

LOCAL GOVERNMENT ENVIRONMENTAL

REGULATION IN GEORGIA

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**I. RELATIONSHIP OF STATE ENVIRONMENTAL REGULATION TO
LOCAL GOVERNMENT REGULATION**

a. Constitutional Rule of Uniformity

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws. Ga.Const. of 1983, art. III, sec. VI, para. IV(a)

b. Rule of Preemption of Local Government Ordinances

-- First provision of uniformity clause follows preemption rule by precluding local government ordinance when general law exists on same subject. Preemption may be expressed or implied.

-- Second provision is exception where general law authorizes local government to act and ordinance does not conflict with general law. Franklin County v. Fieldale Farms Corporation, 270 Ga. 272, 507 S.E.2d 460 (1998), Environmental Waste Reductions, Inc. v. Legal Environmental Assistance Foundation, Inc., 216 Ga.App. 699, 455 S.E.2d 393 (1995) (“[a]ct specifically authorizes local governments to impose

further restrictions on the handling of waste provided they do not conflict with the Act” at p. 702).

- c. Local governments are authorized to adopt environmental regulations not preempted by state general laws and federal laws which preempt local regulation

II. STATE ENVIRONMENTAL LAWS. See List in O.C.G.A. § 12-16-2 (Not Exhaustive List)

- a. Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968"
- b. Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act"
- c. Part 2 of Article 3 of Chapter 5 of this title, the "Ground-water Use Act of 1972"
- d. Code Section 12-5-31, relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting water withdrawn by certain irrigation systems
- e. Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985"
- f. Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977"
- g. Part 3 of Article 5 of Chapter 5 of this title, the "Georgia Safe Dams Act of 1978"
- h. Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975"
- i. Part 1 of Article 2 of Chapter 8 of this title, the "Georgia Comprehensive Solid Waste Management Act"
- j. Part 2 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Site Response Act"
- k. Article 9 of Chapter 8 of this title, the "Georgia Hazardous Site Reuse and Redevelopment Act"

- l. Article 1 of Chapter 9 of this title, "The Georgia Air Quality Act"
- m. Article 2 of Chapter 9 of this title, the "Georgia Motor Vehicle Emission Inspection and Maintenance Act"
- n. Chapter 12 of this title, the "Georgia Asbestos Safety Act"
- o. Chapter 13 of this title, the "Georgia Underground Storage Tank Act"
- p. Chapter 14 of this title, relating to oil or hazardous material spills or releases
- q. Chapter 13 of Title 31, the "Georgia Radiation Control Act"
- r. Any Act of the General Assembly empowering and directing the board to comply with federal statutes relating to clean water, clean air, or the environment
- s. Shore Protection Act, O.C.G.A. § 12-5-2316 et seq.
- t. Coastal Marshlands Protection Act of 1970, O.C.G.A. § 12-5-280 *et seq.*

III. LOCAL GOVERNMENTS ARE REQUIRED TO DEVELOP COMPREHENSIVE PLANS TO MAINTAIN QUALIFIED LOCAL GOVERNMENT STATUS

- a. O.C.G.A. § 50-8-1 *et seq.* gives the Department of Community Affairs authority to establish standards and procedures for development and adoption of comprehensive land use plans by local government
- b. Local governments are required to incorporate environmental planning criteria prepared by the Department of Natural Resources into comprehensive plans, O.C.G.A. § 12-2-8
- c. Local governments are authorized to development comprehensive land use regulations which are consistent with the comprehensive land use plan, O.C.G.A. § 36-70-3(2)

IV. ADDITIONAL REQUIREMENTS OF A LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN

- a. Natural and Cultural Resources Goals

See Ga. Comp. R. & Regs. r. 110-12-1-.06

- b. Local Governments are required to incorporate environmental planning criteria into their comprehensive land use plan

O.C.G.A. § 12-2-8 and Ga. Comp. R. & Regs. r. 110-12-1-.07

V. ENVIRONMENTAL PLANNING CRITERIA WHICH MUST BE INCLUDED IN LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN, See O.C.G.A. § 12-2-8

