

Land use

Principles of Land Use Policy

The Lone Mountain Compact's "Principles for Livable Cities," to which the Georgia Public Policy Foundation is a signatory, form the basis of land use principles:

- Absent a material threat to other individuals or the community, people should be allowed to live and work where and how they like.
- Centralized plans that attempt to determine the detailed outcome of community form and function should be avoided; they interfere with and constrict the dynamic, adaptive and evolutionary nature of neighborhoods and cities.
- Private property rights should be a fundamental element of development control and incorporated in local planning procedures and tools.
- The market, not centralized planning, is more effective in driving densities and land uses.
- Allow diversity in neighborhood design. Given relaxed planning and zoning codes and building regulations, the market will produce the desired neo-traditional neighborhood design, historic neighborhood renovation and conversion and other mixed-use developments.
- Decentralize neighborhood development decisions as far as possible. Local neighborhood associations and private covenants are superior to centralized or regional government planning agencies.
- Growth management policies should be evaluated according to their cost of living and "burden-shifting" effects. Urban growth boundaries, minimum lot sizes, restrictions on housing development, restrictions on commercial development, and other limits on freely functioning land markets that increase the burdens on lower income groups must be rejected.
- The rights of present residents should not supersede those of future residents. "Efficient" land use must include consideration for household and consumer wants, preferences and desires. Thus, growth controls and land-use planning must consider the desires of future residents and generations, not solely current residents.
- Planning decisions should be based upon facts, not perceptions. The use of good data in public policy is crucial to the continued progress of American cities and the social advance of all its citizens.

Agenda

- **Utilize zoning that is oriented toward land use rather than classification.**
- **Eliminate government subsidies that decide winners and losers among developers.**
- **Utilize market-oriented user fees to equitably assign the cost of environmental impacts to those causing the greatest harm.**
- **Encourage farmland and open space protection through private land trusts and conservation easements.**
- **Encourage Congress to eliminate the estate tax.**
- **Allow flexibility in land use regulations to ensure environmental protections while preserving private property rights.**

Facts about Georgia land use:

Georgia, the largest state east of the Mississippi River, covers a total land area of approximately 37.06 million acres. The [federal government](#) owns 1,864,308 million acres of land in Georgia,

about 5 percent of the land.¹ The state owns about 1.1 million acres of property or 3 percent, much of it in parks or open land.

Georgia's population of about 9.54 million comprises 1.8 million rural and 7.7 million urban residents. More than half the state's residents live in the 10-county metro Atlanta area of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale counties. [The population increased](#) 74 percent between 1980 and 2007, caused by a 33 percent increase in the rural population and an 88 percent increase in the urban population.²

[Urban land area](#) (high-intensity and low-intensity) increased 362 percent to 4,156,783 acres between 1974 and 2005, according to the Natural Resources Spatial Analysis Laboratory.³ Between 1991 and 2005 there was an 81 percent increase in impervious surface (to 368,629 acres). Total forested land (deciduous, evergreen and mixed) declined 7 percent.⁴ The tree canopy decreased 2.68 percent between 1991 and 2008.

Despite metro Atlanta's reputation as the poster child for sprawl, Georgia's total urban area, which is home to 81 percent of the state's population, covers less than 9 percent of the state's land area. Twenty-nine percent of the land was [farmland](#) in 2002, up nearly 2 percentage points from 1992.⁵ About 10.74 million acres of land area were classified as farmland in the 2002 USDA Census. (The scheduled release of the 2007 agricultural census is February 2009). It comprised about 49,000 farms averaging 218 acres in size.

Between 1974 and 2005, land in use for row crops and pasture declined 16 percent.⁶ Farm acreage in 2006 was 49 percent of 1960 acreage and the number of farms was 44 percent of the 1960 level. Yet Georgia's [agricultural economy has grown](#) at the same time, thanks to improved efficiency and technology, with an average annual productivity increase of 3 percent during 1960-2006.⁷

[Forestland](#) accounts for almost 25 million acres of Georgia's land area, or about 67 percent of land area.⁸ Private landowners control 22.4 million forested acres (92 percent). The remaining 8 percent is publicly owned, including other federal lands, state, and local lands. Family forest ownership is still dominant with 14.3 million acres. According to the Georgia Forestry Association, an estimated 92 percent of Georgia's commercial forest acreage is in compliance with Best Management Practices (BMPs), which are voluntary guidelines that ensure water and soil quality are protected during forestry operations.

¹ U.S. General Services Administration Table, www.blm.gov/natacq/pls00/pdf/part1-3.pdf

² U.S. Department of Agriculture Economic Research Service, "State Fact Sheets: Georgia," updated July 7, 2006, www.ers.usda.gov/StateFacts/GA.htm

³ Georgia Land Use Trends, Natural Resources Spatial Analysis Lab, http://narsal.ecology.uga.edu/glut/state_lc.html

