floor area, contrary to the approach of conventional zoning.

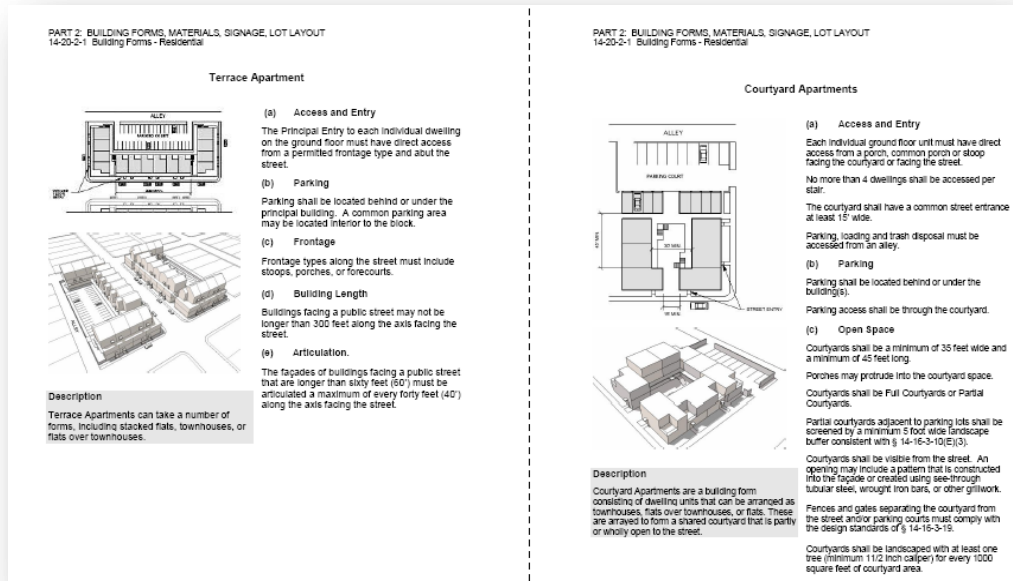


Figure 3 Form based codes
(example from Albuquerque, New Mexico)

Georgia’s broad home rule framework is more than adequate to accommodate innovative uses of zoning and land use controls. While some states specifically enable form-based codes or traditional neighborhood development regulations by name, the approach likely falls within the ZPL’s definition of zoning if it regulates development by district.³² In addition, the DCA’s state planning goals and objectives specifically reference traditional neighborhood development patterns.³³ Of course, any form-based code would be subject to the same zoning challenge as a traditional zoning ordinance. In other words, if the property owner could show that the regulation is confiscatory or is not substantially related to the public health, safety and welfare, then it would be struck down as unconstitutional. As with other land use regulations, it is presumed to be constitutional.

The regulations should be carefully written to avoid vagueness challenges. At least one court (in Missouri) invalidated a rear parking requirement as confiscatory, and many older cases have invalidated minimum height requirements.³⁴ These issues can be resolved through careful planning, findings, and drafting.

Some FBC’s include provisions that streamline development approvals with the right design in the right locations. Permitting is a powerful tool for local government to encourage the form and pattern of development that furthers regional policies. The Zoning Procedures Law (ZPL) principally controls discretionary hearings. These are hearings that typically occur early in the approval process, involve a higher level agency such as a Planning Commission or legislative body, and involve a significant amount of discretion. The ZPL does not address ministerial decisions. These are decisions that are made “behind the counter,” with little public review. This allows the decision to occur quickly, and with few ad hoc conditions. These streamline the process, and enhance predictability.



Birkdale Village in Huntersville (north of Charlotte) was built under a local form based code. It features 330,000 square feet of retail / entertainment uses, 75,000 square feet of office space, 303 apartments and an adjoining single-family community.

Figure 4 Birkdale Village (Huntersville, North Carolina)

Do local governments in Georgia have authority to adopt conservation design regulations?

Like FBCs, conservation design standards deemphasize conventional zoning regulations, typically for single-use, rural subdivisions. The regulations typically eliminate or reduce minimum lot size, allowing the subdivider to devote more land area to contiguous open space. As with a FBC, these types of regulations fall easily within local zoning and police power authority. The density and open space regulations should be reasonable.



Figure 5 Conservation design
(emphasizing the preservation of contiguous open space and rural design elements)

Can local governments tie zoning or subdivision review to the adequacy of public facilities?

Adequate public facilities ordinances (APFOs) tie zoning or plat approval to the capacity of off-site infrastructure.³⁵ Unlike impact fees, APFOs do not require the payment of money, but instead give applicants different ways to mitigate their offsite impacts. This can include timing and phasing the development to coincide with the availability of facilities, reducing density or intensity, or – at the applicant’s option – advancing the facilities. An APFO should be tied to a capital improvements program that shows when the facilities needed to accommodate growth will become available, their capacity, and how they are financed.

An APFO is probably authorized under local government constitutional zoning and home rule powers.³⁶ Georgia courts have upheld the practice of tying zoning and subdivision decisions to the congestion of public facilities, and the Steinberg Act criteria specifically require the local government to consider “[w]hether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.”³⁷ Other states have upheld APFO standards under zoning³⁸ and subdivision plat approval³⁹ authority.

However, as always, the constitutionality of the existing zoning is subject to challenge. If the property owner is left with no reasonable economic use of the property, the existing regulations are likely to be struck down as unconstitutional.