- a. Criteria for Protection of Ground Water Recharge Area

Ga. Comp. R. & Regs. r. 391-3-16-.02

- b. Criteria for Water Sheds

Ga. Comp. R. & Regs. r. 319-3-16-.01

- c. Criteria for Wetland Protection

O.C.G.A. § 391-3-16-.03

- d. Criteria for River Corridor Protection

O.C.G.A. § 391-3-16-.04

- e. Criteria for Mountain Protection

Ga. Comp. R. & Regs. r. 391-3-16-.05

VI. LOCAL GOVERNMENTS ARE GRANTED CONSTITUTIONAL AUTHORITY TO ENACT ZONING AND PLANNING ORDINANCES

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. Ga.Const. of 1983, art. 9, sec. 2, para. IV

VII. COMPREHENSIVE PLANNING VERSUS ZONING

-- Comprehensive planning sets land use policy for the local government by establishing standards for achieving land use goals and making decisions. It is usually treated as a guideline and not binding on local government land use decisions. But some local governments, which they have the discretion to do, require consistency between the future land use map of the comprehensive plan and the zoning ordinance. Where this is enacted by the local government, consistency requires that all zoning decisions be consistent with the comprehensive land use plan.

-- “Zoning” means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established. O.C.G.A. Sect. 33-66-3(3).

-- “Zoning ordinance” means an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The term also includes the zoning map adopted in conjunction with a zoning ordinance which shows the zones and districts and zoning classifications of property therein. O.C.G.A. Sect. 33-66-3(5).

--see City of Atlanta v. Tap Associates, 273 Ga. 681, 544 S.E.2d 433 (2001) (Land use plan required consistency with zoning ordinance.)

-- Zoning is the vehicle for implementation of the comprehensive land use plan.

VIII. LOCAL GOVERNMENTS MAY INCORPORATE ENVIRONMENTAL PLANNING CRITERIA INTO ZONING ORDINANCE

-- Local governments are authorized to incorporate the environmental planning criteria into the zoning ordinance and may even impose more restrictive requirement in land use regulation.

IX. GEORGIA COMPREHENSIVE SOLID WASTE MANAGEMENT ACT, O.C.G.A. § 12-8-20 et seq.

- a. Each local government is required to develop a comprehensive solid waste management plan either independently or jointly with other jurisdictions, O.C.G.A. § 12-8-31.1
- b. State will not issue permits for solid waste land use which is not consistent with the local government solid waste management plan. Ga. Code Ann., § 12-8-31.1(e)
- c. A local government is authorized to impose greater restrictions than that required under the environmental planning criteria as long as they don't conflict with the criteria, O.C.G.A. § 12-8-30.9(1)
- d. In its comprehensive waste management plan a local government may designate areas within its jurisdiction not suitable for a waste disposal facility. Ga. Code Ann., § 12-8-31.1(a)
- e. Waste management plan may be coordinated with zoning ordinance to designate unsuitable areas for waste disposal facilities and to establish decision-making procedures like those in the zoning ordinance.

Appendix

§ 12-2-8. Powers, duties, and responsibilities of department with regard to development and implementation of minimum standards and procedures to protect natural resources, environment, and vital areas

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this Code section is to provide for the department to serve these essential public interests of the state. This Code section shall be liberally construed to achieve its purpose. This Code section is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department is therefore authorized to develop minimum standards and procedures, in accordance with paragraph (2) of subsection (b) of [Code Section 50-8-7.1](#) and in accordance with the procedures provided in [Code Section 50-8-7.2](#) for the promulgation of minimum standards and procedures, for the protection of the natural resources, environment, and vital areas of the state, including, but not limited to, the protection of mountains, the protection of river corridors, the protection of watersheds of streams and reservoirs which are to be used for public water supply, for the protection of the purity of ground water, and for the protection of wetlands, which minimum standards and procedures shall be used by local governments in developing, preparing, and implementing their comprehensive plans as that term is defined in paragraph (3) of subsection (a) of [Code Section 50-8-2](#).

(c) As used in this Code section, the term:

(1) “Land-disturbing activity” means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. Land-disturbing activity shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family residence, and the cutting of firewood for personal use.

(2) “Mountain” or “protected mountain” means all land area 2,200 feet or more above mean sea level that has a percentage slope of 25 percent or greater for at least 500 feet horizontally and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area.

(3) “River corridor” means all land not regulated under [Code Sections 12-5-440](#) through [12-5-457](#), and Part 4 of Article 4 of Chapter 5 of this title, the “Coastal Marshlands Protection Act of 1970,” in the areas of a perennial stream or watercourse with an average annual flow of at least

400 cubic feet per second as defined by the United States Geologic Survey and being within 100 feet on both sides of the river as measured from the river banks at mean high water.