⁴ Ibid

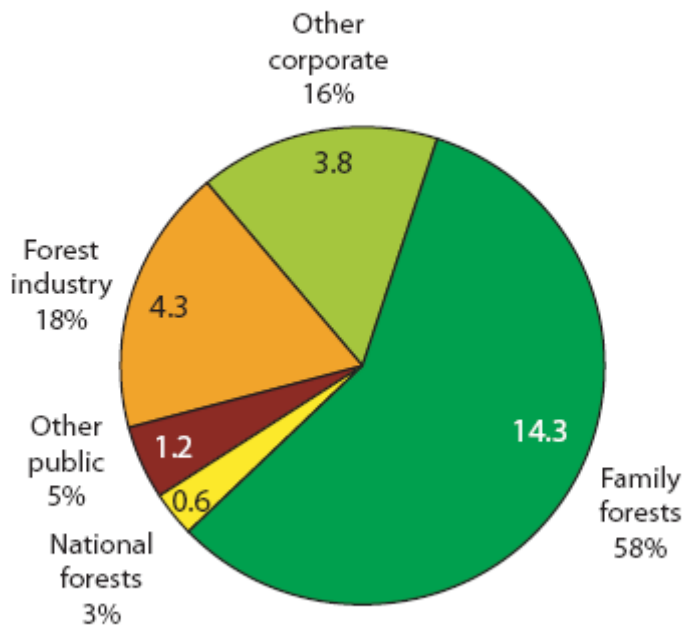
⁵ U.S. Department of Agriculture Economic Research Service, "State Fact Sheets: Georgia," updated July 7, 2006, www.ers.usda.gov/StateFacts/GA.htm

⁶ Georgia Land Use Trends, Natural Resources Spatial Analysis Lab, http://narsal.ecology.uga.edu/glut/state_lc.html

⁷ "Bennet-Bowley Measure for Productivity Analysis of Georgia Agriculture," Selected Paper prepared for presentation at the American Agricultural Economics Association Annual Meeting, Orlando, FL, July 27-29, 2008, Archie Flanders, Fred White and John McKissick, University of Georgia, <http://ageconsearch.umn.edu/bitstream/61110/2/469057.pdf>

⁸ Georgia Forestry Association, www.gfagrow.org/forestfacts.asp

Ownership of Timberland



Note: Numbers on the pie chart represent million acres.

Figure 1: Forestry Ownership: Source: Forestry Inventory and Analysis, 2004

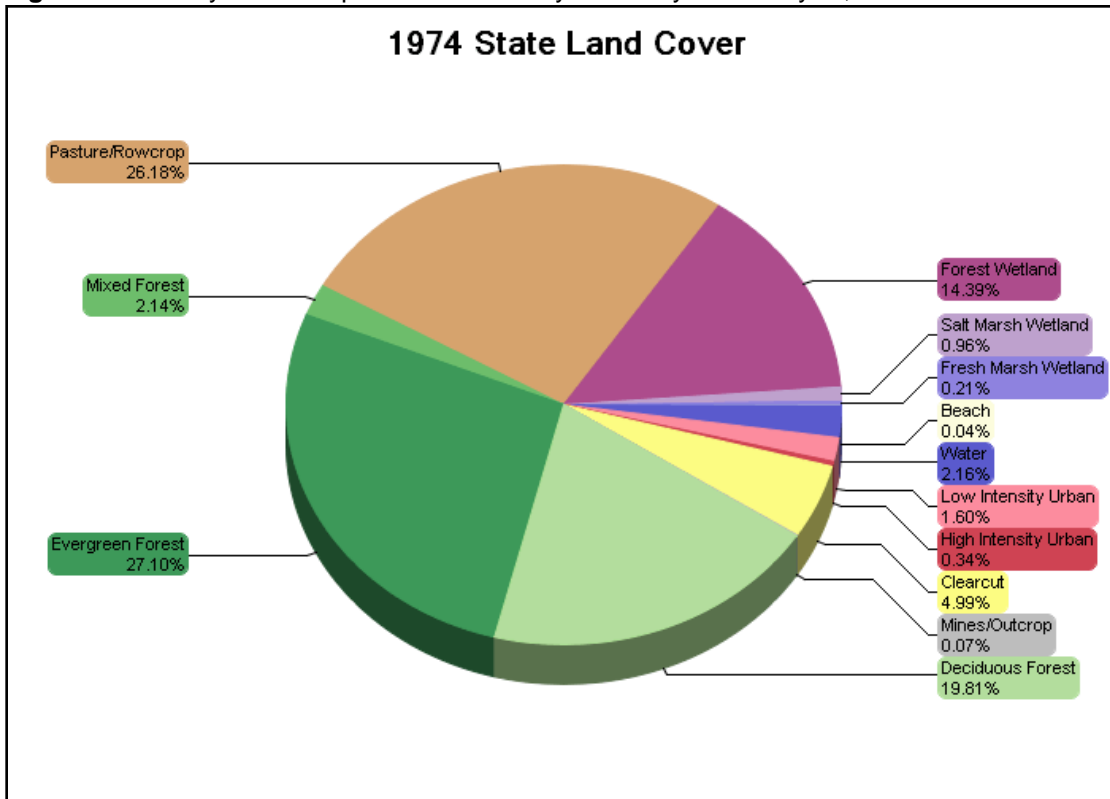
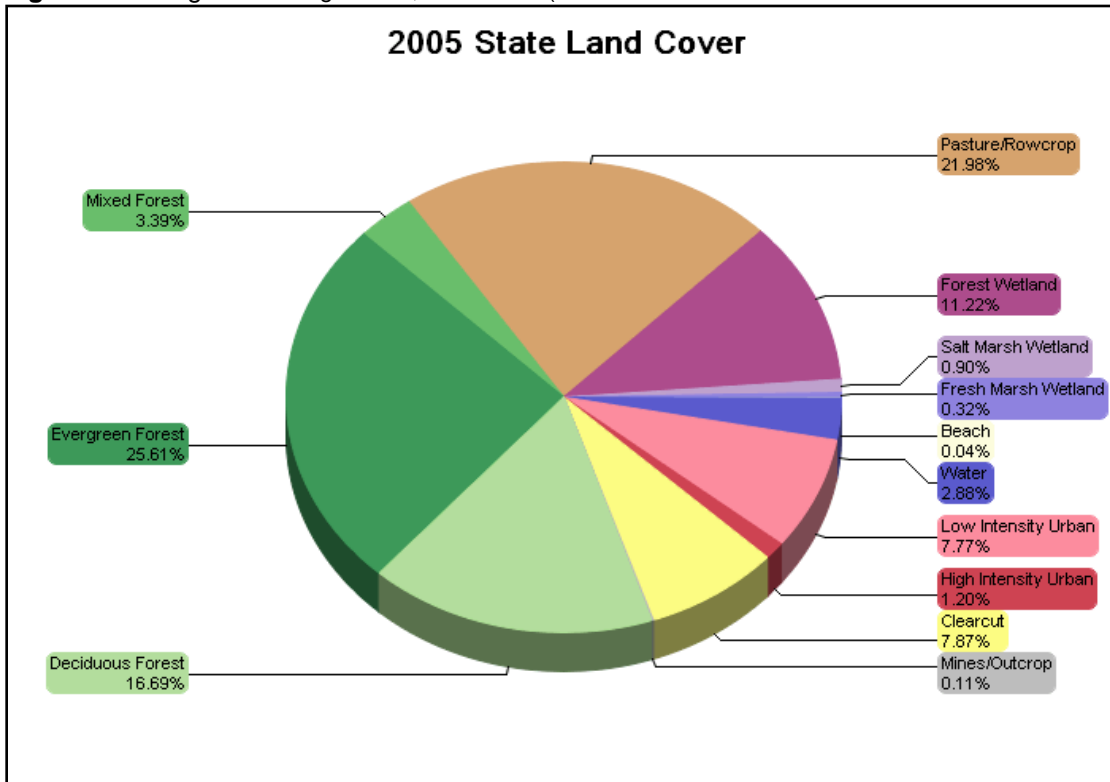


