

# Regional Growth Strategies - the Southern Perspective

Emily McClendon

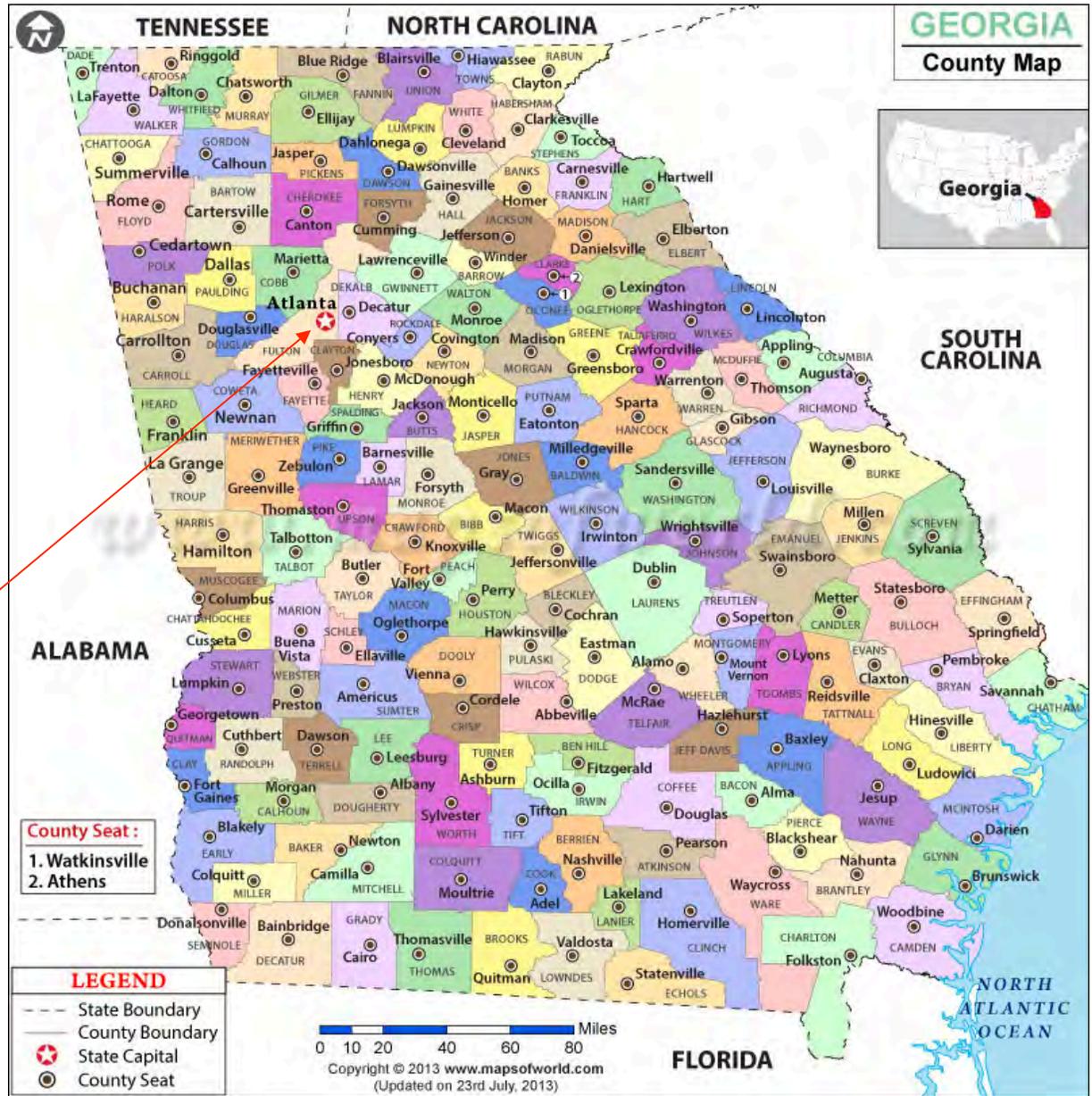
Valkyrie Law Corp.