(d) The minimum standards and procedures for watershed protection referred to in subsection (b) of this Code section shall specifically include, but shall not be limited to, buffer areas along streams and reservoirs, land development densities, and land use activities. The department may adopt differing minimum standards and procedures of watershed protection based on the size of the watershed, the size or flow volume of the stream or reservoir, and whether or not the actual use of the municipal water supply is existing or proposed.

(e) The minimum standards and procedures for protection of ground water referred to in subsection (b) of this Code section shall also specifically include, but shall not be limited to, land use activities and development densities for the protection of ground water. The department may adopt differing minimum standards and procedures for ground-water purity protection based on the relative sizes, depths, and water volumes of various aquifers and based on the relative susceptibility of ground water to contamination by various land use activities and development densities.

(f) The minimum standards and procedures for protection of wetlands referred to in subsection (b) of this Code section shall include, but shall not be limited to, land use activities, land development densities, and activities which involve alteration of wetlands. The department may adopt differing minimum standards and procedures for wetlands protection based on the size or type of wetlands, the need to protect endangered or protected species or other unusual resources, and the need for a particular land use activity which will affect a wetland.

(g) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of river corridors referred to in subsection (b) of this Code section including, but not limited to, regulated activities within river corridor areas. In promulgating such standards, the department may classify river corridor areas and activities by type, size, and other factors relevant to the advancement of the policies and purposes of this Code section. Such standards shall include, but are not limited to, the following:

(1) Perennial river corridors shall be protected by the following criteria:

(A) A natural vegetative buffer area shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks; provided, however, that nothing in such standards shall prohibit or be construed to prohibit the building of a single-family dwelling, including the usual appurtenances thereto, within said area subject to the following conditions: (i) such dwelling must be in compliance with all other local zoning regulations; (ii) a septic tank or tanks serving such dwelling may be located in said area but the drainfield for any such tank or tanks must be outside said area; and (iii) any such dwelling must be located on a tract containing at least two acres of land and there shall be only one such dwelling on each such two-acre or larger tract; and

(B) Except as expressly provided otherwise in subparagraph (A) of this paragraph, septic tanks and septic tank drainfields are prohibited within such set-back area; and

(C) Such criteria shall provide for encroachments into the buffer area as needed for the construction of public roads and public utility crossings of river corridors and must meet all applicable requirements of Chapter 7 of this title, the “Erosion and Sedimentation Act of 1975,” and of any applicable local ordinances on soil erosion and sedimentation control.

(2) Local governments shall identify existing river corridors and shall adopt river corridor protection plans as part of their planning process. Local governments may exempt from the planning process:

(A) Land uses existing prior to the promulgation of a river corridor protection plan from the criteria of the river corridor protection plan;

(B) Mining activities permitted by the Department of Natural Resources pursuant to Part 3 of Article 2 of Chapter 4 of this title, the “Georgia Surface Mining Act of 1968,” from the criteria of the river corridor protection plan; and

(C) Utilities from the buffer and set-back area criteria of the river corridor protection plan if such utilities cannot feasibly be located outside of such areas, provided:

(i) The utilities shall be located as far from the stream bank as reasonably possible;

(ii) The installation and maintenance of the utilities shall be such as to protect the integrity of the buffer and set-back areas as well as is reasonably possible; and

(iii) The utilities shall not impair the drinking quality of the stream water; and

(D) Specific forestry and agricultural activities from buffer and set-back criteria in accordance with the following conditions:

(i) The activity shall be consistent with the best management practices established by the Georgia Forestry Commission or the State Soil and Water Conservation Commission; and

(ii) The activity shall not impair the drinking quality of the stream water as defined by the federal Clean Water Act of 1977 ([P.L. 95-217](#));

(3) River corridors shall be appropriately identified and mapped in the land use plans developed by local and regional governments. Such land use plans shall address, at a minimum, the following considerations with regard to river corridors:

(A) Whether the impact the land use plan has on an area would adversely affect the public health, safety, welfare, or the property of others;

(B) Whether the area is unique or significant in the conservation and movement of flora and fauna including threatened, rare, or endangered species;

(C) Whether alteration or the effects of alteration to river corridors will adversely affect the function, including the flow or quality of water, cause erosion or shoaling, or have an adverse impact on navigation;

