

THE PIEDMONT COMPACT: POSSIBILITIES AND RECOMMENDATIONS

GROWTH MANAGEMENT LAW & IMPLEMENTATION OF GEORGIA STATE
UNIVERSITY AND GEORGIA INSTITUTE OF TECHNOLOGY

Group #3

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MEMORANDUM OF LAW

**The "Piedmont Compact" as an intergovernmental contract in
Georgia**

TO: Profs. Juergensmeyer & Reuter

FROM: Travis Cain and Heather Carter

RE: Growth Management; Creation of Piedmont Compact

DATE: April 21, 2008

MEMORANDUM FOR THE PROFESSORS OF GROWTH MANAGEMENT LAW &
IMPLEMENTATION OF GEORGIA STATE UNIVERSITY AND GEORGIA INSTITUTE
OF TECHNOLOGY

Introduction

It was asked whether a county or municipality¹ in Georgia may enter into a voluntary compact or contract with one another to direct and implement land use and growth policy from a common vision. This memorandum concludes that an intergovernmental contract dealing with land growth policy decisions is lawful and can be accomplished with the current laws² in Georgia. We do not go into the legal difficulties of other organizations as they may sign onto this contract because the difficulty of

¹Other organizations or agencies may participate such as NGOs (non-governmental organizations) or NPOs (non-profit organizations)

² Current laws; as opposing to needing to look forward to further legislative action to enable jurisdictions to enter into such a contract

contracting in this scenario is primarily one of government contracts and not of private contracts.

Our analysis proceeds as follows: In the Part 1 we will explore the actual creation of the contract; how the county or municipality was enabled to contract and who may bind the county or municipality. Part 2 will look at the contract administration authority, executive action and legal incentives. Part 3 will cover conflict resolution including amendments, ADR, other administrative agency's, and courts. In Part 4 will cover the future perspective, including what possible course such a contract would take, anticipate legal challenges that may arise, and the potential for mega-regions. Part 5 will conclude a brief discussion on the issue of takings and final practical difficulties in implementing this contract.

Part 1

CONTRACT CREATION

Section One: Georgia Constitutional Authority

The State of Georgia Constitution provides in relevant part:

Article 9, Section 3, Paragraph I:

"The state, or any institution, department, or other agency thereof, and **any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other** or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts **must deal with activities, services, or facilities which the contracting parties**

are authorized by law to undertake or provide. By way of specific instance and not limitation, a mutual undertaking by a local government entity to borrow and an undertaking by the state or a state authority to lend funds from and to one another for water or sewerage facilities or systems or for regional or multi-jurisdictional solid waste recycling or solid waste facilities or systems pursuant to law shall be a provision for services and an activity within the meaning of this Paragraph.”³

Notice that the first sentence offers an affirmative grant of authority for county and municipalities to contract with each other.⁴ However, it also offers a restriction regarding the duration of the contract, not to exceed 50 years. The contract therefore would need to be limited in length to avoid a constitutional challenge regarding duration.⁵ The second restriction is the services, which the contracting parties must be *authorized by law to undertake*. “Services” are not left often to judicial determination but rather must have some affirmative law enabling the contracting parties to provide those services; this makes a careful reading and following of the legislation extremely important. Specifically included in those “services” are water facilities, sewage and solid waste management. However, other authorized services are found elsewhere in both the Georgia Constitution and statutes.

In defining these “services” the Georgia Constitution provides in relevant part:

³ Ga. Const. art. 9, § 3

⁴ Again, notice the ability of private organizations to join in and contract with counties and municipalities.

⁵ An alternative to solve this is to put in a cyclical re-signing provision, whereas after X years, the involved counties will meet again to reform and agree to the contract for the next X years.

Article 9, Section 2, Paragraph I:

"(a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto."⁶

and

Article 9, Section 2, Paragraph III:

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.
- (11) Terminal and dock facilities and parking facilities.
- (12) Codes, including building, housing, plumbing, and electrical codes.
- (13) Air quality control.
- (14) . . .⁷

These services are specifically included and require only a careful reading to make sure the contract deals with these authorized services. One caution should be made in the contract construction of this portion; in the event that the contract points to a larger growth management plan (such as Envision6) it is important that plan to which the contract points should significantly adhere to these listed services. While article 9, section 2, paragraph I, part (a) indicates that any lawful

⁶ Ga. Const. art 9, § 2

⁷ Ga. Const. art 9, § 2

services may be contracted for, however to avoid unnecessary litigation to prove which services are "clearly reasonable" and "not inconsistent" it would behoove the crafter of the contract and any plan the contract references, to reflect significantly those services which are explicitly mentioned. Since the legislature has already seen fit to include those services in article 9, section 2, paragraph III such a contract design is feasible. This has the additional benefit of alleviating any unnecessary lawsuit concerns for local politicians, perhaps smoothing the way to the signing of the compact.

Section Two: Contract Scope

The State of Georgia Constitution also has a provision that deals with the scope of such a contract, and provides in part:

Article 9, Section 2, Paragraph III continued.. "(b) Unless otherwise provided by law,

(1) No county may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county **except by contract with the municipality or county affected;** and

(2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries **except by contract with the county or municipality affected.**⁸

These provisions govern the geographic scope of the contract; and allow for one county or municipality to work within the borders of another county or municipality and outside of its own

⁸ Ga. Const. art. 9, § 2

jurisdictional borders. This has the practical effect of allowing counties who agree by contract to provide these services to blend their efforts, not only along jurisdictional boundaries but even to the very core of the jurisdiction, allowing for joint efforts that benefit both regions. However, these actions can only be taken in the borders of other jurisdictions by contract, thus protecting each jurisdiction's autonomy and independence, so open negotiations and clarity are very important to avoid unnecessary litigation between jurisdictions.

Further, the Georgia legislature has enacted statutes relating to the scope of contracts including O.C.G.A. § 36-34-2, and provides in relevant part:

"In addition to the other powers which it may have, the governing body of any municipal corporation shall have the following powers, under this chapter, relating to the administration of municipal government: ... (5) The power to contract with any state department or agency or any other political subdivision for joint services or the exchange of services; to contract with such agencies or subdivisions for the joint use of facilities or equipment; and to contract with any state agency or political subdivision to perform any service or execute any project for such agency or subdivision in which the municipal corporation has an interest;⁹

This provision allows municipalities to contract with State agencies; significant because there are some agencies which have authority to resolve disputes and administratively oversee intergovernmental dealings, such as the Department of Community Affairs (DCA). But careful reading is required; notice that the

⁹ Ga. Code Ann. § 36-34-2 (2007)

language of who can contract with such agencies is not as broad as the previous constitutional provisions naming only municipal corporations.¹⁰ However, if municipal corporations are defined broadly, rather than narrowly, this would provide both a new avenue of local and state mutual participation and potentially an inroad to state funding which an otherwise local only compact may fail to reach.

Section Three: Contract Sections

A compact that attempts to comprehensively detail the growth management plan of an area faces the difficulty of the negotiation table. The first step to fix this is to follow the model of the Denver Contract. The Denver Contract, known as the Mile High Compact, is a relatively short document that references an external growth management plan. This external plan allows for the contract to remain simple and clear. It provides the benefit that, which the contract may be permanent and enforceable; it is not all together inflexible if it points to this external document.

In Georgia an analog to the Denver Regional plan is Envision6, and could be the "external plan" referenced in the "Piedmont Compact". This plan would provide the flexibility that a contract that attempted to comprehensively lay out the growth

¹⁰ This may be a place for future research to clarify this term of art.

management plan could not. Because growth management must be constantly re-evaluated a strict contract may end up doing more harm than good, locking regions into a good plan that due to regional changes becomes a bad plan.

Further, there could be a "frame" contract with options. This would allow the maximum jurisdictions to sign into the "frame" and vision of the contract, but not necessarily signing on to the "options" which may not affect them and of which they may have no or little interest. The benefit of that is getting more people interested in joining; and letting only those people who have agreed to the option enforce that option against others who have bound themselves. This way there is an incentive built into the contract both for those jurisdictions that would like more influence over other jurisdictions and those who would place a premium on their autonomy.