Lessons from Other States

ARC is not unique in that the implementation of regional land use objectives, particularly those relating to land development, is primarily a local function. In addition, court decisions in other states give considerable deference to land development regulations that promote regional policies.⁴⁰ However, the other states have gone beyond ARC's approach in different ways:

- **Service Areas and Urban Growth Boundaries.** Both Denver's DRCOG and the Twin Cities' Met Council have spatial land use policies that are designed specifically to contain urban growth. DRCOG's growth boundary is a voluntary, bottom-up tool that resulted from an intergovernmental agreement. The Met Council's approach is much stronger, resulting from a statutory agency and the regional council's control of sewer services.
- **Housing Elements and Inclusionary Zoning.** Georgia's state planning rules establish a goal of access to adequate and affordable housing for all residents. This element must be addressed in regional and local plans. Other regions, such as Pennsylvania, New Jersey and California, have developed more exacting Housing Element requirements that directly relate to zoning capacity and development permitting. States such as California and New Jersey, where land is at a premium and housing costs are high relative to the nation, encourage more aggressive techniques such as inclusionary zoning. An inclusionary zoning ordinance either mandates or incentivizes the set-aside of housing for low or moderate income households in new developments. While local governments in Georgia may have authority to adopt inclusionary zoning ordinances, the region's relatively low housing costs have not made this type of regulation a priority. However, inclusionary zoning is also useful as a tool to encourage a mix of housing throughout the region, thereby providing access by lower income households to jobs and minimizing the need for long commute trips.

The scope of Georgia's regional planning legislation is broader than in most states. However, it is less sweeping than other states in the number of specific types of land development regulations that are expressly listed. This is probably because the broad home rule powers given to local governments, drawn directly from the state constitution, make the specific delegation of local powers unnecessary. In addition, as a Regional Commission and MAPDC, ARC has broad authority to coordinate with local governments to encourage local regulations that reflect regional land development policies. The next section describes how ARC has used this authority, and how it can build on its existing programs as it implements PLAN 2040.

WHAT'S WORKING

ARC's milestone land use planning efforts over the past decade include:

- **2025 Land Use Strategy.** This initiative grew out of the 2025 Regional Transportation Plan (RTP) adopted in 2000. ARC and the Georgia Regional Transportation Authority (GRTA) jointly crafted 8 policies to link land use and transportation throughout the region.
- **Envision6.** The 2030 RTP adopted in December 2004 included a land use and transportation scenario process as a new element in its next RTP update. Envision6 involved a series of activities to coordinate land use, transportation and related planning and forecasting associated with updates of the RTP.

Table 5 provides a summary of ARC's current implementation programs for land use and development. These programs are cutting edge relative to regional planning efforts nationwide. In particular, the Livable Centers Initiative (LCI) has committed over \$13 million in planning grants and \$500 million for transportation projects. The program is nationally recognized, winning the Environmental Protection Agency's 2008 National Award for Smart Growth and the American Planning Association's 2009 National Planning Excellence Award for Implementation.

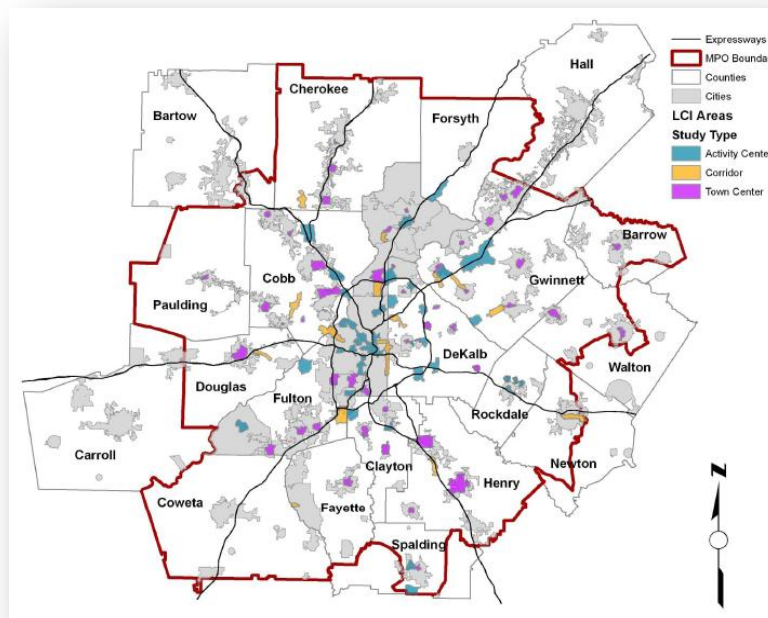


Figure 6 LCI Study Areas
 (source: ARC, LCI Healthy Places Research Group Presentation (May 12, 2010))

Most of the ARC's land use strategies involve planning or technical assistance. The comprehensive plan certification strategy is required by state law, while the others are programs that facilitate the implementation of regional development policies. The Regional Place and Development Matrix, combined with the Unified Growth Policy Map (UGPM), provides a useful structure for calibrating plan policies and land development regulations with regional policies. However, implementation remains with local governments.

Only three programs – developments of regional impact (DRI), area plan review and regional transfers of development rights (TDR) – involve ARC directly or indirectly in the development review process. ARC does not currently play a role in TDR, but is involved in DRI and area plan review. Area plan review includes direct review of public actions and community facilities and services such as water and sewerage systems, storm drainage systems, parks and open spaces, airports, highways and transit facilities, hospitals, and public

buildings.⁴¹ It includes “land use,” but does not include, limit or compromise zoning.⁴² ARC has used area plan review to protect key transportation corridors.⁴³

ARC engages in DRI review along with GRTA.⁴⁴ This process is reserved for projects that, because of their scale or unique location, have significant extra-jurisdictional impacts. The Department of Community Affairs’ (DCA) rules encourage local governments to consider the ARC’s findings and recommendations when they make decisions related to a DRI. For a DRI that is within GRTA’s geographic jurisdiction, GRTA’s decision is final but is subject to override by a supermajority of the local legislative body. DRI review does not address the cumulative regional impacts of smaller subdivisions, commercial projects, or other development that falls outside of the thresholds established by the DCA rules.