# Raymond Young, QC

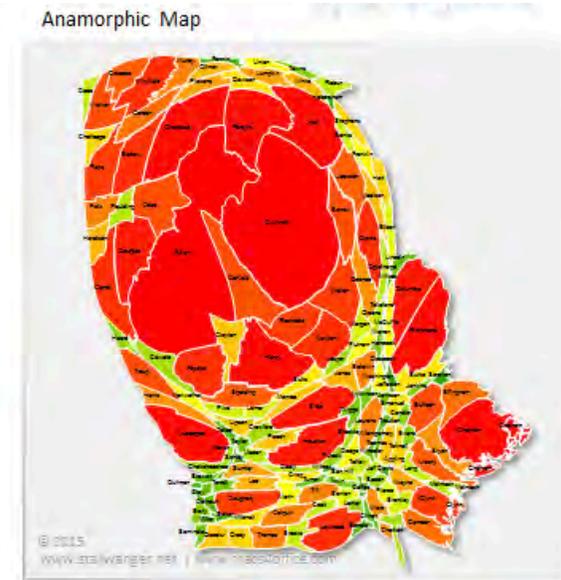
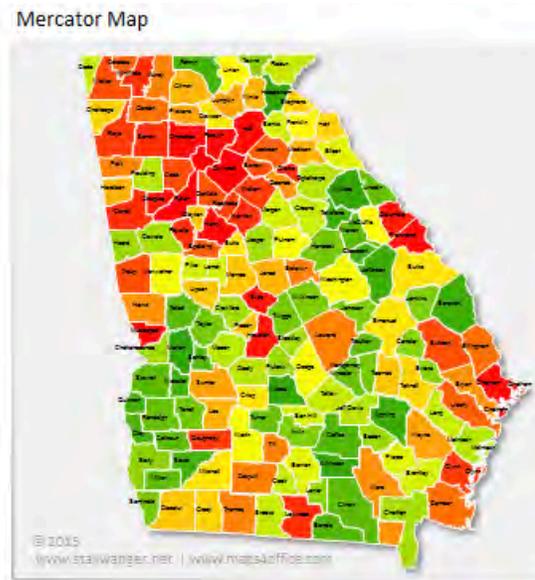
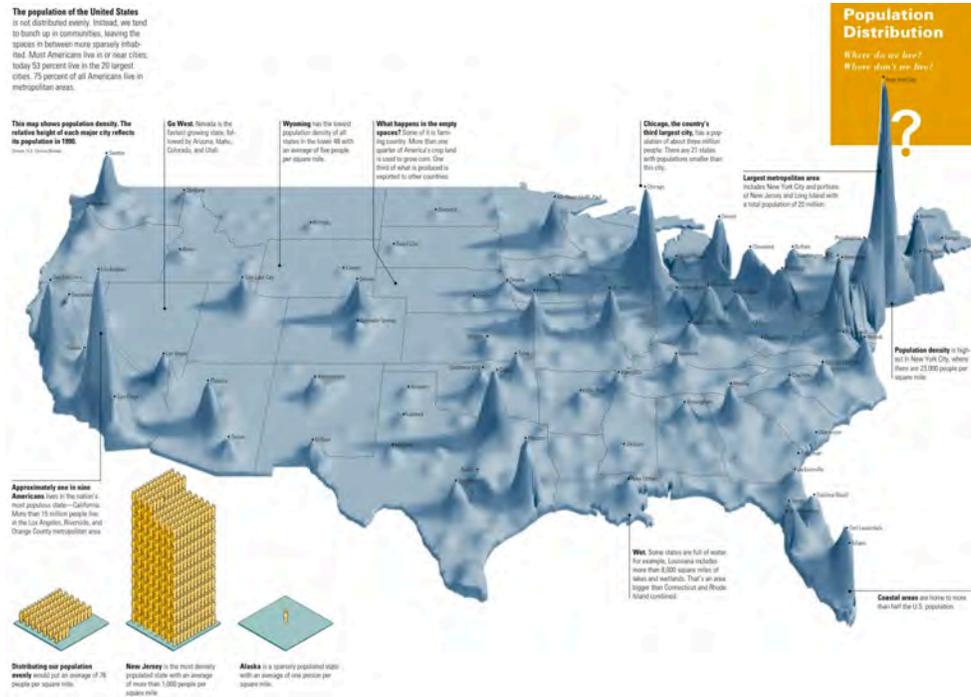


(not me)

# Where I met Ray



# Population of Georgia



159 counties – each with their own zoning authority (plus cities!)