Finally, the contract may have to have a procedural out for catastrophic events. While in common law, catastrophic events may lay the groundwork to allow one or both or multiple parties to drop the contract, governmental entities face particularly unique situations which may be best dealt with as a specific provision allowing for a strategic withdraw from the contract should the event happen.¹¹

¹¹ This is perhaps best understood according to the unique position a local government is in.

Part 2

CONTRACT ADMINISTRATION

Section One: State Executive Authority

The Georgia legislature has enacted a statute granting authority to the Department of Community Affairs (DCA), an executive agency, to make consistent intergovernmental comprehensive plans. O.C.G.A. § 50-8-10 provides in relevant part:

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, **comprehensive plans of all levels of government** consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments;

(2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and...¹²

There are two important activities which the DCA may be involved in, should counties or municipalities decide to enter into a compact with one another. The first is that the DCA may act to keep consistent comprehensive plans of all levels of government. Which means that to avoid the DCA potentially messing with the compact after it was formed it would benefit the region to look into any other contracts or comprehensive plans that may

¹² Ga. Code Ann. § 50-8-10 (2007)

conflict. The most notable of these would be the zoning comprehensive plans of various jurisdictions.¹³ Knowing which plans the compact may be inconsistent with is important to maintaining its independence from the meddling of the DCA. The second authority is similar, but rather than local comprehensive plans, deals with making consistent comprehensive government plans, like the compact, with long term policies of the state. However, this passage is less concerning, because Georgia is a "Home Rule State" in which much of the power for land use and growth management planning is left to the local jurisdictions.

It is probably inevitable that the DCA will want some involvement, particularly if the members of the compact seek any sort of state funds. Besides being aware of other comprehensive government plans that may be inconstant with the contract and its referenced growth plan (i.e., Envision6) the next best way to ensure the compact is carried out along the lines that the members envisioned dealing with the DCA is necessary. It may even be possible to get pre-approval of the plan referenced in the contract to enable immediate implementation, and avoid having to alter it as it is being implemented. Simply put, contacting with, and learning to work with the DCA would put the members of the compact on better footing for making sure their

¹³ Notice that NOT having a plan may actually work here, since their authority is to make consistent different plans, not implement plans where there are none.

plan is not adversely affected by external agencies and avoidable litigation.

Section Two: State Participation and Aid

The DCA is not merely an obstacle to the compact and local jurisdictions. It may also serve as a valuable resource for the members of the compact. According to further provisions of O.C.G.A. § 50-8-10:

(b) The department shall serve as the state's clearing-house and research center on **intergovernmental relations**, including relationships among federal, state, and local levels of government

(c) The department may provide, supervise, or coordinate leadership and community development programs for local governments and other programs with respect to local government affairs. The department may develop pilot programs or projects designed to address the problems and needs of local government.¹⁴

In serving as the state's research center on intergovernmental relations, the DCA may have data relevant to creating a streamlined and enforceable contract among local and state agencies. Further, the DCA may help jurisdictions and members of the compact move their vision for growth forward, by aiding and coordinating the local leadership. Careful attention to "may" should be given, as the DCA is not required to coordinate or supervise programs regarding local government affairs. This could be a double edged sword, while they may want to help, and begin to help; there is no guarantee of their continued help. Additionally, the DCA may be ineffective in generating and

¹⁴ Ga. Code Ann. § 50-8-10 (2007)

coordinating local community leadership and development; particularly if the members of the compact already have an idea of how they would like to coordinate community development.

Section Three: Proposed Ordinances

The first proposed ordinance should be to designate the person authorized to sign and bind the jurisdiction as a member of the compact. While the authority to contract has been established, along with some restrictions and the scope, the first potential legal battle arises when one would theoretically sue the jurisdiction because the person who bound the jurisdiction "did not really have the authority" to bind that jurisdiction. An ordinance would simply eliminate this potential hazard.

The second proposed ordinance should deal with the hierarchy of legislation. How does the jurisdiction, as member of the compact, respond to a local municipality (also a member) who enacts an ordinance that in part overrules or is contrary to the signed compact? Rather than go immediately to litigation, for breach of contract, an ordinance that declares the compact as authoritative over a contrary local ordinance, would streamline the process and help avoid the very practical difficulty of having one jurisdiction enjoy membership in the

compact until they decide merely to overrule it with an ordinance and face litigation.

Part 3

CONFLICT RESOLUTION

Section One: Pre-litigation Measures

One of the easiest steps to resolving contract conflict, especially with an evolving field such as growth management, is merely to add and amendment. The Mile High Compact has implemented two amendments to address necessary changes in the contract. Similarly, the "Piedmont Compact" could take as a first step towards conflict resolution, amendments, therefore enabling cooperation to solve the conflict rather than an immediate move towards litigation. An amendment allowing provision in the contract may be useful, particularly if negotiations are made contractually required prior to any legal action, forcing the jurisdictions to deal with each other and hopefully solve the problem without the adversarial process of the legal system. Amendment benefits to intra-member conflict are its flexibility and emphasis on cooperation rather than competition.

The second step should probably be some sort of mandatory mediation or arbitration, some sort of alternative dispute resolution (ADR). There are several types of ADR and this can

also be contractually obligated prior to litigation. The real decision would come in deciding whether the members of the compact want binding or nonbinding ADR. The advantages of binding arbitration are finality of decision, less delay, and less cost as compared to litigation. Disadvantages are that this decision can't be appealed and the decisions are not judicially reviewable. Non-binding arbitration has the benefit that it becomes a good evaluation of how a potential litigation may proceed. Further, even if the outcome is not satisfactory, judicial review is still possible. The downside is its poor predictability of legal outcomes and the double cost of arbitration; and if unsolved, litigation.

There are many arbitration forums in the United States; however, two are very pre-eminent: the National Arbitration Forum (NAF) and American Arbitration Association (AAA). The benefit of going with one of these forums is that they already have a procedure in place, the judicial system is familiar with them, and they are generally of good reputation. The downside is that they aren't always neutral, its rules like the courts, require strict compliance, and because of the novelty of such a compact and the complexity of the conflict likely to be involved, the decision maker may not be familiar enough with the material to make a wise decision.

Beyond amendments and ADR Georgia has enacted legislation to enable the DCA to coordinate the comprehensive plans of local governments.¹⁵ This can act as an administrative stop, and in the event that the DCA sets up an additional forum to deal with intergovernmental conflict regarding inconsistent plans among jurisdictions may be cheaper for the parties and more definitive method of resolving the dispute. For the findings of the DCA may have more authority and be of more interest to the court than an ADR decision. This is beneficial because it provides for administrative hearings regarding the conflict, of which most counties and municipalities are familiar, and these administrative decisions are judicially appealable.

Section Two: Litigation

If all the previous methods fail the inevitable lawsuit must be prepared. O.C.G.A. § 36-1-3 provides in relevant part:

"Every county is a body corporate, with power to sue or be sued in any court."¹⁶

This provision specifically provides for counties to be sued. While declaring that they may be sued, this statute does not provide any test by which to decide which county the suit should proceed in. This gives rise to two possible outcomes: either it may be discussed and entered in contract, such as "The suit will

¹⁵ See Ga. Code Ann. § 50-8-10 (2007)

¹⁶ Ga. Code Ann. § 36-1-1 (2007)

proceed in county of the defending jurisdiction" or will be the first issue hammered out in litigation.

On the issue of sovereign immunity¹⁷ the O.C.G.A. § 50-21-1, provides in relevant part:

"(a) The defense of sovereign immunity is waived as to any action ex contract for the breach of any written contract existing on April 12, 1982, or thereafter entered into by the state, departments and agencies of the state, and state authorities."¹⁸

This provision statutorily authorizes suit against the government from the state level down concerning any breach of contract. This means that they the state and state authorities will be susceptible to the same claim of "breach of contract" as to any claim involving a breach of contract with them as a party. Simply put, after signing this contract no jurisdiction will be able to claim a defense of sovereign immunity against breaching this compact (though other defenses may still be raised).