Local governments are expressly authorized to establish TDR programs.⁴⁵ TDR allows property owners to transfer their development rights to other property. Local governments designate “sending areas” from which rights are transferred, and “receiving property” to which development rights are sent. Sending areas are typically areas where land use policy discourages development, such environmentally sensitive or agriculturally productive land. Receiving properties can receive increases in dwelling units, area, floor area, floor area ratio, height limitations, traffic generation, or any other criteria designated by the local government when they purchase development rights. Local governments can enter into intergovernmental agreements that allow development rights transfers between or among the jurisdictions. The most successful TDR programs involve “banks” where a local or regional government purchases and holds development rights for resale, and careful tracking of development rights transactions. This makes the program easier for both sending and receiving area applicants to use.

Fulton County and the Chattahoochee Hill Country Alliance developed a Master Plan for 40,000 acres of south Fulton County that established a TDR program. In a comprehensive national study of TDR programs the author conducted several years ago, Fulton County reported that they had not established TDR procedures or processed any transfers. Regional agencies in other states – such as the New Jersey Pinelands Commission and the Tahoe Regional Planning Agency – have implemented successful regional TDR programs. ARC could play a similar role by facilitating transfers, establishing a TDR bank or seed funding, or tracking inter-jurisdictional transfers. ARC could also use its unique position as a regional land development coordinating agency to broker transfers on a regional level.

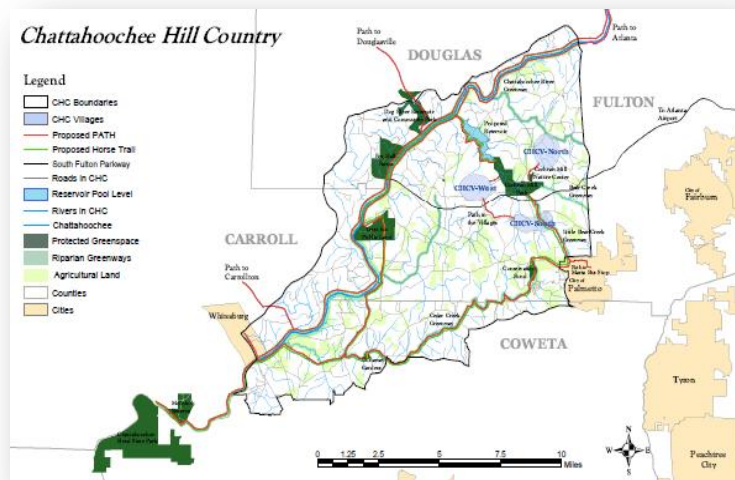


Figure 7 Chattahoochee Hill Country Master Plan
 (source: Chattahoochee Hill Country Alliance website, at <http://www.chatthillcountry.org>)

Table 5 Summary of Current Implementation Programs

Program / Action	2025 Land Use Strategy	Envision 6
<p>The Land Use Coordinating Committee. The LUCC is comprised of local land use officials from the region. The LUCC provides a forum for discussion and research, and makes recommendations on implementation of Regional Development Plan policies. Local governments have used the LUCC to share ideas, programs, plans and codes. Envision6 considered ordinances and other tools to establish basic subdivision, development and street design guidelines.</p>	✓	✓
<p>The Livable Centers Initiative (LCI). This program uses the TIP to allocate funding to local governments for transportation efficient land use and development plans for town centers and activity centers. The program has resulted in the completion of numerous plans and built examples of compact, efficient development. ARC has developed tools to track the travel characteristics, housing/transportation affordability, and other benefits of these centers.</p>	✓	✓
<p>Community Choices. This program provides education, outreach, visualization and assessment tools to local government on regional plan implementation. The ARC publishes a toolkit of implementation tools that local governments can use for smart growth and plan implementation.</p>	✓	✓
<p>Unified Growth Policy Map (UGPM). ARC will work with local governments to develop a regular schedule to evaluate and update the UGPM. ARC has developed a Regional Greenspace Strategy to protect priority areas identified in the Regional Green Infrastructure Priorities Map, which is coordinated with the UGPM.</p>		✓
<p>Developments of Regional Impact (DRI). Mandated by the Georgia Planning Act, DRI review engages ARC in the identification and assessment of the inter-jurisdictional impact of large-scale and certain other developments. Under the state law, ARC reviews DRI applications and states whether it is in the best interest of the region and state (Ga. Code § 50-8-7.1). The final decision to approve or deny the project lies with the host local government. Envision6 built on existing DRI authority by suggesting the development of a quantitative method to evaluate DRI projects.</p>	✓	✓
<p>DCA/Comprehensive Plan Certification. In its role as a Regional Commission and a MAPDC, ARC reviews local comprehensive plans and updates, and compares local plans to the RDP.</p>	✓	
<p>Area Plan Review. ARC uses its Area Plan Review (APR) authority to protect key transportation corridors, encourage planning to protect corridors, and encourage development compatible with proposed transportation projects. The APR authority permits ARC to review a range of public actions that affect the citizens of more than one political jurisdiction and have a substantial effect on the development of the region. ARC has used Area Plan review since 1972, through review programs involving regional rail projects and (through the Metropolitan River Protection Act) the Chattahoochee Corridor.</p>	✓	
<p>Performance Monitoring. ARC undertook to develop a system for periodic reporting of development activity in RDP policy areas, including development patterns, population, housing and employment growth.</p>	✓	
<p>Reporting RDP Coordination. Under this program, ARC requested reports from local governments comparing their current plans to RDP policies, the process to update comprehensive plans to respond to RDP policies, and interim updates of comprehensive plans to respond to RDP policies.</p>	✓	
<p>Collaborative Planning. Envision6 proposed subregional plan modeling and charrettes, small area planning assistance, and regional sustainability programs.</p>		✓