# Georgia - Land Rights!

- In 1927, the U.S. Supreme Court held that zoning laws enacted by a state's General Assembly were a valid exercise of the state's police power and that zoning laws were not a violation of the 14th Amendment's due process clause.
- The Georgia Supreme Court issued an opinion which is the basis of a unique Georgia doctrine. The opinion states that that the zoning power is not an inherent police power of the State (as held by the U.S. Supreme Court), but that the power to zone should come only from an expressed Georgia Constitutional grant. This doctrine remains in force to this day.
- The legal consequence of this opinion is that in the state of Georgia no general zoning power can exist in any governmental body beyond that which is expressly provided in the Constitution.

# Regional Commissions

- 12 in Georgia
- 1960s - Create original areas
- Georgia was one of the first states to allow local governments to voluntarily join together and assess themselves local dues in order to hire professional staff for their mutual benefit
- 1969 - 153 of Georgia's 159 counties had joined one of the state's (then) 18 APDCs, making the state a national model for regional cooperation
- 1980's - the federal government withdrew almost entirely from its support of regional planning. "Of the 39 programs designed and enacted during the preceding two decades to promote regional organization," wrote Bruce McDowell, "only one — metropolitan transportation planning — remained relatively unscathed by this sudden reversal of federal policy."
- 1989 - passage of the Georgia Planning Act, which gave the agencies the responsibility of coordinated and comprehensive planning statewide



# Structure

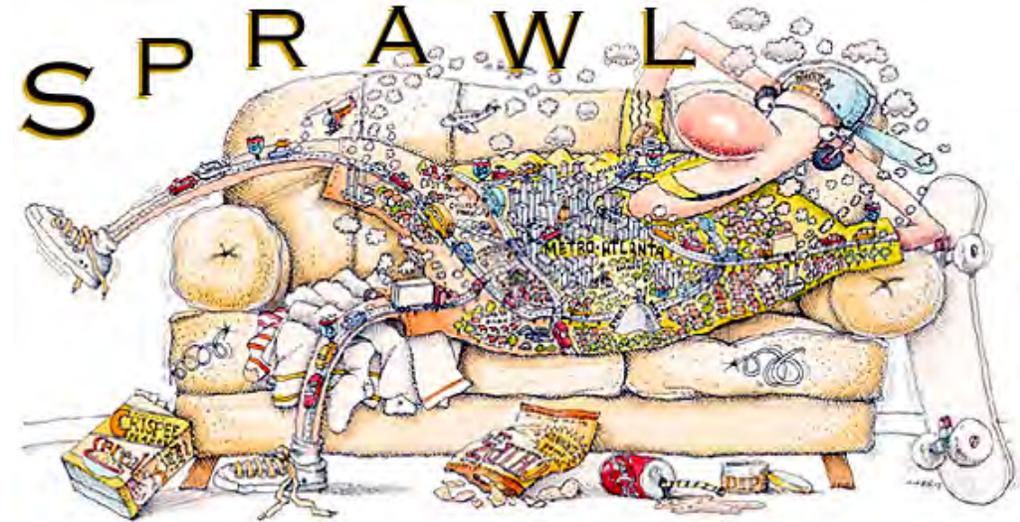
- An executive director oversees each RC, supervising staff and facility operations.
- The executive director reports to a governing regional council, comprising the following members as required by state law:
  - Chief elected official of each member county (county chairperson)
  - One mayor from each member county
  - Three residents from the region appointed by the governor
  - Two non-public members, one appointed by the lieutenant governor and a second by the Speaker of the House of Representatives

Note: the Georgia Assembly (Parliament) has no right to zone or plan. Only local entities (counties and municipalities).\*\* Only procedural requirements can be dictated.