Once venue and sovereign immunity is solved the substance of the case will be on more familiar footing. Land use law in Georgia has a convoluted history, and one that happens to be fairly short. Contract law, however, has been developing for a much longer period. After this contract is signed, disputes if they end up court will proceed under contract grounds. Contract proceedings may be more predictable because of their more

¹⁷ Determining that the government can in fact be sued or barring the government from suit.

¹⁸ Ga. Code Ann. § 50-21-1 (2007)

numerous precedents and case law development. A further benefit of proceeding under a contract claim (or defending against one) is the familiarity of the material. Aspects of land use law require a vast array of knowledge and skills including Federal, State, and local law, common law, zoning ordinances and constitutional law, both Federal and State. But contract law, though perhaps not simpler than land use law, has the benefit of being much more familiar to attorneys and judges alike.

Part 4

FUTURE PERSPECTIVES

Section One: Anticipated Problems

Besides a standard "breach of contract" there may be other non-contract problems that require a solution and deserve a moment of time to hammer out legally. The first of these would include financial disaster. While a compact which envisions a brighter future for everyone may be the ideal, in reality sometimes catastrophic events occur which alter and sometimes even eliminate a jurisdiction's ability to follow through with their contractual obligations. While there is an "act of God" defense for breach of contracts, local governments face a variety of situations which may prove difficult to extend the "act of God" defense; such as financial disaster. This is something that may need to be negotiated and placed explicitly

in the contract; in the event of an event that requires the city alter its current plans for its own immediate survival.¹⁹

Further, with the emerging "township movement" or similar activities may prove a significant threat to the compact. The township movement is about making the localized zoning and land use control even more localized; allowing small communities within the jurisdiction the authority to run its own zoning and land use policies. While no other government functions go along with such a grant of power; if a compact is entered into, how would an emerging township with new isolated power to decide land use questions be integrated? The difficulty arises whenever a township is created and the result is its noncompliance and general disagreement with the vision referenced in the compact. This would create smaller "renegade" jurisdictions that may seriously damage the compacts ability to affect a uniform change and cooperation. This may most simply be dealt with by having the contract state that any "emerging" zoning or land use authorities, if they come out of a jurisdiction already bound to the contract, will be bound as well as a condition of their creation. So even if townships with land use powers emerge or are granted authority they will be born into the contract and

¹⁹ For example, several cities after Hurricane Katrina were left in a debilitated position and required a great shift of funds, time and resources, to even begin to rebuild. While the hurricane may be a classic act of God, other financial disasters totally out of the cities control may be a factor; including in a large section of its business populace pulls out or abandons operations, etc.

maintain the cohesiveness of the compact and its referenced vision.

Previously established contracts may form another difficult issue. A jurisdiction should be careful to make sure its agreement with the contract and referenced vision do not adversely impact any other contracts they have made or risk the danger of being forced to breach one of their obligations in ignoring one contract to fulfill the other. This most likely will be avoided by close scrutiny of the contractual obligations the jurisdiction has already undertaken.

Section Two: Anticipated Benefits and MegaRegions

The legal significance of mega regions would follow similar benefits and problems as the more local compacts. MegaRegions are specifically enabled according to O.C.G.A. 36-69A-2²⁰ but such an undertaking would also offer a greater cooperation, joint resource allocation, and better long term regional planning.

Finally, there are some inevitable benefits legal benefits from such a contract that even if brief, should not be underestimated. First is the streamlined vision of growth management. Simply put, it would advance the jurisdictions which may be slow to make growth management decisions and extend the

²⁰ Ga. Code Ann. § 36-69A-2 (2007)

effectiveness of jurisdictions that already has growth management concepts in place. Having a single vision for an area will provide cohesion, support, and cooperation leading to a stronger and healthier region. Second, the individuals involved such as the developers, home owners, architects, environmentalists and other local bodies will have more security and certainty in land use. They will know what the vision for the region is, how they can best fit into that vision, and what to expect out of it.²¹

PART 5

TAKINGS

Section One: A Constitutional Takings

The United States Constitution provides in the Fifth Amendment:

"...nor shall private property be taken for public use without just compensation."²²

This is perhaps the single greatest fear involved in land use controls and management. However, much of the risk involved in regular zoning ordinances or other issues of government land use controls are minimized when a compact is involved. While on a challenge may arise on an "as applied" basis, perhaps on the

²¹ Please see the "Planning" section of this paper for more elaborate look at the benefits of a compact beyond the legal consequences.

²² U. S. Const. amend. V, § 5 or "The Takings" clause.

issue of spot zoning²³, there really is no takings issue to be concerned with from the contract or vision itself. The standard for spot zoning is when a zoning regulation is for a particular parcel and is unique to that parcel, contrary to the comprehensive plan and arbitrary and capricious. Since the compact will reference the comprehensive plan this should not be a problem.

To establish a taking claim of the following: 1) private property was taken AND 2) just compensation was not given OR 3) the property was taken for a non-public use. The United States Supreme Court gives great deference to what the legislature determines is a "public use" and is almost invariable not going to be a problem, even if the taking is for economic purposes.²⁴ A determination of just compensation is a matter of economic analysis and examples can be found in such cases as...²⁵ The issue will arise primarily as to what constitutes a "taking" from prong one.

The United States Supreme Court has given only a few bold lines to when a taking occurs. First if there is a permanent or temporary physical invasion²⁶ and second if the regulation

²³ See *Cassel v. Mayor and City of Baltimore*, 73 A.D2 486 (Md. 1950) .

²⁴ *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984)

²⁵ The standard is generally is what a willing buyer would pay a willing seller at the time.

²⁶ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)

regarding the property deprives it of all reasonable economic use.²⁷ However, since it is unlikely any of the scenarios will result (after all this compact is primarily concerned with guiding the growth of a region; not just limiting it) these are unlikely to be difficult factors to overcome. The issue will arise primarily when area's are determined for "green space" and zoned to allow minimal or zero new development. This means that a uniform rule of "no development here" won't withstand a constitutional takings claim but it may be enough to allow the development of a single family home. And, even in the event a taking is found, there may be some instances in which the jurisdiction for the benefit of the region, really does take private property and justly compensates them so it may be use for public use, for instance for mass transportation facilities.

Section Two: Final Considerations

In the final consideration, the issue of takings is not going to be one that adversely affects this contract, and will primarily be raised in the context of how the jurisdiction exercising authority under its police powers implements the referenced vision. The legal challenges can never be totally avoided or negated; but by proceeding along a contract basis

²⁷ Penn Central Transportation Co. v. New York, 438 U.S. 104 (1978) and Lucas v. South Carolina Coastal, 304 S.C. 376 (1991)

rather than purely land use authority, a guiding hand and vision is given to the land use policies of each jurisdiction. This cooperation will pave the way to developing the region as a whole, benefiting not only the individual jurisdictions, but each as a member of the whole as well.

PIEDMONT COMPACT²⁸

THIS AGREEMENT is made and entered into this 21st day of April, 2008²⁹ pursuant to³⁰ Article 9, Section 3, Paragraph I and Paragraph II³¹ and Article 9, Section 2, Paragraph III³² of the Constitution of the State of Georgia and O.C.G.A. § 36-34-2³³, by and among the cities and towns of the State of Georgia, and the counties of Georgia, bodies politic organized under and existing by virtue of the laws of the State of Georgia.