Table 5 Summary of Current Implementation Programs

Program / Action	2025 Land Use Strategy	Envision 6
Collaborative Review and Studies. ARC is involved in a cooperative study and planning programs involving specific issues, such as access management, vacant / underdeveloped lands, development patterns on septic systems, and housing priorities. Envision6 proposed studies of the Steinberg Criteria, development codes, accessory apartments, plan implementation progress, context sensitive solutions (CSS), market analyses, and coordination of land use and access management strategies.		✓
Regional Place and Development Matrix. This tool relates the locations and infrastructure outlined on the Unified Growth Policy Map to the types and scale of future development.		✓
Congestion Mitigation Program. As required by federal law, ARC promotes Transportation Demand Management (TDM) strategies and programs to reduce the growth in traffic congestion and create a more efficient use of transportation resources.	✓	✓
Infrastructure Capacity Analysis. This would have been a pilot program to work with local governments to review local comprehensive plans, areas and scale of anticipated development. ARC would compare these plans and developments to existing transportation capacity and anticipated locations of water and sewer infrastructure to determine if major inconsistencies exist. ARC would advise local governments of areas where it appears that comprehensive plans may not be well coordinated with existing or planned infrastructure.		✓
Development Incentives. ARC proposed to work with local governments to identify state, regional and local incentives that can be provided to communities or developers to support more growth in areas that have adequate infrastructure and implementation.		✓
Regional TDR Program. ARC has proposed to support a regional transfer of development rights (TDR) program. This would allow property owners to voluntarily transfer densities or floor area rights to areas where infrastructure is available.		✓

Also, ARC initiated the Comprehensive Transportation Plan (CTP) program in 2005. This program provides funding assistance to encourage counties and municipalities to develop joint long-range transportation plans. To date, 14 counties and the City of Atlanta have received funding under this program.⁴⁶

Table 3 and the foregoing discussion show that ARC has developed strong planning and regional coordination programs. It is nationally recognized for its work on regional land use planning, and has attempted to harness local zoning and land use authority to tackle regional land use issues. It has shown success in encouraging compact development in urban centers. However, there are additional implementation tools that ARC and the region's local governments can consider to influence regional development patterns. These are discussed below.

GENERAL RECOMMENDATIONS

The approaches taken by ARC’s peer agencies do not depart significantly from its regional policy direction. Most are striving to encourage more efficient land uses, fiscally responsible development, and compact, transit friendly land use patterns. ARC’s status as a regional agency with direct enabling legislation provides an important legal basis for developing sound, effective approaches to regional plan implementation. In addition, the federal Sustainable Communities Initiative and other smart growth programs encourage metropolitan regions to develop integrated housing, land-use, and transportation plans, and to use those plans to influence the planning and decision making of localities. ARC’s current programs, along with additional tools, will strengthen its position for funding and assistance under these programs.

One key distinction between ARC and its peer agencies is the strength of local land use control in Georgia. The Georgia Constitution places zoning power in the hands of local governments. In other states, land use authority is either derived from state legislation, or is subject to preemption by the state legislature. The strength of local authority creates competing visions of land use and development that result in incompatible development and growth patterns. While land use regulations are largely a local function in all states, Georgia’s direct constitutional authorization is unique. This substantially limits the State’s ability to mandate “top down” change (short of an amendment to the Constitution). However, ARC can use a number of tools that are similar those in its peer regions, based on a collaborative process with local governments.

Several of the regions have taken more aggressive steps than ARC to control the location of urban development and, in particular, to expand the regional footprint in an orderly manner. This requires careful collaboration with local governments, even in regions such as the Twin Cities where regional agencies have powerful legal authority. ARC certainly has the authority to take a central role in formulating policies and working with local governments to assist them in implementing comprehensive plans.

Actions that are beyond ARC’s current approach

Our review of regional plan implementation programs yielded a number of tools not currently used by the ARC. Most of the approaches listed below do not require additional enabling legislation, but would require action by local governments in cooperation with ARC. We also identify some additional ideas that come from our understanding of the ARC context.

1. **Public-Private Partnerships.** Public/private partnerships are a way to leverage public improvements, while using regional or local authority to encourage development in the right places. These are particularly important due to declining and unpredictable levels of infrastructure funding from state and federal governments. State and federal agencies have, for years, administered financial assistance programs for designated purposes, such as affordable programs. Transit agencies in other states, such as Dallas Area Rapid Transit (DART), have used advance acquisition, joint development, value capture, and development agreements to encourage transit-oriented development.⁴⁷ Expedited permitting, site assembly, low cost financing, and similar tools have created new growth opportunities for the private sector in designated centers, while furthering regional land use goals.

2. **Directed Growth Tools.** Other regions have used regulatory and non-regulatory tools to influence regional growth patterns. An example of the regulatory approach is an urban growth boundary, while non-regulatory tools include urban service and preferred investment areas.

Several of the regional entities we studied, such as DRCOG, ABAG and the Met Council, use advance planning and mapping to identify **preferred public infrastructure investment areas**. In some states (for example, Priority Funding Areas in Maryland’s smart growth legislation) this provides a key element of the growth management system as state infrastructure funding is directed to these areas.

Growth Boundaries are one of the most widely discussed mechanisms for controlling regional urban form. As is discussed in the Task 2 report, a voluntary boundary seems to be within ARC’s authority to designate and fits within local implementation authority in Georgia. This would require an extensive discussion of where and how boundaries will be drawn, regional growth projections, and the regulatory tools used to “hold” the boundaries. ARC would play a pivotal role, in collaboration with local governments, in establishing regional policies and criteria for urban form. However, regulatory implementation would reside with the region’s cities and counties. The Met Council is an example of a regional **Urban Service Area**. While the region is feeling pressure at its edges, the Twin Cities’s MUSA is regarded as successful in controlling regional urban form. The Met Council has had an advantage in that it controls regional sewer services. However, a collaborative effort to control service extensions is within the purview of a regional planning effort and can be easier to defend legally than regulatory approaches.

Georgia’s local governments have strong zoning powers, and it is nearly impossible for the State or any regional body to impose any restrictions on the use of that power, other than procedural matters. However, infrastructure drives development, and the State has a great deal of influence over infrastructure funding. Urban high density development requires roads, sewer and water. Many of the concepts discussed to guide growth, such as growth boundaries and urban service areas, are given real teeth if they are backed up by limitations on infrastructure development. Other than SPLOST funded projects, many if not most road, water and sewer projects rely on some state funds or state agency loans.