\*\*except order to protect and preserve the natural resources, environment and vital areas

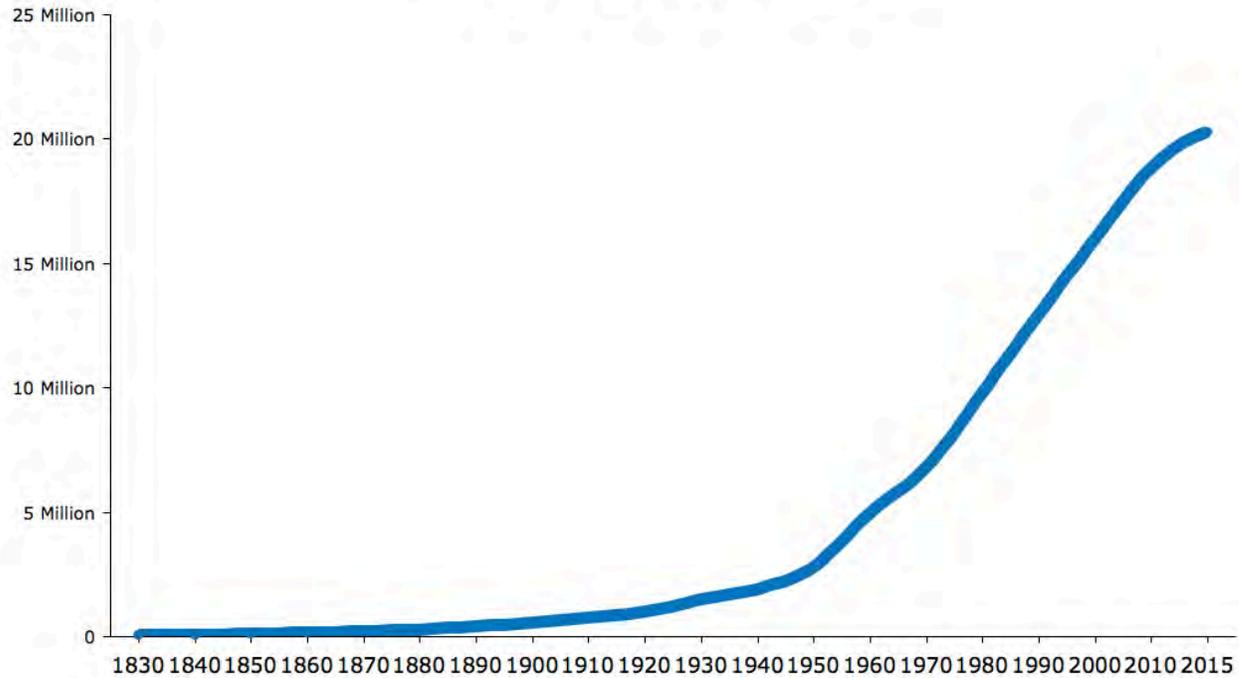
# Regional Commissions Can't Zone

- State efforts to
  - 1) gain some control and consistency in the planning area, and
  - 2) either authorize or mandate the use of common growth management tools have not been shut off.
- For fun, the sections of the Georgia Planning Act authorizing RDC review and comment on local plans end with **“NOTHING IN THIS CODE SECTION SHALL LIMIT OR COMPROMISE THE RIGHT OF THE GOVERNING AUTHORITY OF A COUNTY OR MUNICIPALITY TO EXERCISE THE POWER OF ZONING.”**