- I. **WHEREAS**, the Cities and Counties recognize that growth and development decisions can impact neighboring jurisdictions and the region; and
- II. **WHEREAS**, Envision6³⁴, collaboratively created by Atlanta Regional Commission³⁵ (ARC) members, business, environmental and neighborhood leaders; provides a regional framework for local decisions on growth and development within the ARC's region; and
- III. **WHEREAS**, the Cities and Counties are willing to make a commitment to the accommodation and encouragement of planned growth and development, to the orderly extension of urban services, to the enhancement of the quality of life, to the protection of the environment, and to the promotion of economic viability of their respective communities and the region; and
- IV. **WHEREAS**, the Cities and Counties support planned growth and development to maximize efficiency through coordination among jurisdictions, provide for the orderly extension and integration of urban services, promote the economic vitality of the Cities and Counties and enhance the quality of life of its residents; and
- V. **WHEREAS**, the Cities and Counties have Comprehensive/Master Plans that provide for the development within their respective jurisdictions; and

²⁸ Adapted from the Mile High Compact <http://www.drcog.org/index.cfm?page=MileHighCompact>

²⁹ Effective date used only for illustrative purposes here. Actual effective date will need to be agreed upon by the parties.

³⁰ Corresponding Colorado provisions are C.R.S.A. Const. Art. 14 § 18(a)(2) and C.R.S.A. § 29-1-203

³¹ Ga. Const. art. 9, § 3.

³² Ga. Const. art. 9, § 2.

³³ Ga. Code Ann. § 36-34-2 (2007)

³⁴ <http://www.atlantaregional.com/html/126.aspx>. Denver's corresponding plan is Metro Vision <http://www.drcog.org/index.cfm?page=MetroVision>

³⁵ Similar to Denver's DRCOG <http://www.drcog.org>

they recognize the need to have consistent and coordinated comprehensive plans and master plans in order to provide for the orderly growth and development of the region; and

VI. **WHEREAS**, the Cities and Counties desire to voluntarily and collaboratively set forth the principles defined herein that illustrate their commitment to address the nature and location of growth within their individual and overlapping jurisdictions and the region as a whole.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the undersigned Cities and Counties (hereinafter referred to as we) agree as follows:

1. **Envision6**. We acknowledge that Envision6 is the comprehensive guide for the development of the region. Moreover, we agree that Envision6 is a dynamic document that reflects changes in the region.
2. **Comprehensive/Master Plan**. We acknowledge that comprehensive/master plans are critical tools in translating the community's vision into more specific goals, policies and programs to manage their long-range growth consistent with the communities' and the region's vision. We agree to develop and approve comprehensive/master Plans for each of our respective communities and to update these plans on a regular basis, as determined by each jurisdiction.
3. **Comprehensive/Master Plan Principles**. We recognize that there are certain fundamental principles that guide the development of a comprehensive/master plan. We agree to rely on the following principles in developing or amending our comprehensive/master Plans:
 - **Envision6**. Local comprehensive/master plans will be consistent with the regional vision provided by Envision6 and will incorporate its core elements:
 - Promote sustainable economic growth in all areas of the region;
 - Encourage development within principal transportation corridors, the Central Business District, activity centers, and town centers;

- Increase opportunities for mix-used development, transit-oriented development, infill and redevelopment;
- At strategic regional locations, plan and retain industrial and freight land uses;
- Design transportation infrastructure to protect the context of adjoining development and provide a sense of place appropriate for our communities;
- Promote the reclamation of Brownfield development sites;
- Protect the character and integrity of existing neighborhoods, while also meeting the needs of communities;
- Encourage a variety of home styles, densities and price ranges in locations that are accessible to jobs and services to ensure housing for individuals and families of all incomes and age groups;
- Promote new communities that feature greenspace and neighborhood parks, pedestrian scale, support transportation options and provide an appropriate mix of uses and housing types
- Promote sustainable and energy-efficient development;
- Protect environmentally-sensitive area including wetlands, floodplains, small water supply watersheds, rivers and stream corridors;
- Increase the amount, quality, connectivity and accessibility of greenspace;
- Provide strategies to preserve and enhance historic resources;
- Through regional infrastructure planning, discourage growth in undeveloped areas;
- Assist local governments to adopt growth management strategies that make more efficient use of existing infrastructure;
- Inform and involve the public in planning at regional, local and neighborhood levels;
- Coordinate local policies and regulations to support Regional Policies;
- Encourage the development of state and regional growth management policy.
- *Designating the extent of urban development within a specified area;*

- *Creating a balanced multi-modal transportation system;*
 - *Establishing a hierarchy of mixed-use, pedestrian and transit-oriented urban centers;*
 - *Preserving four free-standing communities of Boulder, Brighton, Castle Rock and Longmont;*
 - *Development of a regional open space system;*
 - *Preserving the region's natural environment, especially air and water quality.*
- **Public participation.** The comprehensive plan/master plan will be developed through a public participation process with the specifics determined by each jurisdiction, but which will include a public hearing prior to the adoption of the comprehensive plan/master plan.
- **Reflection of community values.** The comprehensive/master plan will be a reflection of the community's values and the region's vision.
- **Translate the vision into specific goals, policies and programs.** The comprehensive/master plan will translate the vision for the community into specific goals, policies and programs and/or provide implementation strategies .
- **Provide for the broad needs of the community.** The comprehensive/master plan will provide for the diverse life-style, and life-cycle needs of the community (residential and business).
- **Long-range view.** Local comprehensive/master plans will address the development and re-development of the community for a fifteen-to-twenty-year period.
- **Dynamic.** The comprehensive/master plan will be a dynamic document and be able to reflect changes in the community.
- **Long-range plan for major infrastructure.** The comprehensive/master plan will address the major infrastructure that will be needed to support the development of the community. The incremental, implementing elements of the long-range plan will be identified in the capital improvements/project plan.

- **Coordinated.** The comprehensive/master plan will coordinate the various elements, such as transportation, land use, community facilities, that must come together in order to provide for the desired quality of life.
 - **Intergovernmental collaboration.** Issues that overlap or affect neighboring jurisdictions or districts will be addressed in a collaborative process.
4. **Elements of a Comprehensive/Master Plan.** We agree to include and/or address the following elements within our comprehensive/master plans.
- **Land use and growth coordination.** This element includes identification of the desired land use patterns, where growth is anticipated or desired to occur over the time period of the plan, and the anticipated amount of development at the end of twenty years or buildout. An urban growth boundary/area will be based on these decisions.
 - **Provision of services and community facilities.** This element provides a description of the essential services and community facilities (for example, schools, fire, police recreation, libraries, etc.) to be provided or available to the community, the level of such services, and what services and/or community facilities are necessary in the future to address future growth for the plan period.
 - **Utilities.** This element provides a description of how utilities with sufficient capacity will be provided to serve planned development and redevelopment. Such utilities should include, but not be limited to water, wastewater and drain age.
 - **Transportation and transit.** This element addresses how the community plans to accommodate the transportation demand for the timeframe of the comprehensive/master plan, including alternative modes of transportation such as trails and bikeways, and transportation demand reduction strategies. This element also reflects Metro Vision 2020 regional multimodal transportation plans.
 - **Parks and recreation.** This element addresses how the community provides future parks and recreation facilities and opportunities to serve the community. Plans for

trail corridors, bike paths, etc. will be coordinated with overlapping and neighboring jurisdictions.