Figure 2: Changes in Georgia Land, 1974-2005 (Source: Natural



Resources Spatial Analysis Lab)

Overview

As part of the Sunbelt, Georgia is seeing its population grow at one of the fastest rates in the nation. The fourth-fastest growing state in the nation, the population is expected to increase by nearly 5 million people by 2030. The outward expansion of metro Atlanta has earned the region the title of “sprawl capital of the world,” a negative connotation. Yet if sprawl is defined as the spread of urban land uses into the surrounding countryside over time, then two factors account for the urban area’s expansion: population growth and growth in per capita land use (in other words, the amount of land used for each person’s residential, commercial and transportation needs). This increase in population and land use has become an important public policy issue primarily because of concerns about its impact on traffic, air quality and water quality and quantity. As a result, there is vigorous debate surrounding the challenges of balancing the environment, economy and private property rights.

“[The Planning Penalty](#),” a nationwide report released in 2006 by the Georgia Public Policy Foundation and economist Randal O’Toole of the American Dream Coalition, found that housing remained affordable in Georgia.⁹ Prices were rising at faster-than-normal rates in Savannah, however, possibly in response to excessive Chatham County planning regulations. Land use policies such as growth controls, zoning and other government regulations have a substantial impact on both housing and labor markets in metropolitan areas. They raise the cost of construction and constrain the housing supply, increasing demand and prices and, by reducing housing affordability, price potential workers out of an area’s job market and lower employment growth.

In the wake of national outrage over the 2005 *Kelo v. New London, Conn.*, decision in the U.S. Supreme Court, the [Georgia Legislature in 2006](#) passed one of the strongest eminent domain reform laws in the nation, enhancing the rights of property owners in the process.¹⁰ Small businesses and homes can no longer be taken by local government for economic development purposes and unelected officials may no longer authorize eminent domain. Unfortunately, the accompanying Georgia constitutional amendment states that “The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose subject to any limitations on the exercise of such power **as may be provided by general law.**” This means property owners remain at the mercy of the General Assembly, which has the ability to weaken the legislation.

Dozens of counties and municipalities have taken advantage of a Georgia law that allows local governments to impose a development impact fee on newcomers, defined as “payment of money imposed upon development as a condition to development approval to pay for a proportionate share of the cost of system improvements needed to serve growth and development.” A 2006 housing report by the Joint Center for Housing Studies of Harvard University found that impact fees, which “place the marginal cost of infrastructure and public services on new homebuyers,” [harm housing affordability](#).¹¹

⁹ Georgia Public Policy Foundation and American Dream Coalition, “The Planning Penalty: How Smart Growth Makes Housing Unaffordable,” www.gppf.org/pub/LandUse/Gahousing.pdf

¹⁰ House Bill 1313, “The Landowner’s Bill of Rights and Private Property Protection Act,” www.legis.ga.gov/legis/2005_06/search/hb1313.htm

¹¹ Federal Reserve Board Member Raven E. Saks, “Job Creation and Housing Construction: Constraints on Metropolitan Area Employment Growth,” www.federalreserve.gov/Pubs/feds/2005/200549/200549pap.pdf

[Thanks to federal and state tax reform](#), fewer landowners need to sell to developers to settle estate taxes.¹² However, the estate tax still [costs families](#) time, money and land – and the tax relief is temporary.¹³

Despite a number of good ideas, supporters of “smart growth” promote a government-mandated strategy of accommodating the growing population by greatly increasing development density in urban areas while prohibiting development in so-called green belts. A survey by the National Association of Homebuilders and National Association of Realtors, however, found that 82 percent of respondents preferred to live in the suburbs. A market approach, with government oversight, can protect Georgia’s environment while preserving an individual’s ability to choose where to live.