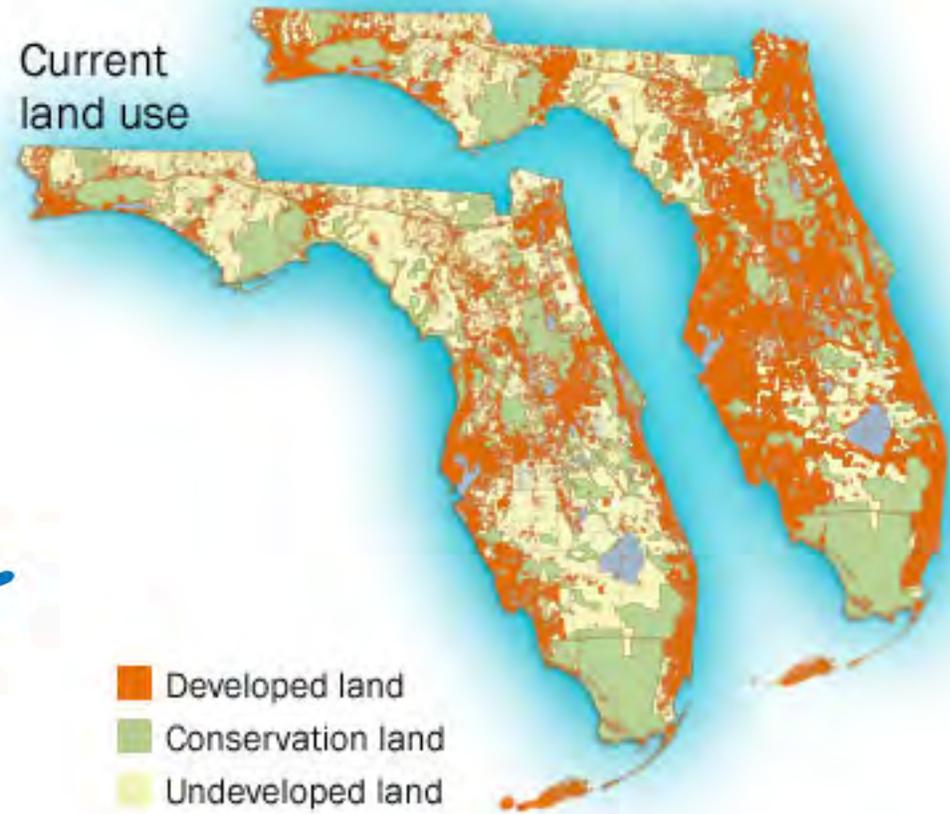


# Florida

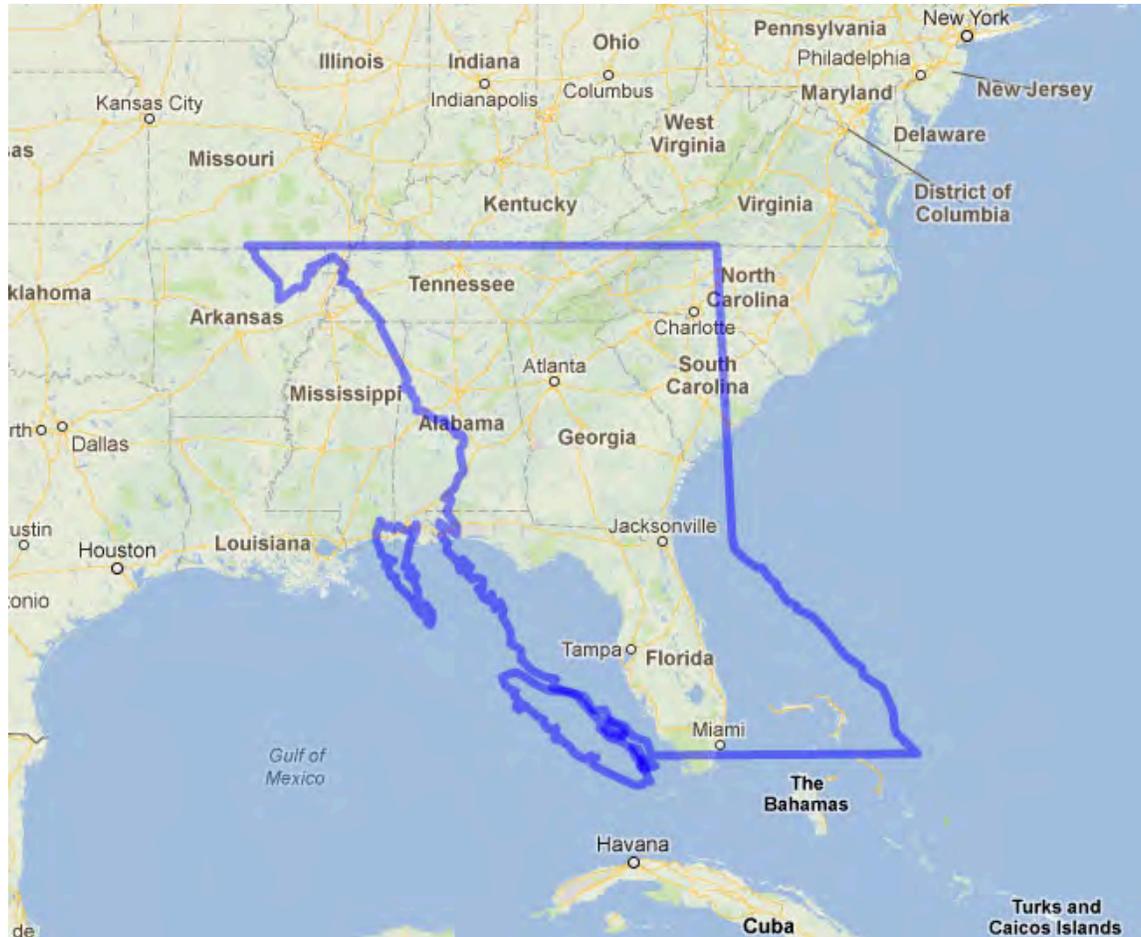
**Florida Population Growth**



**Projected land use in 2060**



# Florida and Georgia versus B.C.



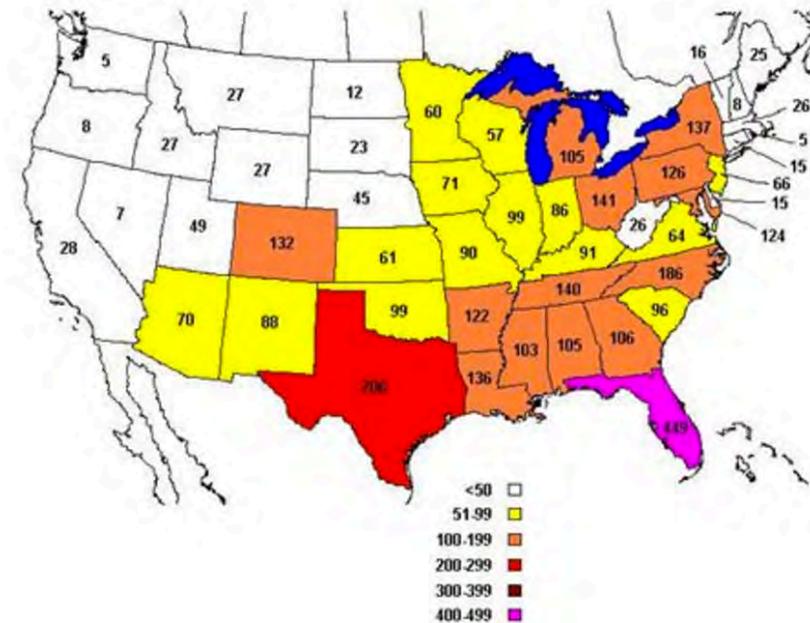
- FLA is 1/6<sup>th</sup> the size of B.C.
- About 1/2 of Florida is below sea level
- "Large" conservation areas
- Population growth from 2 mil - 23 million between 1960 to today

# Top Down Planning

- Urban sprawl of 60s and 70s → tightly controlled at state level
- Florida's system of state, regional, and local comprehensive planning was designed and implemented with the hope that it would help the state manage growth.
- In 1972, the Florida legislature passed the Florida State Comprehensive Planning Act.
- This act ordered the Division of State Planning of the Florida Department of Administration to prepare a state comprehensive plan designed to "provide long-range guidance for the orderly social, economic, and physical growth of the state, setting forth goals, objectives, and policies. NEVER HAPPENED.
- In 1975, the Local Government Comprehensive Planning Act was passed.
- This legislation recognized the traditional role of local government in land use control and was intended to stimulate and guide the development and implementation of comprehensive plans by local government. It contained two essential mandates: (1) **local governments were to adopt comprehensive plans**, and (2) **development must conform to the plans**. The act specified a number of elements to be included, such as for sewer, solid waste, drainage, and potable water facilities that were to be correlated with the land use element. The local government comprehensive plans were to be adopted by July 1, 1979.