- **Open space.** This element addresses the community's future open space preservation which will be coordinated with, but not limited by, the plans of overlapping and neighboring jurisdictions and the Metro Vision 2020 Open Space Plan.
 - **Economic viability.** This element includes a review and projection of the economic viability of the community based on existing and projected commercial/industrial activities and employment included in the comprehensive/master plan and their impacts on the other elements of the plan.
 - **Housing.** This element addresses how projected population changes, and development and redevelopment are anticipated to affect the mix, affordability, availability and redevelopment needs of the community's housing stock. The relationship between housing and jobs may be addressed in the context of the subregion or to the individual community.
 - **Urban design/Community image/Identity.** This element addresses how the community will shape its boundaries and urban landscape to further its identity and image.
 - **Environmental resources and hazards.** This element identifies key environmental resources, such as wildlife corridors and habitat areas, which are important for the community to preserve and to identify hazard areas that should not be considered for development. This could also be included as part of the land uses element since it provides the basis for future land use. This element addresses the effects that the location and type of growth and land development have on air and water quality.
5. **Urban Growth Areas or Urban Growth Boundaries.** We agree to adopt Urban Growth Areas or Urban Growth Boundaries, as established by Envision6, within our comprehensive/master plans, or in the case of counties by resolution of the Board of Commissioners, and to allow urban development only within those areas. We will encourage and support the efficient development within our Urban Growth Areas or Urban Growth Boundaries consistent with the goals of

Envision6. Modifications to Urban Growth Areas or Urban Growth Boundaries will be addressed through Envision6's flexibility process. We agree to address non-urban growth outside of the Urban Growth Area or Urban Growth Boundary through subregional planning, intergovernmental agreements, comprehensive/master plans or revised Metro Vision policies.

6. **Comprehensive/Master Plan Approval.** We will develop our comprehensive plan/master plan through an inclusive public participation process including, but not limited to, a public hearing.
7. **Comprehensive/Master Plan Implementation.** We will use our comprehensive/master plan for updating local zoning and development regulations. Moreover, we will develop and adopt policies, procedures, and/or ordinances to implement and enforce our comprehensive/master plans that are consistent with the provisions of our comprehensive/master plan.
8. **Coordination with Other Plans.** We will work to coordinate our plans with neighboring and overlapping governmental entities and work to integrate our plans at a sub-regional level.
9. **Intergovernmental Agreements.** We will enter into additional intergovernmental agreements, when necessary, to address discrepancies and/or inconsistencies at the jurisdictional boundaries or any other planning and coordination matters.
10. **Dispute Resolution.** Individual communities will pursue dispute resolution processes.³⁶
11. **Term.** This Agreement shall be effective as of the Effective Date, for an initial term of fifty (50) years³⁷. We will annually jointly evaluate the effectiveness of the processes set forth herein and to propose any necessary amendments. If any parties consider withdrawing from the agreement, they must notify ARC by April 1st with the action to be effective by the following January 1st.

³⁶ Proposed dispute resolution process would proceed as follows: Compact amendments, then alternative dispute resolution, then use of Department of Community Affairs (DCA), and finally litigation.

³⁷ Term is limited by Ga. Const. art. 9, § 3. An alternative to solve this is to put in a cyclical re-signing provision, whereas after X years, the involved counties will meet again to reform and agree to the contract for the next X years.

12. **Intent of Agreement.** This Agreement is intended to describe rights and responsibilities only as between the named parties hereto. It is not intended to and shall not be deemed to confer rights to any persons or entities not named as parties hereto. We, by signing this Agreement, intend to implement its provisions in good faith.

13. **Execution in Counterparts.**

ADMINISTRATIVE IMPLEMENTATION

Introduction

Why is a compact beneficial? There are both pragmatic and strategic reasons that suggest regional compacts, such as the Mile High Compact in the Denver metro area, are the direction in which growth management should be progressing.

The pragmatic reasons are straightforward. Local governments seek to manage growth, preserve quality of life, and promote economic vitality in a world where the pace of change accelerates every year. Civic leadership is always in flux, and fragmented local structures with multiple overlapping jurisdictional boundaries confuse the matter even further. Many problems vexing local governments do not respect municipal or county lines.

A short list of some of these are:

- Sprawl
- Job Training
- Housing
- Traffic
- Air Quality
- Water Supply
- Equity
- Education

Issues such as these are better dealt with cohesively, at a regional scale. The answer is a compact. This is not a top-down solution, but more a form of networking; making sure that proximate local governments are on the same page, working

towards the same goals without hampering one another.

Basically, the regional compact is a new step in the social contract.

The political scientist Ted Halstead has identified four phases in the evolution of the social contract in America:

- 1) Independence, the Constitution, and the Bill of Rights
- 2) The Reconstruction of the Union after the Civil War
- 3) 20th Century expansion of the federal government and its regulatory powers
- 4) A world where competing needs and diminishing resources will require more regional cooperation

The United States is currently entering phase four. The pressure of increasing populations and consumption rates, while sources of energy become more precious are forcing local and state governments to stop behaving as if they exist in a vacuum. Problems must be solved while taking neighbors into consideration. The compact is a suitable framework for this.

Strategic Benefit

Game Theory, a branch of applied mathematics used in the social sciences (notably economics), biology, philosophy, and computer science studies human behavior, typically choice-making, in strategic situations. It also has many applications when considering planning issues. In particular, the Nash Equilibrium is instructional. In theory, a Nash Equilibrium is always the end result of a non-cooperative game, one where the

players cannot coordinate their choices. In this equilibrium, there is no change that a player can make unilaterally that will increase their benefit from the point where equilibrium has been established, even though there may exist additional benefit to be had. This is the downside of competition - it can prevent all parties from reaching a higher state of betterment.

One could argue that local governments within the same region would find themselves in this situation, competing with one another to improve their economy and expand their tax base. They may undercut one another, lowering standards or increasing incentives in order to lure industry to their jurisdiction, when these actions might actually have negative externalities.

When there *is* additional benefit potentially to be had, but is not, the situation is said to be Pareto inefficient. A state of Pareto Efficiency, or Pareto Optimality, can only be attained when everything choice that can be made to increase benefit has been mad, as long as overall benefits are not raised at the expense of some party.

So how is the Nash Equilibrium broken in order to attain Pareto Efficiency? The game must be changed from one of non-cooperation to one of cooperation. The compact is the tool that accomplishes this. A compact provides the three ingredients that are required to facilitate the type of cooperation that is needed for all participants to increase their benefit - to make

the pie itself bigger, and not just the slice. These three things are reciprocity, trust, and sharing of information. These are best accomplished in a region where leaders meet face-to-face. The discussion of the Mile High Compact and the Denver visioning process that follows will show how the agreement gives these things to the participating governments in the Denver metro area.

How it Began

In 1955, 39 Denver area elected officials met Denver's mayor at the time, Quigg Newton, for a meeting to consider a four-county district authority to plan for the development of the metropolitan area...and to meet the common problems that confront the four counties. One month later, the Inter-County Regional Planning Association, was created. Adams, Arapahoe and Jefferson counties, and the City and County of Denver were charter members. The organization changed its name to the Denver Regional Council of Governments in 1968 (DRCOG). The vision of DRCOG is enhancing and protecting quality of life in the Denver region. From the inception of this association, the participating members have put into action a plan of reciprocity, trust among members and shared information throughout the region. To date, there are 55 governments

participating in the organization that is funded by membership dues and state and federal grants.

According to a phone interview with Program Director, Catherine Marinelli, another voluntary collaboration began in 1993 with 37 mayors in the Denver Metropolitan region coming together to form the Metro Mayors Caucus. Leaders came together in order to provide a non-partisan medium for regional cooperation on issues affecting the entire metropolitan region. This Caucus provided the region with a metro area forum to address regional problems that could be effectively dealt with and grow over time.

In 2000, Caucus members partnered with DRCOG to draft and execute the groundbreaking Mile High Compact. In the wake of failed legislative attempts to address growth statewide, the Caucus felt it was crucial to build commitment and momentum for the implementation of the region's Metro Vision 2020 growth and transportation plan. Marinelli explains that in August 2000, 31 cities and counties in the region comprising more than 79% of the metro area's population implement the agreement. The agreement binds its signatories to:

- use Metro Vision as the regional planning framework,
- develop and approve comprehensive plans with a defined set of elements,
- adopt their Metro Vision 2020 Urban Growth Boundaries within their comprehensive plans,

- allow urban development only within the defined growth boundary, and
- coordinate comprehensive plans with those of neighboring and overlapping entities and integrate plans at the regional level.

