

**Rules of  
Georgia Department of Community Affairs**

**Chapter 110-12-5  
Alternative Dispute Resolution for Inter-jurisdictional Conflicts  
(Effective Date: July 1, 2009)**

**TABLE OF CONTENTS**

<b>110-12-5-.01</b>	<b>Purpose &amp; Overview</b>
<b>110-12-5-.02</b>	<b>Alternative Dispute Resolution Process</b>
<b>110-12-5-.03</b>	<b>Definitions</b>

**CHAPTER 110-12-5-.01  
PURPOSE & OVERVIEW**

**110-12-5-.01 Purpose & Overview**

**(1) General.** The Georgia Planning Act authorizes the Department of Community Affairs (the Department) to establish procedures and guidelines for mediation or other means of resolving conflicts related to local plans, regional plans, Developments of Regional Impact, and Regionally Important Resources. These specific rules and procedures are provided herein and are applicable to all local governments and Regional Commissions in the State. The intent of these rules is: (1) provide an alternative to the courts for resolving conflicts related to planning or growth management, where processes for resolving specific types of disputes (such as, but not limited to, those for annexations or service delivery conflicts) are not provided elsewhere in state law; (2) foster more careful consideration of, and planning for, impacts of growth; and (3) improve local, regional and state level communication about planning and growth management matters.

**(2) Overview.** These rules establish an alternative dispute resolution process for reconciling differences on planning or growth management related issues among Georgia's local governments, Regional Commissions, and private interests where no other processes for resolving specific types of disputes are provided in state law. The parties to the conflict may choose from two types of dispute resolution to reach a settlement. These are *facilitation or mediation* and both of these enlist an impartial third party (or neutral) to lead the process. To provide as much process certainty as possible, these rules call for the alternative dispute resolution process to be concluded within 90 days after it is initiated, although this time-frame can be extended by mutual agreement of the affected parties. Four types of conflicts are subject to dispute resolution as provided in these rules:

(a) Conflicts related to preparation or implementation of local plans or regional plans as provided in the *Georgia Planning Act*.

(b) Conflicts related to preparation or implementation of local plans or regional plans provided in the *Comprehensive Solid Waste Management Act*.

(c) Actions or conflicts related to Developments of Regional Impact.

(d) Actions or conflicts related to Regionally Important Resources.

**(3) Changes and Interpretation.** These rules and regulations may from time to time be revised by the Department pursuant to the *Administrative Procedure Act*. The Department is the final authority for interpretation of these rules.

## **CHAPTER 110-12-5-.02 ALTERNATIVE DISPUTE RESOLUTION PROCESS**

### **110-12-5-.02 Alternative Dispute Resolution Process.**

**(1) Pre-initiation Consultation.** Whenever a local government, Regional Commission, or private interest becomes aware of a conflict related to preparation or implementation of a local or regional plan, Development of Regional Impact or Regionally Important Resources, it must first contact the Regional Commission of the local government whose plan or proposed action is the subject of the conflict and ask the process manager to contact parties potentially affected by the conflict to discuss the issues and evaluate whether the conflict is suitable for the alternative dispute resolution process provided in these rules. In making a determination of whether the alternative dispute resolution process provided in these rules is appropriate for the subject conflict, the process manager must assess whether other processes for resolving the specific type of dispute (such as, but not limited to, those for annexation or service delivery conflicts) is already specified in state law; If this is not the case and the process manager's discussions with potentially affected parties results in a determination that the alternative dispute resolution process is appropriate for the subject conflict, the process manager shall transmit to the appropriate parties, in writing, a recommendation to initiate the alternative dispute resolution process by the procedures outlined below.

**(2) Petition for Alternative Dispute Resolution.** A petition for alternative dispute resolution must be filed with the Regional Commission of the local government whose plan or proposed action is the subject of the conflict. If a Regional Commission is party to the conflict, then the petition must instead be filed with the Department.

(a) The Department's *Uniform Petition for Alternative Dispute Resolution* must be used by the petitioning party. It must include:

1. A statement of the facts underlying the conflict;
2. Identification of the injury that has been or may be suffered by the petitioner;
3. Steps that have previously been taken to resolve the conflict; and
4. Listing of any other local governments, public agencies, or private interests (such as the project sponsor/property owner and any other affected property owners) that should be included as affected parties in the alternative dispute resolution process.