According to Randal O’ Toole in [“Housing Affordability in Georgia.”](#)¹⁴

- ✓ **Housing shortages caused by restrictive land use planning and regulation imposed penalties on U.S. homebuyers totaling more than \$275 billion in 2005.**
 - That is more than four times the total cost of urban congestion as calculated by the Texas Transportation Institute’s annual urban mobility reports.
- ✓ **More than 90 percent of this cost was in just 12 states whose cities have especially strict land-use controls such as growth boundaries, greenbelts, growth caps, or concurrency rules.**
 - Leading states include California, Colorado, Florida, Massachusetts, Oregon, and Washington.
- ✓ **Homebuyers in more than 50 metropolitan areas paid penalties of \$100,000 to \$850,000 per median-value home in 2005. Homebuyers in another 50 metropolitan areas paid penalties of \$25,000 to \$100,000 per home.**
 - These penalties are conservatively calculated and the real numbers probably average 25 percent more.
- ✓ **These penalties dwarf the so-called costs of sprawl. According to “The Costs of Sprawl 2000,” low-density housing adds just \$11,000 per home in urban-service costs compared with more compact development.**
 - Why should every homebuyer in a metropolitan area pay \$25,000 to \$850,000 more just so cities can save \$11,000 on a few new homes?

Farmland

From 1997 to 2002, Georgia’s number of farms declined by 32, from 49,343 farms to 49,311 farms, according the 2002 Census of Agriculture released in June 2004. Land in farms decreased 441,781 acres, from 11,262,838 acres to 10,821,057 acres, a decline of 5 percent. Part of this decline may be more a result of the economic impact of the debilitating three-year drought that struck Georgia than the demands of urbanization and development. But while farm acres are shrinking, technological advances including equipment, irrigation and best management practices continue to [improve production on farms](#).¹⁵ Georgia may be converting farmland, but the change is not harming farms or agricultural output. Through the use of better science and new technology, farmers harvest more acreage than in the past while foodstuffs are seeing alternative

¹² Effects of Federal Tax Policy on Agriculture, AER-800, Economic Research Service, USDA, www.ers.usda.gov/publications/aer800/aer800.pdf

¹³ “Taxing Forests to Death,” by Pam Villarreal, National Center for Policy Analysis, www.ncpa.org/pub/ba/ba462/

¹⁴ Housing Affordability in Georgia, Randal O’Toole, <http://www.americandreamcoalition.org/BriefGA.pdf>

¹⁵ “Bennet-Bowley Measure for Productivity Analysis of Georgia Agriculture,” Selected Paper prepared for presentation at the American Agricultural Economics Association Annual Meeting, Orlando, FL, July 27-29, 2008, Archie Flanders, Fred White and John McKissick, University of Georgia, <http://ageconsearch.umn.edu/bitstream/6110/2/469057.pdf>

uses than just for food (such as oils, fuels, etc.). Such individual decisions are difficult to regulate with a top-down land use management plan.

Additionally, thanks to wetland conversion and conservation programs in agriculture, the rate of wetland decline has decreased in recent decades. Through the federal Wetland Reserve Program, agriculture has become the single largest source of U.S. wetland restoration. The Wetlands Reserve Program of the USDA Natural Resources Conservation Service is a voluntary program offering landowners the opportunity to protect, restore and enhance wetlands on their property. In fiscal 2007, the program allocated \$227,631,300 to states for financial and technical assistance; Georgia's allocation was \$1,219,397. [This program](#) offers landowners an opportunity to establish long-term conservation and wildlife practices and protection.¹⁶

In Georgia's metropolitan areas, a combination of population growth and a high tax burden on farm owners has helped lead to a decline in metropolitan-area farm acreage. Not only is there a demand for large tracts for residential and commercial development, but encroaching neighborhoods often view as a nuisance existing farms' daily activities.

Excessive regulation makes it difficult for the small family farmer to remain in business. When overzealous policy-makers impose burdensome environmental or labor mandates on small farms, the small farmer rarely has the capital to make the requisite changes. Such regulations place the small farmer at a competitive disadvantage with the larger producer who captures the economies of scale to pay for the cost of new regulations.

Federal and state tax reform that reduces the tax burden encourages more farmers to stay in the business as it reduces the need to sell farms to developers. However, the federal estate tax provisions are temporary and set to return to pre-2001 levels in 2011 unless Congress makes them permanent. (See recommendation on eliminating the estate tax.)

Forests

If we are not losing such large tracts of farmland that our agricultural viability and rural landscape is threatened, then it must be our forestland, right?