This approach could build on ARC’s role as an MPO and Regional Commission/MAPDC. One example is the Livable Centers initiative, with appropriate mapping that designates the centers in advance of applications for the funding of an LCI study. ARC could establish a map or criteria in its development guide for the preferred location of high capacity infrastructure

investments and relate this to TIP recommendations. Coordination with the TIP or other infrastructure investments would elevate the designations' importance. The long range transportation plan could specifically designate centers or corridors for high capacity transportation and transit facilities. Local governments could map these locations as part of their comprehensive plans.

3. **Enhanced Water Planning and Allocation Systems.** ARC staffs the Metropolitan North Georgia Water Planning District (MNGWPD), which encompasses a 15-county area. MNGWPD prepares comprehensive regional and watershed specific water resources, water conservation, and wastewater plans. As with land use plans, implementation lies with local governments. The region is currently facing an adverse court decision that would return metro Atlanta's water withdrawals from Lake Lanier to mid-1970s levels. This threatens the water supplies for 3 million people in the region, in addition to prospects for continued growth and development. With 99% of the region's water supply drawn from surface water sources, the quantity and quality of water is a significant planning issue.

In the Twin Cities, a strong regional planning system grew out of a water pollution crisis that required the expansion of a regional sewer system. In the Atlanta region, stronger regional planning could emerge from the reality that the area's water quantity and quality issues require the participation of all community stakeholders.

The region and local governments could tie **Water and Utility Allocation** polices to growth objectives. Water may soon become a limiting factor for growth. The location and capacity of water (and sewer) supplies has an impact on the timing and density of new development. ARC and local governments could work with the Metropolitan North Georgia Water Planning District and water providers to designate, for example, "centers and developed and developing areas" in the regional water supply and wastewater plans. These could link to areas that are scheduled for more intensive, mixed use development that conforms to regional land use polices and to areas of preferred transportation investment.

4. **New Planning Issues.** ARC's programs focus principally on urban form and infrastructure issues. Some of the other agencies are addressing cutting edge issues such as climate change and food system planning. ARC's Clean Air Act nonattainment planning functions also support the use of planning tools that reduce emissions, although it does not infringe on local land use controls.⁴⁸ In many cases, the agency gains local and regional benefit by being seen as an expert and resource the jurisdictions can turn to when trying to address their own issues of interest. By capitalizing on its position as a regional information resource and technical provider, ARC can encourage local governments to engage in a broader range of land development issues.

ARC's enabling legislation is sufficiently broad to encompass non-traditional planning issues, if there is the desire and political will to address them.

5. **Marketing.** As with DVRPC's "Classic Towns" program, ARC could develop a strategy to creatively market its centers. The region is blessed with interesting historic centers and natural beauty. An integrated marketing theme could improve regional cooperation and a sense of regional identity. It also provides opportunities for regional knowledge sharing, and it may be easier for a jurisdiction to accomplish something if they have a regional example.
6. **Housing Allocation Plans.** Regional housing allocation models were pioneered by the Miami Valley Regional Planning Commission (Dayton) in 1970 as part of the United States Department of Housing and Urban Development's 701 Program.⁴⁹ The Twin Cities Metropolitan Council was cited as having some success with early housing allocation models, and prepared a Housing Opportunity Plan (HOP) through which it become one of the earliest recipients of bonus Section 8 housing funds.⁵⁰ The HOP required a system for allocating housing assistance outside of areas of undue low income household concentrations.

In the Atlanta region, the cost of housing has not posed the critical burden that it has in the more expensive regions studied in this report, such as San Francisco. Therefore, this issue may not be as critical as the impacts of dispersed growth patterns. However, allocation programs, inclusionary zoning, and other tools are useful ways to provide a mix of housing and households in new communities.

Actions that are within Georgia's legal framework or legal authority

The recommendations set out below address issues that are either part of ARC's existing work program or enabling legislation. Other regional agencies have implemented similar programs, but have used their authority more aggressively or in unique ways.

7. **Comprehensive Development Guides.** Both the Twin Cities Met Council and the ARC are authorized to publish regional "development guides." However, the Minnesota legislation explicitly authorizes the Met Council to become directly involved in the plan adoption process and to make consistency determinations. While ARC may recommend modification of plans to maintain consistency with the development guides, the statutory language and regional planning culture are stronger in the Twin Cities region. Therefore, the level of regional involvement in local planning decisions in the Twin Cities region appears to be stronger than it is in the Atlanta region.
8. **Enhanced Stakeholder Participation.** The Zoning Procedures Law requires a minimum level (?) of public participation to put zoning controls into place. Published notice, a recommendation by the Planning Commission, and

adoption by the community's legislative body are all the law requires. This is the norm in most states.

Some communities choose a wider public participation process when they develop or update their development codes. Communities can deploy a variety of public engagement tools that precede the formal public hearing process. This includes enhanced notification using online notices and social media, workshops and design charrettes, and citizen or technical committees. This can broaden the input and expertise that goes into implementation, build a constituency for the regulations, and head off disputes at the hearing stage. Because courts give a broad public participation process significant deference, ARC should continue to support these tools. Guidance and assistance on innovative practices, such as charrettes and virtual town hall meetings, could bring more people into the planning process and strengthen public support for regional policies.

9. Mediation. Georgia law assigns to the Georgia Department of Community Affairs (DCA) the authority to develop rules to mediate interjurisdictional conflicts between plans and for developments of regional impact. California has broader authority for regional agencies to mediate a broad range of development disputes, including rezoning, and state law also establishes a Local Area Formation Commission (LAFCO) process for orderly annexations. The Georgia DCA's rules apply the mediation / alternative dispute resolution (ADR) process to both plans and plan implementation, and assign the Regional Commissions (i.e., ARC in the Atlanta region) the authority to process applications for ADR. Mediation can provide a useful way to avoid litigation costs, but is often viewed with suspicion by parties to a land use dispute. ARC could establish incentives to mediate claims, particularly where litigation threatens the development of projects that are consistent with regional goals and objectives.