(D) Whether modification or the effects of modification by a project would adversely affect fishing or recreational use of river corridors;

(E) Whether an alteration or the effects of alteration would be temporary in nature;

(F) Whether the project contains significant state historical and archeological resources, defined as “Properties on or Eligible for the National Register of Historic Places”; and

(G) Whether alteration of river corridors would have a measurably adverse impact on adjacent sensitive natural areas;

(4)(A) Land use plans shall provide the following acceptable uses of river corridors without long-term impairment of functions:

- (i) Timber production and harvesting;
- (ii) Wildlife and fisheries management;
- (iii) Waste-water treatment;
- (iv) Recreation;
- (v) Natural water quality treatment or purification;
- (vi) Agriculture production and management; and
- (vii) Other uses including those permitted by the Department of Natural Resources or under Section 404 of the Federal Water Pollution Control Act as amended by the federal Clean Water Act of 1977 ([P.L. 95-217](#)).

(B) The following uses shall not be acceptable:

- (i) Receiving areas for toxic or hazardous waste or other contaminants;
- (ii) Hazardous or sanitary waste landfills; and
- (iii) Other uses unapproved by local governments;

(5) The provisions of this subsection shall apply to each local government which contains within its boundaries any river corridor.

(h) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of mountains referred to in subsection (b) of this Code section including, but not limited to, land-disturbing activities within protected mountain areas. Such standards shall include, but are not limited to:

(1) The proposed land-disturbing activity must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control;

(2) Where one or more septic tanks are to be used for individual sewage disposal, the proposed land-disturbing activity must meet all applicable requirements imposed by the local governing authority;

(3) Where one or more wells are to be used for individual water supply, the proposed land-disturbing activity must meet all applicable requirements of Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985," the requirements of the rules and regulations of the Department of Human Resources regarding individual or nonpublic wells, and any more stringent requirements imposed by the local governing authority;

(4) If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment must meet all applicable requirements of Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act";

(5) If a public water supply system is to be provided, the water supply system must meet all applicable requirements of Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977";

(6) No single-family residences may be constructed at a density of more than one per acre, but no such acre shall be less than 100 feet wide at the building site, except that this density restriction shall not apply to:

(A) Any lot of less than one acre if such lot was as of July 1, 1991, owned and described as a discrete parcel of real property according to the instrument of title of the person or persons owning the lot on July 1, 1991; or such lot was as of July 1, 1991, shown as a discrete parcel of

real property on a plat of survey properly recorded in the real property records of the clerk of superior court by the person or persons owning the lot on July 1, 1991; or

(B) Any land or part of any land which was contained in or subject to any master plan, planned unit development, special approved development plan, or any other development plan if such plan was filed with and approved by the local governing authority prior to July 1, 1991, pursuant to a duly enacted planning and zoning ordinance; provided, further, that any such planning and zoning ordinance must have provided for rules and procedures and governed lot sizes, density, types of buildings, and other limitations usually associated with the implementation of local zoning ordinances;

(7) No multifamily residences may be constructed at a density of more than four dwelling units per acre, except where there is a public water supply and sewerage system available to this property then the density may be increased to no more than six dwelling units per acre, but no such acre shall be less than 100 feet wide at the building site;

(8) Any application for a building permit to construct a commercial structure shall contain a detailed landscaping plan. Such landscaping plan shall identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground and shall contain a plan for replacement of any such trees that are removed. Such application shall also include a topographical survey of the project site and an assessment of the impact that the project will have on the environment of the protected mountain after it has been completed and is in operation. Nothing in this paragraph shall be construed to require commercial structures to comply with the density provision of paragraphs (6) and (7) of this subsection;

(9) No structure may extend more than 40 feet, as measured from the highest point at which the foundation of such structure intersects the ground, above the uppermost point of the crest, summit, or ridge top of the protected mountain on which the structure is constructed; provided, however, that this height restriction shall not apply to water, radio, or television towers or any equipment for the transmission of electricity or to minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills; and

(10) No person engaging in land-disturbing activity shall remove more than 50 percent of the existing trees which exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground unless such person has filed with the application a plan of reforestation developed by a registered forester.

CREDIT(S)

Laws 1989, p. 1317, § 5.1; Laws 1991, p. 1719, § 1; Laws 1992, p. 6, § 12; Laws 1993, p. 91, § 12.