Wrong. Despite forest loss to development and urbanization, the amount of timberland across Georgia has remained fairly stable for the past 70 years, according to the Georgia Forestry Commission. Georgia contains the [largest area of forest cover in the South](#) with 24.8 million acres, or 67 percent of the state, according to the 2004 inventory by the Georgia Forest Commission.¹⁷ This is an increase of about 371,000 acres since the previous forest inventory in 1997.

In essence, the state has gained forestland at a time of rapid population increase. Is this thanks to government? More than 90 percent of the forested acreage in Georgia is privately owned (600,000 individual owners own 72 percent of the state's forests; 20 percent is owned by corporations) and 8 percent is owned by government.

¹⁶ Wetlands Reserve Program, USDA Natural Resources Conservation Service, http://www.nrcs.usda.gov/Programs/2007_allocations/07WRPAlloc.pdf

¹⁷ Georgia Forestry Commission, <http://srsfia2.fs.fed.us/states/ga/GA%20Factsheet.pdf>

Land Class	1936	1953	1961	1972	1982	1989	1997	2004
Timberland	21.4	24.0	25.8	24.8	23.7	23.6	23.8	24.2
Other/reserved	-	0.1	0.1	0.4	0.6	0.5	0.6	0.5
Total forest land	21.4	24.1	25.8	25.3	24.3	24.1	24.4	24.8
Total land area	37.6	37.7	37.7	37.4	37.2	37.1	37.1	37.1
Percent Forested	57%	64%	68%	68%	65%	65%	66%	67%

Figure 3: Georgia forestland breakdown (Source: Georgia Forestry Commission)

Sound forest conservation has been practiced in Georgia for years; with the state setting a world record in 1988 for regenerating 603,000 acres. More than 3 billion trees have been replanted over the last decade. About 1.78 trees are planted for every one harvested to ensure that future forests continue to support the economy and environment. An estimated 80,000 acres of forestland are naturally regenerated each year. The state is known for its pine plantations, but while 44 percent of the timberland is pine, 55 percent is hardwood such as oak, maple, yellow poplar and sweetgum. Hardwoods, generally slower growing species, are considered more vulnerable to land use changes.

It is obvious private ownership has kept the state covered in forests. It has promoted wildlife habitat, too, encouraging game species such as deer, turkey and quail that now thrive in Georgia's forests. The industry is given the opportunity to operate responsibly while protecting non-game species such as the red-cockaded woodpecker, whose habitat is old living pine trees, through conservation programs such as the "Safe Harbor" agreements between landowners and the state Department of Natural Resources.¹⁸

Policies designed to protect and conserve forests and farmland must be crafted in recognition of the positive, private strides made in land conservation: Business-minded landowners realize that the better they take care of the land, the more productive it remains in the long term.

Agriculture and forestland purchases made by government should not be based on emotion, but sound science and recognition of incentives that exist now to protect our natural resources.

Agenda

Utilize zoning that is oriented toward land use rather than classification.

Performance zoning describes the intensity of land use rather than the purpose for which land is used (prescriptive zoning). This concept allows planners to develop fewer, broader zoning districts. Performance zoning measures such things as residential densities, the amount of impervious surface layer, height and bulk of structures in the district, etc. From these calculations, planners might recommend stronger buffering between some land uses than others based on intensity of use.

¹⁸ "Conservation Incentives: Helping Landowners Help Endangered Species," Environmental Defense Fund, http://www.edf.org/documents/821_garcw.pdf

More flexible zoning would also allow for innovative practices such as conservation subdivisions, mixed-use developments and multi-family options such as “granny flats.” Conservation subdivisions allow developers to increase the density of one portion of a development in order to protect sensitive areas such as near stream buffers, create more green space and preserve more open space. The overall density level must still meet current zoning standards, but the added flexibility encourages environmentally rewarding, innovative designs. By reducing and streamlining zoning, policy-makers can reduce costly, bureaucratic delays that make developers think twice about experimenting; they can shift the land-use choices closer to the community instead of top-down dictates that create an us-vs.-them mindset.

Additionally, given the spiraling cost of land in the metro Atlanta region, zoning and development regulations can hinder developers’ efforts to provide affordable housing options. An audit for the [Quality Growth Task Force](#) of the Metro Atlanta Chamber of Commerce found that about half the jurisdictions in metro Atlanta set a maximum residential density of eight units to the acre.¹⁹

Eliminate government subsidies that decide winners and losers among developers.

“Discounting” infrastructure costs to developers (average pricing) can encourage shortcuts and haphazard design in development. By eliminating subsidies, policy-makers will eliminate some of the incentives that have encouraged irresponsible development practices. When developers connect to water and sewer, they should pay the full cost of doing so. Likewise, when a proposed development will impact traffic and changes are necessary such as new roads, intersections and traffic lights, the cost must be borne by the developer, either through direct payment or full-cost pricing, in which government charges the developer the full cost (including debt service) of the infrastructure investment.

The same goes for subsidizing in-fill development: It harms the subdivision/suburban developer who chooses to satisfy the suburban marketplace.

Tax Increment Financing/Tax Allocation Districts

Tax Increment Financing, under the Georgia Redevelopment Powers Law of 1985, gives local municipalities powers to facilitate the redevelopment of blighted or economically depressed areas. Local governments may issue tax allocation bonds to finance infrastructure and other redevelopment costs within a Tax Allocation District (TAD). The TAD is the geographic area in which Tax Increment Financing (TIF) can be used. These terms are used interchangeably in Georgia.