10. Intergovernmental Agreements. Some of the peer agencies use intergovernmental agreements to accomplish regional land use objectives. An example is Denver's Mile High Compact, which brings together the region's local governments to support the region's long range plan. Georgia's Constitution, Article IX, Section III, Paragraph I provides that counties and municipalities may contract with one another to provide services for any period up to fifty years. Georgia does not have a regional planning commission law (as in Colorado) that requires regional review and approval of road and utility projects. However, like DRCOG, ARC can implement regional policies by engaging local governments, providing advice, coordinating public outreach and education, and working toward consensus for a common comprehensive plan. Many of the initiatives it started in the 2025 Land Use Strategy – such as the Land Use Coordinating Committee and Community Choices – do just that.

Several of the agencies studied in this report (DRCOG, NCTCOG) are voluntary councils of government (COGs) that are created by intergovernmental agreements. Regional Commissions in Georgia are creatures of the General Assembly and are not under the control of the local governments. In Georgia, a regional agency could use the intergovernmental agreement power, along with the local governments' powers to contract to provide services, to provide review processes and services to the local governments. For example, the NCTCOG provides services outside land use planning. A regional program that is oriented to service provision rather than planning mandates could be perceived as more of a resource that benefits local governments rather than a top-down mandate. In addition, since the function would be voluntary and created by the local governments, rather than imposed by statute, it would be less threatening to local autonomy.

11. Common Zoning Ordinances. Local governments in Pennsylvania and New Jersey have implemented regional land use controls and multi-jurisdictional zoning ordinances. Local governments in Georgia can use this technique also. This requires the participating jurisdictions to adopt the same ordinance. For example, Albany and Dougherty County in Georgia, while not a unified government, have adopted the same zoning ordinance and have a common planning commission. There is no limit to the number of governments that could adopt an identical or similar ordinance. This could involve regional or countywide planning commissions, or a series of joint planning commissions. A disadvantage of Planning Commission operating at this scale is the increase in their workload. However, there are also economies of scale that would benefit local governments, such efficiencies in staffing, providing the tools to perform development reviews (for example, common permitting software and tracking systems), and making the development process in the region simpler and more flexible for developers.

12. Land Use Maps. The MPOs reviewed have very different land use maps and authority associated with them. Metropolitan Council and NCTCOG represent the two ends of the spectrum.

In the Minneapolis/St. Paul region, local jurisdictions are required by state law to modify their comprehensive plans so that they are in concert with the regional land use and MUSA plan maps developed by Metropolitan Council. The Metropolitan Council's plans are created by looking at the capacity and expansion plans for the urban services the Council provides. At the other end of the spectrum, NCTCOG's map has no correspondence with local plans. The preferred physical development pattern is an aspiration that was generated through public visioning workshops.

Between the Metropolitan Council and NCTCOG extremes lie ABAG/MTC, DRCOG, and DVRPC. Of the three, DRCOG has the strongest connection to

local plans. The DRCOG Board allocates growth to each community and the community, working with DRCOG, determines the specific geographic location for the growth boundary. The ABAG/MTC map also has a strong connection to local plans, but it is driven from the bottom up rather than from the top down as at DRCOG. The ABAG/MTC map depicts the Planned and Potential Priority Development Areas for which local jurisdictions request designation from ABAG. In order to be approved by ABAG (and shown on the map), the local comprehensive plan needs to meet specific criteria. DVRPC's map is a highly generalized map that focuses on existing and future growth areas, greenspace networks, and rural conservation lands. DVRPC attempts to make the map consistent with local plans, and does not require local governments to modify their plans for consistency with the regional map.

ARC's Unified Growth Policy Map (UGPM), along with its Regional Place and Development Matrix, offers good basic guidance on the general parameters of development on a regional scale. The UGPM is a composite of local plans and regional policy. As the UGPM is updated, ARC could build stronger connections to local implementation through a "cross-acceptance" or memorandum of understanding process, similar to DVRPC's regional compact and New Jersey's regional comprehensive planning process. While ARC reviews individual plans for consistency with regional policy, this type of outreach builds acceptance of regional boundaries from the bottom up. Because local governments continue to make zoning map decisions, this type of process could strengthen fidelity to regional plan objectives as individual rezoning and development proposals are considered.

- 13. Official Maps / Major Thoroughfare Plans.** The Major Thoroughfare Plan (MTP) is an underused tool by local governments. Many states have legislation that prohibits the issuance of building permits within the bed of streets that are shown on an "official map."⁵¹ This can preserve rights of way and avoid significant increases in construction costs, but can also raise takings issues. In Georgia, local governments can condition zoning approvals on transportation improvements.⁵² They also refer local subdivision plats to the Department of Transportation if the plat abuts or accesses the state highway system.⁵³ These conditions are subject to nexus and proportionality requirements imposed by state and federal law. In other words, the improvements must be proportionate to the impacts of the development. Extending right of way preservation requirements to minor arterial or collector streets can improve connectivity and the efficiency of the street network, and appears to be consistent with the state comprehensive planning rules.

As is discussed under "What's Working" above, ARC has used its Area Plan review authority to submit recommendations on projects in designated corridors. ARC could expand the program to work with local governments to

put right of way protection programs into place in local zoning and subdivision regulations.