- In 1984, the Legislature passed the State and Regional Planning Act
- Called for the development of a State Comprehensive Plan and directed the Executive Office of the Governor to prepare a draft plan within six months
- The version adopted by the legislature in 1985 established goals for ten and fifteen year planning periods on twenty five subject areas
- Required that each state agency prepare an "agency functional plan" to demonstrate the manner in which agency programs and budget allocations would pursue the goals established in the State Comprehensive Plan

## USA Lightning Deaths 1959-2007



Can't plan for lightning (no this has nothing to do with my presentation)

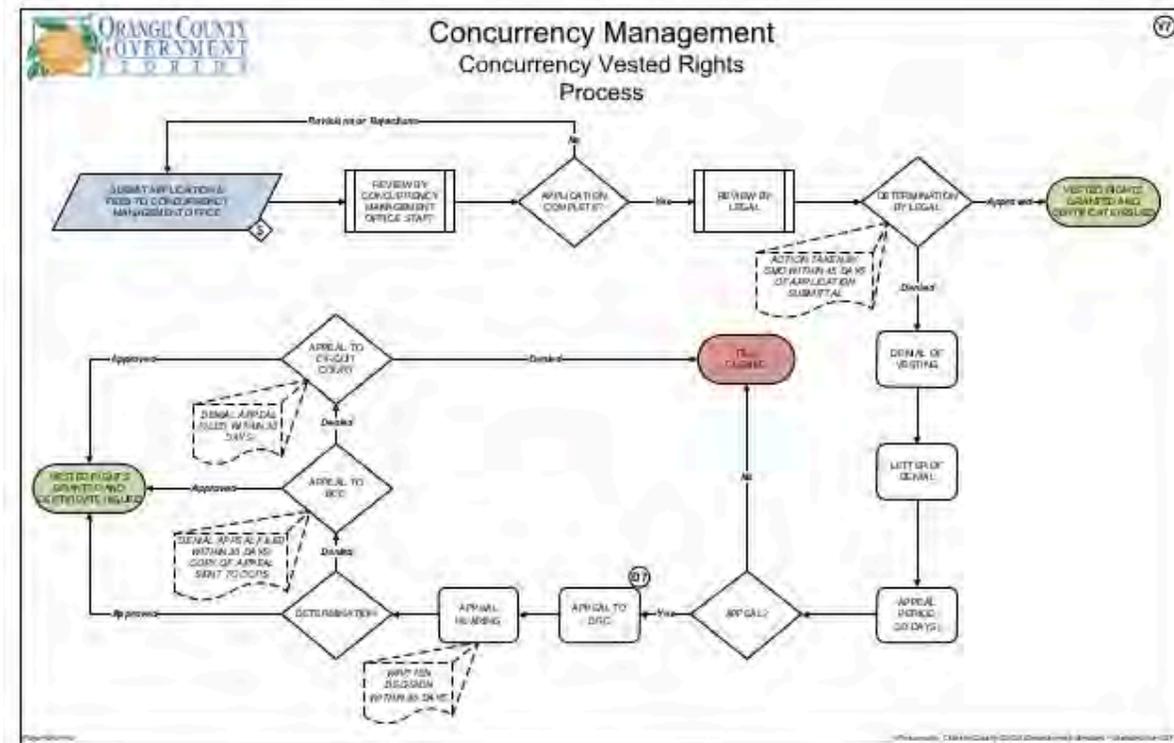
# Regional Councils

- The 1984 State and Regional Planning Act also required that "Comprehensive Regional Policy Plans" be completed within eighteen months from the date of adoption of the State Plan, and submitted for approval by the legislature
- This meant that the eleven regional planning councils in the state were required to have their plans available by November 30, 1986