The Substance of the Compact

The Mile High Compact is seen as an evolutionary document with a goal of 100% participation in the region. One of the main driving principles that participants agree to is the Metro Vision 2020 comprehensive plan. Comprehensive/master plans are critical tools that guide each jurisdiction to develop long-range visions and execute goals into specific projects. In addition to individual plans, participants acknowledge that Metro Vision 2020 is the master plan of the region and that local jurisdiction master plans will follow principles set for the region. Metro Vision 2020 is a dynamic document that reflects changes in the region.

Metro Vision 2020 is made up of the following core elements:

- designate the extent of urban development within a specified area
- create a balanced multi-modal transportation system
- establish a hierarchy of mixed-use, pedestrian and transit-oriented urban centers
- preserve four free-standing communities within the region
- develop a regional open space system

- preserve the region's natural environment, especially air and water quality

As of March 2008, 44 communities representing more than 88.5 percent of the region's population have signed the Compact. The second largest county in the region, Jefferson County, has not signed the Compact and does not intend to do so. Jill Locantori of DRCOG explained that Jefferson County has been following the guidelines set out by the Compact and sees no need or reason to join the compact, though they support all of the objectives and plan accordingly.

Incentives and Penalties of the Compact

Larry Mueglar of DRCOG, explained the point system that is managed by the Executive Committee of DRCOG in order to supervise the participating jurisdictions and regulate any changes to Metro Vision 2020. The committee closely monitors new and evolving developments in the Denver Metro Region. An urban growth area and boundary (UGA/B) has been designated around the region to limit development to an area of 720 square miles. Any amendments to the UGA/B must go through a rigorous application process and a hearing is held before the committee to determine whether or not the proposal meets an adequate point scale to allow the development to take place. Over the last 4 years, a land bank of 20 square miles has been set aside for

such allowances. Mueglar explains many proposals are made and very few amendments to the UGA/B are granted.

Additionally, waste water treatment facilities are only allowed if the Health Department, in cooperation with the Executive Committee of DRCOG, determines the infrastructure is necessary to sustain a new or re-directed area of service recipients. Transportation proposals follow the same recommendation process through the committee and are granted state and federal funds only when the proposals follow the Metro Vision 2020 elements.

The operation of Metro Vision and the principles of the Mile High Compact are centered on the Executive Committee of DRCOG that is made up of representatives throughout the region. Incentives for transportation expansion and development of Waste Water facilities are only granted through this committee. Any changes in development are also managed. This centralizes the operation of the agreement in the hands of the entire jurisdiction so that planning and implementation continue to be managed for the region. The committee determines when to amend the document based on growth needs for the region. To date, Metro Vision has gone through one update including amendments for future growth; Metro Vision 2035 was adopted in 2005.

Denver is a unique city to have the foresight to not only think beyond its city limits, but to successfully garner the

region's support in putting cooperative plans into action. Larry Mueglar described the Denver region leaders as, "dedicated to the region, even if it means leaders sacrifice re-election in their own jurisdictions". That provides a powerful force in supporting a regional plan and propels the continued success of a region over the long term. Such a commitment and cooperative effort may be more challenging in cities such as Atlanta that have a more divided practice of planning and management.

The Piedmont Compact: Feasibility for Metro Atlanta

Over 50 Denver area jurisdictions, representing greater than 90% of the region's population, have signed the Mile High Compact. Each has committed to promote the well-being of the entire region by following the planning principles laid out in Metro Vision 2030. Perhaps most important, more so than any physical changes in Denver's landscape, is the Compact's ability to foster a cross-jurisdictional spirit of solidarity and enthusiasm for the future.

Could such collaboration be replicated in metro Atlanta, a region historically plagued by the inability of its jurisdictions to work together? Paying special attention to political realities and the challenges of building consensus, we now explore the possibility of constructing a similar agreement in the southeast- The Piedmont Compact.

Advantages: A Structure and Vision

Metro Atlanta indeed enjoys several advantages that make feasible the prospect of a Piedmont Compact. First, it has an administrative infrastructure of planning bodies that have the capacity to coordinate cross-jurisdictional relationships. The Atlanta Regional Commission, which serves as the region's Metropolitan Planning Organization (MPO), has promoted the interests of the region for over 60 years. The ARC has longstanding relationships with surrounding counties and municipalities, and has earned trust by offering training and technical support to these jurisdictions' planning efforts. In fact, the ARC is no less capable of leading a sweeping coalition than was Denver's Metropolitan Planning Organization, the Denver Regional Council of Governments (DRCOG).

Furthermore, at least administratively, Atlanta's metropolitan planning entities almost mirror those in Denver. The ARC is joined by Georgia Regional Transportation Authority, Georgia Department of Transportation, MARTA, and the Department of Community Affairs in its regional efforts. These agencies certainly do not always interact harmoniously, but each seeks improvement on a regional scale. The point is that Denver has not created an administrative structure to lead a compact from

thin air; it has achieved consensus with planning bodies that are very similar to Atlanta's.

Another important part of what makes a Piedmont Compact feasible is the fact that the region has a comprehensive planning vision in the ARC's Envision6. This document considers the needs of a region that will soon accommodate over 6 million residents. Again, it shares many of the very same principles espoused in Metro Vision 2030 to which so many Denver jurisdictions committed, including the promotion of more mixed-use developments with higher density, pedestrian friendly places, and transit oriented development. Envision6 even promotes a quasi-Urban Growth Boundary that would preserve valuable rural land from development.

Therefore, two foundational pieces of a possible Piedmont Compact are already in place: an administrative framework with consensus-building capacity and a comprehensive regional vision that could unite the seeming disparate goals of various jurisdictions. So, what stands in the way of making the Piedmont Compact a reality?

Obstacles: A Monstrous Region

Of course, in some ways Denver and Atlanta are drastically different- in more ways than just elevation. Metro Atlanta faces certain political realities and disadvantages that call

into question the feasibility- some would say sanity- of a multi-jurisdictional compact. Most overwhelming is the sheer number of counties and cities now included in what's become a regional behemoth. Eight out of nine metro Denver counties have signed the Mile High Compact, in addition to 37 municipalities. Gaining this many signatories is a great accomplishment, but would not be nearly enough for Atlanta.

The Atlanta region now includes at least 18 counties, according to ARC's Envision6, and conceivably includes 33 counties clear to the Alabama state line. Easily over 100 independent municipalities exist within these counties, dwarfing the number seen in Denver. In fact, Georgia has the smallest average county size in the nation, which is good for constituent representation, but bad when it comes to getting all these counties on the same page. Needless to say, securing the support of this many jurisdictions would be an incredible feat- next to impossible, to many.

Unfortunately, the Piedmont Compact cannot survive with just lukewarm support. Its success depends on continuity, on adjacent jurisdictions agreeing to abide by the same principles. If support were dotted across this vast region, a compact would obviously be largely irrelevant.

An added disadvantage is that metro Atlanta jurisdictions have not shown the initiative to organize for the sake of the

region, as many did in Denver. The Metro Mayors' Caucus is a group of 37 metro Denver mayors that, along with DRCOG, invented the idea of the Mile High Compact. This importance of the Caucus and their cognizance of the benefits of regional coordination cannot be overstated. Regional planning advocates in Atlanta, on the other hand, often find themselves trying to convince jurisdictions of the benefits of coordination and the mutual losses felt in a spirit of ultra-competitiveness. A progressive, transformative compact is only feasible when jurisdictions take ownership, and that may yet be years away in greater Atlanta.

Strategies for Implementation

Despite these obstacles, we believe the Piedmont Compact to be a feasible idea for unifying metro Atlanta. Regional planning agencies could direct many of their incentives and services to jurisdictions who sign the compact. For example, the Livable Communities Initiative, a grant given by ARC to development projects that incorporate the principles described in Envision6, could be restricted to participating governments. Also, those highly-sought transportation funds could be tied to participation in the compact- if not in whole, at least to a degree by perhaps instituting a bonus system. For rural counties, the expansion of transfer of development rights (TDR)

programs, which compensate for the value of land while preserving its environmental state, may prove to be a valuable carrot in gaining their support.