- 14. Move forward on the Envision6 Regional TDR Concept.** The transfer of development rights (TDR) tool is both expressly enabled by Georgia law, and a market-friendly way to influence regional development patterns. Many local governments shy away from TDR out of a fear that implementation will become costly and time consuming. The experience of other regions with effective programs – such as the Tahoe Regional Planning Agency and New Jersey Pinelands Commission – shows that the programs require significantly less staffing and administration than is initially perceived. An upfront commitment of time and money can create long term dividends, involving both the public and private sectors cooperating in the creation of sustainable, compact development patterns.
- 15. Make the Right Things Easy.** Zoning and land development regulations can inadvertently penalize the type of development that furthers the goals and policies of local plans. For example, the zoning regulations may require a planned unit development (PUD) rezoning to approve a mixed use development in an area designated as a center in the comprehensive plan. The PUD process can be lengthy, expensive, and unpredictable. Communities are increasingly turning to predictable, design based codes (such as form base zoning) that define the standards for mixed use development clearly. This allows the community to reward applicants with administrative, predictable and speedy approval processes. For example, the San Antonio, Texas Unified Development Ordinance (UDO) allows traditional neighborhood developments (TNDs) by right in every zoning district, subject to administrative site plan approval. This has encouraged the developers to opt for mixed use projects in areas that were formerly reserved for low density, dispersed development.



Figure 8 Hunter's Pond TND (San Antonio)

16. Deal Creatively with Vested Rights. This is a sensitive legal and political issue. Applicants who have substantial investments in existing developments should be treated fairly, and Georgia law is favorable toward vested rights. However, preexisting permits and obsolete uses can interfere with a community's current land use planning goals. Some communities may favor more aggressive tools to terminate nonconformities, such as amortization. Others may favor a more gradual approach that incentivizes compliance with current regulations. New plans and the regulations that implement them should carefully address vesting and nonconformity issues.

CONCLUSION

The Atlanta region has made great strides in regional planning. While the region has struggled with the impacts of rapid growth and economic recession, it has also put important tools in place to meet the demands of the next three decades. Georgia's unique land use legal framework disperses land use authority among the region's many local governments. However, the state's progressive regional planning legislation, ARC's broad authority as a regional coordinator, and the abundant authority given to local governments to control land use create opportunities for effective regional plan implementation. The experiences of other regional agencies show that planning works best when it has buy-in and credibility by local governments. Regional influence over service delivery is also a powerful engine for effective land use coordination. Because Georgia's constitution assigns direct zoning authority to local governments, regional partnerships will work best as implementation tools are put in place.

ENDNOTES

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- ¹ Atlanta Regional Commission, Regional Assessment (Draft, Jan. 27, 2010), at 11 (hereinafter “Regional Assessment”).
- ² Regional Assessment, Appendix: Development Patterns and Design.
- ³ Leinberger, “The Connection Between Sustainability And Economic Development,” in D. Porter, *The Practice of Sustainable Development* (Urban Land Institute, 2000).
- ⁴ OCGA § 50-8-30.
- ⁵ OCGA §50-8-98(a); *Kingsley v. Florida Rock Industries, Inc.*, 259 Ga.App. 207, 576 S.E.2d 569 (Ga.App. 2002)(absent notification procedure for adoption of plan, the county’s normal practice applied rather than the notice required by the Zoning Ordinance or ZPL).
- ⁶ OCGA § 50-8-7.1(b).
- ⁷ 23 U.S.C. § 134(c)(1)).
- ⁸ OCGA §50-8-46, -94(e); Griffith, “The Preservation Of Community Green Space: Is Georgia Ready To Combat Sprawl With Smart Growth?”, 85 WAKE FOREST L. REV. 563, 572 (2001).
- ⁹ Ga. Comp. R. & Regs. 110-12-6-.03.
- ¹⁰ See <http://www.atlantaregional.com/transportation/public-participation>.
- ¹¹ Ga. Comp. R. & Regs. 110-12-6-.02(1)(c).
- ¹² Ga. Comp. R. & Regs. 110-12-1-.08(5)(d).
- ¹³ OCGA § 50-8-8(a).
- ¹⁴ OCGA § 50-8-99.1.
- ¹⁵ Regional Assessment, at 58.
- ¹⁶ RTD Station Area Reports, 2009 Status Report, at <http://tod.drcog.org/node/102>.
- ¹⁷ Dunlavy Law Group, *The Power To Zone: Who Has It And Where Does It Come From*, at http://www.dunlavylawgroup.com/articles/authority_zone.htm.
- ¹⁸ See 2008 population estimates at <http://quickfacts.census.gov/qfd/states/13000lk.html>. As of July 1, 2008, Gwinnett County’s population is 789,499 and Cobb County is 698,158.
- ¹⁹ *F. P. Plaza, Inc. v. Waite*, 230 Ga. 161, 196 S.E.2d 141, 143 (Ga.), cert. denied, 414 U.S. 825, 94 S.Ct. 129, 38 L.Ed.2d 59 (1973).
- ²⁰ Ga. Constitution Art. 9, § 2, pars. I-II; OCGA § 36-35-3(a).
- ²¹ Roskie & Custer, “Adequate Public Facilities Ordinances: A Comparison Of Their Use In Georgia And North Carolina,” 15 *Southeastern Environmental Law Journal* 245 (2007).
- ²² Ga. Constitution Art. 9, § 2, par. III.
- ²³ *Cherokee County v. Atlanta Homebuilders*, 566 S.E.2d 470, 255 Ga. App. 764 (Ga. App., 2002).
- ²⁴ *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520, 555 S.E.2d 722 (Ga. 2001)(citing *Bradshaw v. Dayton*, 270 Ga. 884(1), 514 S.E.2d 831 (1999); *City of Lilburn v. Sanchez*, *supra* at 521, 491 S.E.2d 353; *Cannon v. Coweta County*, 260 Ga. 56, 57, 389 S.E.2d 329 (1990), overruled, *King v. City of Bainbridge*, 276 Ga. 484, 577 S.E.2d 772 (Ga. 2003); and comparing *Gradous v. Bd. of Commissioners*, 256 Ga. 469, 349 S.E.2d 707 (1986)); *Dover v. City of Jackson*, 246 Ga.App. 524, 541 S.E.2d 92 (2000)(protecting neighborhood character is a legitimate government interest).
- ²⁵ *In re Petition of Dolington Land Group*, 576 Pa. 519, 839 A.2d 1021 (Pa., 2003). For other “regional general welfare” cases, see *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.*, 67 N.J. 151, 336 A.2d 713 (N.J.), cert. denied, 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 28 (1975); *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.*, 92 N.J. 158, 456 A.2d 390 (N.J. 1983); *Save a Valuable Environment (SAVE) v. City of Bothell*, 89 Wash.2d 862, 576 P.2d 401 (1978); *Associated Home Builders etc., Inc. v. City of Livermore*, 135 Cal.Rptr. 41, 557 P.2d 473, 18 Cal.3d 582 (1976).
- ²⁶ P. Olson, “Vested Rights, Grandfathering and Moratoria,” Land Matters (Oct. 2007).
- ²⁷ *Barker v. County of Forsyth*, 248 Ga. 73, 281 S.E.2d 549 (1981).
- ²⁸ *North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge*, 248 Ga.App. 450, 546 S.E.2d 850 (Ga.App. 2001).
- ²⁹ See *BBC Land & Development, Inc. v. Butts County*, 281 Ga. 472, 640 S.E.2d 33 (2007); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 267 Ga.App. 134, 601 S.E.2d 106 (2004); *Ralston Purina Co. v. Acrey*, 220 Ga. 788, 142 S.E.2d 66 (1965); *Gifford-Hill & Co., Inc. v. Harrison*, 229 Ga. 260, 191 S.E.2d 85 (1972); *Purple Onion, Inc. v. Jackson*, 511 F.Supp. 1207 (N.D.Ga. 1981).