A redevelopment plan outlines how the redevelopment authority will improve dilapidated facilities and use tax increment financing – the expected increase in property values in the TAD that are expected to produce new property tax revenues – to achieve its goals. The revenues are placed into a special fund to pay for redevelopment costs or to finance bonds that might be issued to fund capital improvements within the TAD.

The redevelopment plan must show that [the TAD is a last resort](#) – the “but for” clause: It must “contain a finding that the redevelopment area has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the

¹⁹ Metro Atlanta Quality Growth Task Force Consolidated Final Recommendations, www.metroatlantachamber.com/macoc/initiatives/img/quality_recommendationsl.pdf

redevelopment plan, and that the improvement of the area is likely to enhance the value of a substantial portion of the other real property in the district.”²⁰

Georgia’s best known example of a TAD is Atlantic Station in downtown Atlanta, which turned the site of a former steel mill into a mixed-use residential, office and commercial development. Other examples include redevelopment around the Georgia Aquarium, downtown Smyrna and downtown Marietta.

Several questions must be answered to the satisfaction of taxpayers when such revitalization projects are considered:

- Why is the local government going into the development business? Is the tax increment financing indeed a last resort for the project, or are developers gaining unnecessary public – taxpayer – support for a project that would have taken place without it?
- **Will taxpayers outside the TAD have to subsidize additional government services required within and as a result of the TAD?** Property owners in the TAD pay the same millage rate levied by the local government, but for the duration of the TAD, the local government receives the same amount it did before the TAD was created, even though the need for services may grow with the
- **What are the TAD’s chances of success, and what is the fallout for the local issuing government if the projected revenue does not materialize?** Auditors for the City of Englewood, Colorado, reported in 2007 that Englewood’s redevelopment authority, the Englewood Urban Renewal Authority, “[is in default](#) on its Tax Increment Revenue Refunding and Improvement Bonds Series 1985A and Tax Increment Revenue Refunding Bonds Series 1985B. This condition raises substantial doubt about the Authority’s continuation as an economic going concern.”²¹ The auditors added: “The Authority’s ability to generate revenue is primarily dependent on the taxes generated within its boundaries, which are currently not sufficient to meet its existing debt service requirements.”²²

Utilize market-oriented user fees to equitably assign the cost of environmental impacts to those causing the greatest harm.

While there is still plenty of space left to physically accommodate more people in Georgia, there are many concerns about the impact that haphazard development can exert on the environment. Traffic congestion, along with water quality and quantity and, to a lesser extent, air quality, have been the greatest concern for a growing Georgia. The perception of harm wrought by urbanization – more specifically, suburbanization – threatens to constrain Georgia’s economic growth.

In addition to human impacts such as traffic congestion, urbanization’s impact on the environment can lead to reduced tree cover in certain areas, with increases in impervious surface leading to heat islands and reduced air and water quality.

With the increase in per capita income comes the expectation of an enhanced environment and quality of life. As Georgians earn more, they “move up” and increasingly have the ability to pay for their rising expectations. Regulations that force developers to increase density to undesirable or unmarketable levels or enact poorly designed impact fees are unnecessary. Instead, policy-makers could adopt market approaches such as user fees that equitably assign the cost of

²⁰ O.C.G.A. 36-55-8.

²¹ Annual Financial Report, Fiscal Year Ended December 2006, Englewood Urban Renewal Authority, <http://www.engagewoodgov.org/Modules/ShowDocument.aspx?documentid=1349>

²² Ibid

Georgians' lifestyle choices and decisions. (See the chapter on Water for an example of this approach.)

Encourage farmland and open space protection through private land trusts and conservation easements.

“A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements.” – *Land Trust Alliance*

The Georgia Land Trust Service Center works to increase the effectiveness of land trusts and helps land owners protect conservation lands in Georgia and the Southeast. According to the Land Trust Alliance, private conservation efforts are reaping huge dividends. Total acres conserved by local, state and national land trusts doubled to 37 million acres between 2000 and 2005 and the number of land trusts grew to 1,667, [a 32 percent increase](#).²³

The Land Trust Alliance's 2005 National Land Trust Census Report, which is described as the only census of private, voluntary land conservation, credits state and local land trusts with protecting more than 11.9 million acres across the nation through 2005, an increase of 5.8 million acres since 2000 and an area twice the size of New Hampshire.

Between 2000 and 2005, the Southeast saw a 42 percent increase in land trusts, to 166, and a 131 percent increase in conserved lands, from 411,842 acres in 2000 to 952,365 in 2005. Georgia saw a 41 percent increase in land trusts, from 17 in 2000 to 24 in 2005, and tied for third place in the Southeast with South Carolina behind Florida (36) and North Carolina (32). Georgia had 103,056 acres conserved by land trusts, ranking it fourth in the Southeast in 2006, behind North Carolina, South Carolina and Tennessee. That was an increase of 179 percent in acres conserved from 2000-2005.²⁴ On its Web site, www.GEPInstitute.com, the Georgia Environmental Policy Institute lists 52 land trusts – national, multi-state, statewide and local – that are directly and actively involved in land-saving action in Georgia.

The 2008 Georgia Legislative session brought enhancements to the Georgia Land Conservation Program ([HB 1176](#)), the Georgia Forest Land Protection Act ([HB 1211](#)), and the land conservation tax credit program ([HB 1274](#)).