Also, advocates of the compact should develop a system whereby outlying counties and municipalities have a say in what happens in Atlanta. Too often these jurisdictions sense- sometimes justifiably- that the City of Atlanta only wants to meddle with their affairs. But what if these very places realized that entering a compact would give them some influence in Atlanta? The dialogue might be changed if a suburban county got a vote about the next civic project or major transportation improvement in Atlanta.

A final strategy for gaining support for a compact would be to start small. Gaining the support of a few key counties and municipalities may give the compact momentum for mass acceptance, as was seen in the Mile High Compact. But, advocates should be careful to avoid the danger of a geographically disjointed result. Instead, they could first focus on a quadrant of metro Atlanta that shows the greatest willingness to plan across jurisdictions. Even a small contingent of jurisdictions could spark the snowball effect needed to bolster the Piedmont Compact, especially if participating counties receive incentives that draw the interest of adjacent jurisdictions.

Concluding Thoughts

As an endnote, we would like to briefly suggest what regional compacts could grow into in the future. As mentioned previously, Ted Halstead has suggested that the United States is entering into the age of a new type of social contract, one that requires more regional cooperation in order to solve problems of competing interests in a world of diminishing resources. This need for cooperation does not stop at the city-state level. It extends to multi-state areas as well.

Atlanta's water problems are well known. However, imagine that the Piedmont Compact existed. This would make it easier for the municipalities of the Atlanta region to chart a strategy that would help to conserve water and grow responsibly, together. Even so, the problem of water is bigger even than the hypothetical Piedmont Compact. It crosses state boundaries, as problems with Tennessee, Alabama, and NW Florida have shown. This multi-state level of planning is now being called the MegaRegion.

Roughly 10 MegaRegions have been identified around the USA. Denver is the central point of its own, and Atlanta is the main hub of the Piedmont Atlantic MegaRegion. It's spine runs from Birmingham, AL up the eastern side of the Appalachian Mountains to Raleigh. If all these cities, Birmingham, Atlanta,

Greenville-Spartanburg, Charlotte, and Raleigh-Durham, can form their own regional compacts, perhaps these compacts could then be organized into a greater body that would oversee planning at a multi-state scale and work to solve problems like those with the water supply.

"Perhaps our institutions created in democratic countries during the 19th and 20th centuries are no longer adequate. If this is so, then democracies will need to create new institutions to supplement the old." - Robert Dahl, *On Democracy*

Power Point Presentation

The Mile High Compact

Travis Cain
Heather Carter
Joe Collums
Jason Combs
Lane Conville

Pragmatic Needs

- Manage Growth
- Preserve Quality of Life
- Promote Economic Vitality

Cross-Jurisdictional Problems

- Sprawl
- Job Training
- Housing
- Traffic
- Air Quality
- Water Supply
- Equity
- Education

Four Phases of the American Social Contract

- The Founding
- Reconstruction
- 20th Century Expansion
- Conflicting Needs, Diminishing Resources

Strategic Benefits

Game Theory: The Nash Equilibrium
the "sticking point" in a non-cooperative game in which no player can gain any more benefits, though though more benefits might be there to be had

A Beautiful Mind Clip

Economics: Pareto Efficiency
the point at which no one can gain any more benefit without harm to another.

The Solution

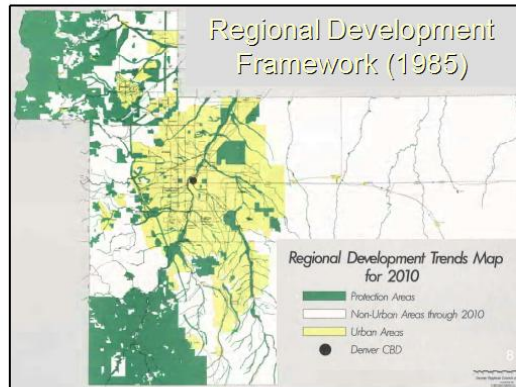
Change the non-cooperative game into a cooperative game, and achieve Pareto efficiency.

How?

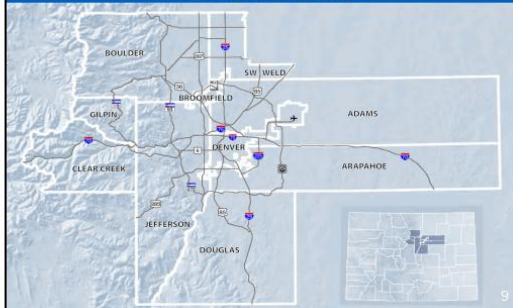
The Compact.

Compact Requirements

- Reciprocity
- Trust
- Information Sharing



Denver Regional Council of Governments



Evolution of Metro Vision 2020

1992: Vision statement, principles and policies

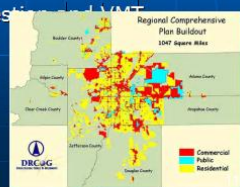
1995: Scenario analysis and urban growth boundary target

1997: Adoption of final Metro Vision plan, UGB map

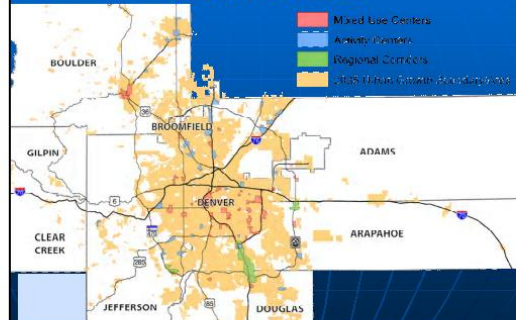
2000: Mile High Compact

The impetus for a new plan

- Overlapping, contradictory local plans
- Regional composite buildout > 1,000 sq. mi.
- Air quality concerns
- Growing traffic congestion
- Political battles over transportation spending
- Practical need for better ability to forecast future growth



Urban centers



Key plan elements

- Growth and development
 - Urban growth boundary/area (UGB/A)
 - Urban centers
 - Freestanding communities
 - Senior-friendly development
 - Semi-urban development
- Environment
 - Parks and open space, air quality
 - water quality, noise
- Transportation
 - Vision
 - Fiscally constrained



The Piedmont Compact



Can it happen in Metro Atlanta?

Regional Planning: A Similar Structure



- | | |
|--|--|
| <ul style="list-style-type: none"> • Denver Regional Council of Governments • Metro Mayors Council • Colorado Dept. of Transportation • Department of Local Affairs (DLA) • Regional Transportation District (RTD) • Colorado Legislature • Metro Vision 2030 | <ul style="list-style-type: none"> • Atlanta Regional Commission • Georgia Regional Transportation Authority (GRTA) • Georgia Dept. of Transportation • Department of Community Affairs (DCA) • MARTA • Georgia Legislature/ Georgia Planning Act • Envision6 |
|--|--|

Why would a Piedmont Compact be so significant?

Figure 12. Unified Growth Policy Map



- Compliance can be mandated- not just a recommendation
- Expands scope: no longer a piecemeal approach to planning
- Can coordinate between adjacent jurisdictions

Source: ARC

The Challenge



- Denver Metro
- 8 out of 9 counties have signed Mile High Compact
 - 37 municipalities have signed
 - Represents nearly 90% of metro residents



- Atlanta Metro
- ARC targets 18 counties
 - Up to 33 counties in CSA
 - Well over 100 municipalities

But it can be done...