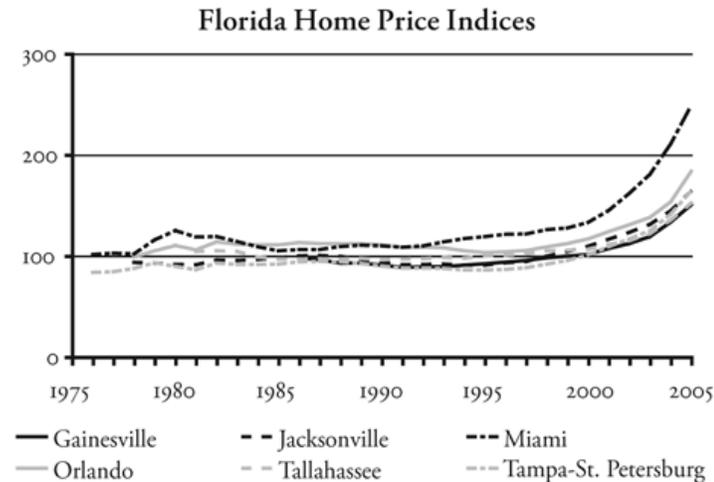


# Concurrency

- 1985 - Local Government Comprehensive Planning and Land Development passed, which substantially amended the 1975 Local Government Comprehensive Planning Act
- It required local governments to amend their existing plans to ensure consistency with the State and Regional plans
- Failure to do so would result in loss of state revenue-sharing to local governments, and loss of grant money controlled by the state government



- The 1985 Act requires that local government comprehensive plans be certified by the Florida Department of Community Affairs as being in compliance with statutory requirements
- The Department of Community Affairs adopted detailed rules setting up minimum criteria for approval of local plans
- The Act also requires local governments to enact the necessary implementing ordinances within **one year** of submitting their plans to the Department of Community Affairs (9J-5, F.A.C)



# Developers and Local Planners Did Not Like This At All...

# HB 7207 – Effective Repeal

- Repealed 9J-5, FAC
- Department of Community Affairs becomes the Division of Community Development within the new Department of Economic Opportunity
- Limits individual agency comments to the potential effect on state resources within that agency's area of expertise; limits regional planning council and other local government comments on comprehensive plan amendments to the relationship to regional or municipal impacts
- State land planning agency is limited and must be supported by clear and convincing evidence

## Tampa Bay Times

### An obituary for Florida Growth Management

Saturday, June 4, 2011 4:30am

Growth management, an imperfect but noble effort to protect Florida from selfishness and greed, died Thursday (June 2, 2011). The cause of death was legislation passed by a Legislature lacking perspective and signed into law by Rick Scott, a new governor ignorant of the state's history and indifferent about its future. • Growth Management was 26 years old. The agency that oversaw it, the now-vanquished Department of Community Affairs, is survived by a handful of relatives not up to carrying on the mission: water management districts decimated by spending cuts; regional planning councils and similar agencies with little authority; and county commissions with neither the will nor the vision to stand up to developers.

#### The painful end

Growth Management had been on life support for months as legislators, developers and business groups shamefully repackaged a visionary effort to save Florida into a demon to be slain. Gov. Charlie Crist signaled the beginning of the end in 2009 when he signed the precursor to this year's death sentence. Scott demonized Growth Management as he campaigned for governor last year, and he joined state lawmakers this year in claiming less regulation will create more jobs. They said virtually nothing about creating a quality of life — clean water, clear roads, good schools, nice parks — needed to attract and keep businesses and workers.

# After Effects

## DCA Secretary Pelham to Resign

Will Short Gorham | 11/23/2010



"We're trying to manage growth with an unmanageable statute. ... It's a mess. It spraaawwls."

— Tom Pelham

### DCA Secretary Tom Pelham

Secretary Tom Pelham of the Florida Department of Community Affairs has announced that he will be leaving the department at the end of Governor Crist's term of office.

Pelham has clashed with Rick Scott over the Gov.-elect's campaign attacks on DCA.

"It's very discouraging to public servants, who are given a mission and responsibility to enforce laws enacted by others, to be constantly bashed for doing their job," Pelham has said.

His resignation is effective at the close of business January 3, 2011.

## The Changes: Old vs. New

### LAND USE PLAN CHANGES

**OLD**  
(1986-2010)

Required approval from the Florida Department of Community Affairs. Staffed by 61 planners and assistants.



Florida Department of Community Affairs

**NEW**  
(AS OF OCT. 1, 2011)

Can only object on grounds of negative impact to "important state resources and facilities," now undefined. Staffed by 32 planners and assistants.



Department of Economic Opportunity

### PUBLIC SERVICES & DEVELOPER FEES



**OLD** Developers were required to pay for improvements to streets, schools, parks, water, garbage, drainage and sewer systems their developments would cause to fall below standards.



**NEW** Local governments are now responsible for controlling the impact of growth on streets, schools and parks.

Source: Northeast Florida Regional Council