HB 1176 would allow the Georgia Environmental Facilities Authority and the Georgia Land Conservation Program Council to make loans to non-governmental entities to protect and conserve land.

HB 1211: Georgia's large-tract landowners have long complained about their escalating tax burden, especially when compared to neighboring states, because land is based on “highest-and-best use” appraisals instead of current use appraisals. Effective January 2009, HB 1211 eliminates the 2,000-acre limitation and ownership restrictions on land enrolled in the conservation use property tax program (Current Use Valuation Program, or CUVA) that was created in 1990. Beginning in 2009, corporate owners and large tracts may no longer be rejected. The result is an environmentally sound market incentive that will reduce the number of forestland acres lost to development or other non-forest uses.

²³ 2005 National Land Trust Census Report, Land Trust Alliance, November 2006, <http://www.landtrustalliance.org/about-us/land-trust-census/2005-report.pdf>

²⁴ “New Report Shows Landmark Gains in Land Conservation in Georgia,” Land Trust Alliance 2005, <http://www.landtrustalliance.org/about-us/land-trust-census/ga-census2005-factsheet.doc>

The new tax program will require a 15-year covenant to keep the property in a qualifying forestland use. The legislation contains a “cure” provision allowing a breach of the covenant to be corrected before a property owner is ejected from the program. Counties whose tax digest would be adversely impacted by more than 3 percent would be made whole through a state refund. Counties whose digest would be reduced by 3 percent or less would receive a refund equal to 50 percent of the digest reduction. [The legislation](#) caps the year-to-year CUVA value increases at 3 percent and also defines “fair market value of forestland” to reduce the temptation of taxing authorities to raise fair market values on forestland to increase the size of the refund from the state.²⁵

HB 1274, which amends the Georgia Land Conservation Tax Credit to increase eligibility of certain tracts and types of donations, is expected to increase preserved wildlife habitat. It extends the carryover for unused tax credits from five years to 10 years and updates the definition of fair market value to match that of the IRS. It establishes penalties for substantial value misstatements. It also adds eligibility for members of a partnership for a total tax credit of up to \$1 million. And it directs the Board of Natural Resources to establish rules to determine the suitability of a tract for conservation purposes.

Purchase of agricultural conservation easement (PACE) programs compensate property owners for restricting the future use of their land. PACE is also known as Purchase of Development Rights (PDR). When a landowner sells property, generally all the rights are transferred to the buyer. PACE programs enable landowners to separate and sell their right to develop land from their other property rights. For example, the landowner might agree to prohibit any structures, roads or clearcutting on a parcel in order to protect wildlife habitat. Or he might restrict land disturbance and chemical application within a river or lakeshore buffer zone, or restrict dredging in a wetland. Conservation easements have also been used to protect historic sites, especially battlefields. The buyer, whether a government agency or nonprofit conservation group, acquires the right and responsibility to prevent development.

Typically, conservation easements “run with the land,” binding all future owners unless a provision exists to terminate for cause or at the end of a specified period. However, a downside is that federal tax benefits are available only for perpetual easements, which subject all future landowners to the easement restrictions. IRS flexibility on the perpetuity clause (allowing a 50-year easement, for example) would make conservation easements more palatable to more landowners.

The federal Farm and Ranch Lands Protection Program is a voluntary program under the U.S. Department of Agriculture that helps farmers and ranchers keep their land in agriculture. It provides matching funds to state, tribal and local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. In fiscal 2007, Georgia was allocated \$943,664 of the national total of \$72.8 million available, enabling it to purchase three [conservation easements](#) totaling 176 acres.²⁶

Land preservation programs that reflect market incentives and leverage public-private relationships work best. Several private land trusts operate successfully without the need for taxpayer dollars, and even local communities have met with tremendous success in protecting farmland through private means.

The private [Lancaster Farmland Trust](#) established in 1985 in Lancaster County, Pennsylvania, has been favored by the Amish and Mennonite community, which shuns government programs and taxpayer funds. By 2006, the trust had protected 15,000 acres on 250 farms, 27 farms and

²⁵ Georgia Forestry Association, <http://www.gfagrow.org/UploadedFiles/CFR%2008-04-12.pdf>

²⁶ Farm and Ranch Lands Protection Program
http://www.nrcs.usda.gov/programs/frpp/2007_Easements/07FRPPAcres.pdf

more than 1,800 acres in 2006 alone. Landowners who preserve their farms with Lancaster Farmland Trust donate a significant portion of the value of the development rights on their properties. In 2006, the Trust spent a little more than \$1.5 million to preserve 27 farms with a total appraised value of \$5.3 million.²⁷

The **Lancaster County Agricultural Preserve Board**, a county department established in 1983, reports that by the end of 2007 it had preserved 58,000 acres of farmland with 698 conservation easements. However, it has done so at much greater cost and with the use of taxpayer dollars from the county, the commonwealth and the federal government. The board has a budget of approximately \$8 million per year with which to purchase farms. Highlighting one risk of using public funds, the Lancaster Sunday News noted in March 2004, "Only \$7.7 million of commissioners' \$25-million bond issue to preserve farmland was spent on farms. The rest went to pay other bills."²⁸

The **Colorado Cattlemen's Agricultural Land Trust** (CCALT) prides itself as being "a land trust OF landowners, BY landowners, and FOR landowners." Established in 1995 as part of a ranchers' organization, the trust focuses on educating farmers and ranchers about the use of conservation easements, both to protect land and to promote intergenerational transfers of farmland. It has ensured the protection of over 285,000 acres in 34 counties across Colorado, an area larger than the entire Colorado State Park System (246,000 acres over 43 parks).²⁹

State and county agricultural organizations, in establishing their own land trusts, can increase the value of membership and connect older farmers with younger farmers, thereby creating agricultural longevity.