- Make offers they can't refuse
- Incentives contingent upon commitment
- Let surrounding jurisdictions have say about what happens in Atlanta
- Start small



Piedmont Compact

Legal Construction

Overview

- Contract Creation
 - Intergovernmental Contracts
 - Contract Structure
- Contract Administration
 - Executive Authority
 - Legal Incentives
- Conflict Resolution
 - Amendments
 - Alternative Dispute Resolution
 - Administrative Stops
 - Courts
- Future Perspectives
 - Potential Problems
 - Inevitable Benefits
 - Mega-Region

Contract Creation

- Intergovernmental Contracts
 - Georgia Law and Authority
 - Who can enter into, bind
 - Proposed local Law, to empower a particular individual in authority to issue
- Contract Structure
 - Frame
 - Options
 - Procedural Outs

Intergovernmental Contracts - Georgia Law and Authority

- Georgia Constitution Article 9, Section 3, Paragraph I:
 - The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide. By way of specific instance and not limitation, a mutual undertaking by a local government entity to borrow and an undertaking by the state or a state authority to lend funds from and to one another for water or sewerage facilities or systems or for regional or multi-jurisdictional solid waste recycling or solid waste facilities or systems pursuant to law shall be a provision for services and an activity within the meaning of this Paragraph.

Intergovernmental Contracts – Georgia Law and Authority

- Georgia Constitution Article 9, Section 2, Paragraph I:

“(a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto.”

Intergovernmental Contracts – Georgia Law and Authority

- Georgia Constitution, Article 9, Section 2, Paragraph III:
 - (1) Police and fire protection.
 - (2) Garbage and solid waste collection and disposal.
 - (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
 - (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
 - (5) Parks, recreational areas, programs, and facilities.
 - (6) Storm water and sewage collection and disposal systems.
 - (7) Development, storage, treatment, purification, and distribution of water.
 - (8) Public housing.
 - (9) Public transportation.
 - (10) Libraries, archives and arts and sciences programs and facilities.
 - (11) Terminal and dock facilities and parking facilities.
 - (12) Codes, including building, housing, plumbing, and electrical codes.
 - (13) Air quality control.
 - (14) . . .

Intergovernmental Contracts – Georgia Law and Authority

- Georgia Constitution Article 9, Section 2, Paragraph III continued...
- Power to Contract with LOCAL
 - “(b) Unless otherwise provided by law,
 - (1) No county may exercise any of the powers listed in Subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county **except by contract with the municipality or county affected**; and
 - (2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries **except by contract with the county or municipality affected**.

Intergovernmental Contracts – Georgia Law and Authority

- O.C.G.A. § 36-34-2:
 - Power to Contract with STATE
 - “In addition to the other powers which it may have, the governing body of any municipal corporation shall have the following powers, under this chapter, relating to the administration of municipal government:
 - ...
 - (5) The power to contract with any state department or agency or any other political subdivision for joint services or the exchange of services; to contract with such agencies or subdivisions for the joint use of facilities or equipment; and to contract with any state agency or political subdivision to perform any service or execute any project for such agency or subdivision in which the municipal corporation has an interest;
 - ...

Intergovernmental Contracts – Georgia Law and Authority

- “Home rule”
- Counties and municipalities have authority to contract with each other to provide services, adopt plans, and exercise power of zoning
- Contracts may be enforced against each other

Intergovernmental Contracts – Contract Structure

- Contract among counties and municipalities to agree to follow a comprehensive/master plan
- Comprehensive/master plan = Envision6
- Options
- Procedural Outs

Contract Administration – Executive Authority

- O.C.G.A. § 50-8-10: Department of Community Affairs
 - (a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:
 - (1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, **comprehensive plans of all levels of government** consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments;
 - (2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and
 - (3) . . .

Contract Administration – Executive Authority

- O.C.G.A. § 50-8-10 continued:
 - (b) The department shall serve as the state's clearing-house and research center on **intergovernmental relations**, including relationships among federal, state, and local levels of government
 - (c) The department may provide, supervise, or coordinate leadership and community development programs for local governments and other programs with respect to local government affairs. The department may develop pilot programs or projects designed to address the problems and needs of local government.

Contract Administration – Legal Incentives

- Streamlining
- Hierarchy of Authority
- Ordinance that declares who can bind
- State lobbying
- Clarity of Responsibilities

Conflict Resolution - Overview

- Compact Amendments
- Alternative Dispute Resolution
- Administrative Stops
 - Cost effective measures
 - Department of Community Affairs
- Court
 - Contract law v. Growth Management or Land Use law
 - More predictable than land use
 - Jurisdiction/venue?
 - Choice of Law provision in Compact?

Conflict Resolution – Amendments

- Should be first line for conflict resolution
- Since Piedmont Compact is a contract, it can be amended
- Counties and Municipalities simply agree to the changes in the amendment and sign
- Advantage: Can adapt to changing circumstances, not have to involve traditional means of conflict resolution

Conflict Resolution – Alternative Dispute Resolution

- Should be the second line for conflict resolution
- Arbitration Agreement Clause
- Binding v. Non-binding:
 - Binding
 - Advantages: Finality, avoids delay, cheaper
 - Disadvantages: Can't appeal, non-reviewable
 - Non-binding
 - Advantages: Good evaluation, can still have administrative hearing or trial
 - Disadvantages: Not good predictor, cost, etc.

Conflict Resolution – Alternative Dispute Resolution

- American Arbitration Association
- National Arbitration Forum

Conflict Resolution – Administrative Stops

- O.C.G.A. § 50-8-10: Department of Community Affairs
 - (a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:
 - (1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, comprehensive plans of all levels of government consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments.
 - (2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and
 - (3) . . .

Conflict Resolution – Administrative Stops

Department of Community Affairs:

- Use administrative stops as third line for conflict resolution
- DCA has authority to oversee and regulate, especially comprehensive planning
- Use of administrative hearings
- Appealable

Conflict Resolution - Courts

- O.C.G.A. § 36-1-3:
"Every county is a body corporate, with power to sue or be sued in any court."
- O.C.G.A. § 50-21-1:
"(a) The defense of sovereign immunity is waived as to any action ex contract for the breach of any written contract existing on April 12, 1982, or thereafter entered into by the state, departments and agencies of the state, and state authorities."

Conflict Resolution - Courts

- Beneficial to bring under contract law because more predictable than growth management law
- Venue requirements:
 - Choice of law provision
 - Possibly 3rd party who is uninterested (either not in Compact or not affected by breach)
 - County of party that breaches

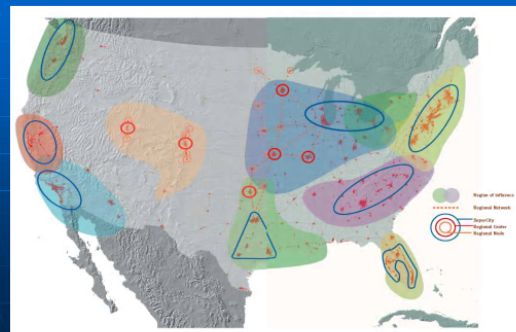
Future Perspectives

- Potential Problems
 - Financial Disaster
 - Townships = Only have zoning power
 - Will they get a free "out"?
 - Relation to "Mega regions"
 - Other contracts already in place
- Inevitable Benefits
 - Streamlined vision and growth management
 - Security and certainty in land use, planning and construction

Future Perspectives – Mega Regions

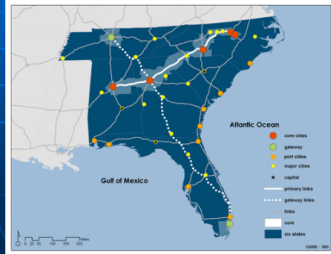
- O.C.G.A. 36-69A-2: Interlocal Cooperation
"It is the purpose of this chapter to permit counties and municipalities in this state the most efficient use of their powers by enabling them to cooperate with localities in other states on a basis of mutual advantage and provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."
- Counties and Municipalities could enter into agreements within Mega Region (Birmingham, Atlanta, Greenville-Spartanburg, Charlotte, and Raleigh-Durham)

Mega Regions



Mega Regions

- PAM: Piedmont-Atlantic Mega region



“Perhaps our institutions created in democratic countries during the 19th and 20th centuries are no longer adequate. If this is so, then democracies will need to create new institutions to supplement the old.” – Robert Dahl, *On Democracy*

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