- ³⁰ D. Slone and D. Goldstein, eds., *A Legal Guide to Urban and Sustainable Development for Planners, Developers and Architects* (Wiley, 2008); Congress for the New Urbanism, *Codifying the New Urbanism* (American Planning Association, Planning Advisory Service Report No. 526, 2004).
- ³¹ White, *The Zoning and Real Estate Implications of Transit-Oriented Development*, Transit Cooperative Research Program (TCRP) Legal Research Digest, No. 12 (January 1999).
- ³² White & Jourdan, "Neotraditional Development: A Legal Analysis," 49 *Land Use Law & Zoning Digest*, No. 8 at 3 (August 1997).
- ³³ Ga. Comp. R. & Regs. 110-12-6-.06(3)(m).
- ³⁴ White & Jourdan, *supra*.
- ³⁵ Freilich & White, *21st Century Land Development Code* (American Planning Association, 2008); White, *Adequate Public Facilities Ordinances and Transportation Management* (American Planning Association, Planning Advisory Service Report No. 465, August 1996).
- ³⁶ Roskie & Custer, *supra*.
- ³⁷ OCGA § 36-67-3.
- ³⁸ *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (N.Y.), *app. diss'd*, 409 U.S. 1003, 93 S.Ct. 440, 34 L.Ed.2d 294 (1972); *Beaver Meadows v. Board of County Com'rs of Larimer County, State of Colo.*, 709 P.2d 928 (Colo. 1985)(upholding denial for lack of offsite capacity and offering mitigation alternatives in lieu of denial, even where the state provided for strict construction of authority).
- ³⁹ *Garipay v. Town of Hanover*, 351 A.2d 64 (N.H. 1976)(upholding denial of subdivision plat based on the inability of offsite roads to handle the additional traffic generated by the subdivision).
- ⁴⁰ *In re Petition of Dolington Land Group*, 576 Pa. 519, 839 A.2d 1021 (Pa., 2003); *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.*, 67 N.J. 151, 336 A.2d 713 (N.J.), *cert. denied*, 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 28 (1975); *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.*, 92 N.J. 158, 456 A.2d 390 (N.J. 1983); *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal.3d 582, 557 P.2d 473, 135 Cal.Rptr. 41 (1976); *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.2d 344 (Colo. 1972); *National Land & Investment Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1965).
- ⁴¹ Ga. Code § 50-8-80. Through the Metropolitan River Protection Act, ARC also reviews sewer lines and development proposals in the Chattahoochee Corridor. Ga. Code § 12-5-440 et seq.; *Threatt v. Fulton County*, 266 Ga. 466, 467 S.E.2d 546 (Ga. 1996).
- ⁴² Ga. Code §§ 50-8-80, -94.
- ⁴³ Resolution By The Atlanta Regional Commission For The Adoption Of Area Plan Review (Apr) For Inner Core Transportation Corridor.
- ⁴⁴ Ga. Code §§ 50-8-7.1, 50-32-14.
- ⁴⁵ Ga. Code §§ 36-66A-1 et seq.
- ⁴⁶ See CTP web page at <http://www.atlantaregional.com/transportation/studies/current/ctp-program/ctp-program>.
- ⁴⁷ S. Mark White, *The Zoning and Real Estate Implications of Transit-Oriented Development* (Federal Transit Administration, Transit Cooperative Research Program, Legal Research Digest No. 12, Jan. 1999).
- ⁴⁸ 2010 UPWP - *Unified Planning Work Program for the Atlanta Metropolitan Transportation Planning Area* (adopted Dec. 1, 2009), at 3; 42 U.S.C. § 7431.
- ⁴⁹ American Bar Association, and Richard P. Fishman, *Housing for All Under Law: New Directions in Housing, Land Use, and Planning Law : a Report of the American Bar Association, Advisory Commission on Housing and Urban Growth* (Cambridge, Mass: Ballinger Pub. Co, 1978), at 468-71.
- ⁵⁰ Fishman, *supra* note **Error! Bookmark not defined.**
- ⁵¹ 3 Rathkopf's *The Law of Zoning and Planning* § 50:1 (4th ed.).
- ⁵² *Cross v. Hall County*, 238 Ga. 709, 235 S.E.2d 379 (1977).
- ⁵³ Ga. Code §§ 32-6-151 to -153.