Finally, since 1980, the **Marin Agricultural Land Trust** (established in Marin County, California), the first agricultural land trust in the nation, has permanently protected more than 40,500 acres of land on 63 family farms and ranches in the county. This voluntary land preservation effort was founded by a coalition of ranchers and environmentalists.

Conservation easements can be particularly effective in protecting water quality. As opposed to the many problems associated with mandatory riparian buffer regulations or the high cost of purchased riparian buffer strips, voluntary conservation easements can protect water quality while maintaining private ownership.

Encourage Congress to eliminate the estate tax.

The federal estate tax exemption, known as the Economic Growth and Tax Relief Reconciliation Act of 2001, is set to expire at the end of 2010 unless Congress acts to reform it or make the exemption permanent.

The exemption on the federal estate tax – also referred to as the "death tax" – was \$675,000 in 2001; \$1.5 million in 2003 and will be \$3.5 million in 2009. The tax is repealed altogether in 2010. But the uncertainty surrounding the rate – whether it will be permanently repealed or return to 2001 levels in 2011 – makes estate planning a costly gamble for families and family businesses.

²⁷ 2006 Annual Report, Lancaster Farmland Trust, <http://www.lancasterfarmlandtrust.org/docs/annual-reports/annual-06.pdf>

²⁸ "Their bond is not their word," By Helen Colwell Adams Lancaster Sunday News, March 15, 2004, www.lancasteronline.com/articles/5796

²⁹ Colorado Cattlemen's Agricultural Land Trust, <http://www.ccalt.org/>

Year	Estate Tax Exemption	Maximum rate on estate greater than exemption
2008	\$2 Million	45%
2009	\$3.5 Million	45%
2010	Tax repealed	Tax repealed
2011	\$1 million	55%

In other words, a person who dies with a net worth of \$1.2 million and life insurance of \$1.5 million is \$700,000 over the \$2 million limit for 2008.

The tax is another contributor to the loss in agricultural land. Research estimates that hundreds of thousands of acres have been lost due to the egregiousness of the estate tax, which often forces the widows

or children of farmers to sell their land to developers in order to raise the funds to pay their estate tax bill.

In addition to encouraging the sale of farmland (including forestland), the estate tax can also indirectly harm the environment by causing an estate faced with a substantial tax bill to harvest timber indiscriminately or divide the property into parcels, fragmenting the landscape and reducing the effectiveness of long-term forest management plans.³⁰

While residential developments generate more taxes for a community/local government, their demand for services is also much higher. Government must take care not to tax farmland/timberland out of existence, eliminating the very greenspace communities are demanding.

Allow flexibility in regulations to ensure environmental protection while preserving private property rights.

Results-oriented regulations that allow landowners to enjoy their property so long as it does no harm to others are preferable to top-down, inflexible and burdensome rules that diminish private property rights. One example is the perennial push to restrict the construction of septic systems in Georgia. Requiring that new residences hook up to municipal sewer lines, where they are available, is good practice. Refusing to allow landowners to install septic systems where municipal hookup points are distant and therefore cost-prohibitive is punitive to landowners. It is effectively social engineering, because it unreasonably discourages people from building mountain homes and rural homes, or maintaining large acreage.

There is a solution that preserves private property rights and the environment: allowing such construction while requiring routine maintenance of septic systems. The concern that water is not being returned to its source, while legitimate, is minimal. The water in septic systems eventually filters back into groundwater. The concern of contamination can be overcome with a requirement that septic systems must be checked, say, every five years.

Likewise, tree preservation and water protection measures need to be flexible. Protecting the urban forest is admirable, but draconian regulations that don't allow property owners to cut down trees that endanger their homes and lives are overkill. Mandating riparian buffer zones that restrict the use of large swathes of land without flexibility is unreasonable. The volunteer efforts of environmental watchdog groups can help keep landowners honest, but many property owners skirt the law because they feel their chances are slim to none in trying to make a persuasive case before regulatory agencies. Focusing on desired outcomes instead of the minutia of prohibitive, inflexible regulation will allow for the environmentally responsible, best use of Georgia's lands and waters by its private property owners.

³⁰ Forest Landowners Tax Council, www.fltc.net/deathtaxposition.html

Further reading:

“The Greening of Georgia: The Improvement of the Environment in the Twentieth Century,” by R. Harold Brown

“Eminent Domain, Private Property and Redevelopment: An Economic Development Analysis,” Reason Foundation, <http://www.reason.org/ps331.pdf>

“Save The Environment from Regressive Activists,” by R. Harold Brown, <http://www.gppf.org/article.asp?RT=6&p=pub/Environment/EnvEarthday050420.htm>

“The Hidden Cost of Planning” by Randal O’Toole, <http://www.gppf.org/article.asp?RT=10&p=pub/LandUse/housing060331.htm>

“Playing Favorites on Land Use Won't Solve Congestion,” by Benita Dodd, Georgia Public Policy Foundation, <http://www.gppf.org/article.asp?RT=10&p=pub/LandUse/Envlanduse040820.htm>