**(b) Eligible Parties.** Only qualified local governments and Regional Commissions are eligible to file a petition for alternative dispute resolution. The petition must be signed by the duly authorized official (such as mayor, county manager, executive director who has been authorized to take such action by majority vote of his/her governing body – i.e., city council, county commission, or regional council) of the petitioning local government or Regional Commission. Private interests may ask a local government to file a petition for alternative dispute resolution, or they may request that the Regional Commission recommend use of alternative dispute resolution as provided at section 110-12-5-.02(1).

**(3) Review of the Petition.** Within 3 days of receipt of a petition for alternative dispute resolution, the Regional Commission (or the Department, if applicable) must review the petition and determine whether the conflict is eligible for alternative dispute resolution. In making this determination, the Regional Commission (or the Department, if applicable) must consider:

**(a)** Whether the conflict is subject to alternative dispute resolution as provided in section 110-12-5-.01(2).

**(b)** Whether the petitioner is an eligible party as provided in section 110-12-5-.02(2)(b); and

**(c)** Whether the petition is complete and signed by the duly authorized official of the petitioning local government or Regional Commission.

**(d)** Whether other processes for resolving the dispute (such as, but not limited to, those for annexations or service delivery conflicts) are provided in state law;

**(4) Certification of the Petition.** If the Regional Commission (or the Department, if applicable) determines that the conflict is eligible for alternative dispute resolution, it will certify the petition. If the Regional Commission (or the Department, if applicable) determines that the petition can not be certified, it may either dismiss the petition or request that the petitioning party correct any deficiencies. These corrections must be made and approved by the Regional Commission (or the Department, if applicable) within 10 days of the date of notification of deficiencies in the petition.

**(5) Notification.** Within 3 days after certifying a petition for alternative dispute resolution, the Regional Commission (or the Department, if applicable) must notify the parties listed below that

the petition has been certified. This notification must include an explanation of the nature of the conflict and set a meeting schedule for deciding process specifics, as provided at section 110-12-5-.02(7).

(a) The petitioning local government or Regional Commission;

(b) The local government or Regional Commission whose plan or proposed action is the subject of the conflict; and

(c) The Department.

**(6) Deferring Action.** Local governments and if applicable, Regional Commissions, must not take any official action approving any project subject to the conflict until the alternative dispute resolution process is concluded as provided at section 110-12-5-.02 (12). It is intended that the alternative dispute resolution process should take place simultaneously with local development review procedures in order to minimize administrative delay for review and approval of any project subject to the conflict. Therefore, the local government may proceed with its development review process during the alternative dispute resolution period, provided that it does not make decisions on final approvals, and builds in enough time to seek any recommended alterations of the proposed project that may result from the alternative dispute resolution process, before granting final approvals. Examples of local development review activities that may take place during the alternative dispute resolution process include, but are not limited to, preliminary staff administrative functions, project evaluation/assessment, community participation meetings and hearings, site visits, and planning commission meetings to discuss, but not vote on, the proposed project.

**(7) Decisions on Process Specifics.** Once the petition is certified, the affected parties have 30 days to reach agreement on the following specifics of the alternative dispute resolution process to be employed.

**(a) Other Affected Parties.** The process manager shall assist the petitioning local government or Regional Commission and the local government or Regional Commission whose plan or proposed action is the subject of the conflict in reaching agreement on other local governments, public agencies, or private interests (such as the project sponsor/property owner and any other affected property owners), that should be included as affected parties in the alternative dispute resolution process.

**(b) Process Options.** The process manager shall assist the affected parties in reaching agreement on the desired alternative dispute resolution process to be employed to resolve the conflict. There are two basic process options available, although these may be employed in any variation or sequence, depending on the desires of the affected parties. For example, the affected parties may choose to switch to a different process option, if progress toward a settlement is not moving along satisfactorily. The two basic options vary in the role played by the impartial third party, as follows:

**1. Facilitation.** The impartial third party (see Section 110-12-5-.02(7)(c)) will facilitate meetings between the affected parties to discuss possible solutions to the conflict. The role of the third

party is to keep a dialogue going and help the affected parties move toward consensus agreement upon a mutually acceptable solution. If the affected parties have not agreed upon a solution at the end of the 90-day alternative dispute resolution process, the process simply concludes without resolving the conflict.

**2. Mediation.** The impartial third party (see Section 110-12-5-.02(7)(c)) will not only facilitate meetings between the affected parties, but will offer possible solutions for consideration by the affected parties. If the affected parties have not agreed upon a solution at the end of the 90-day alternative dispute resolution process, the impartial third party will propose a solution for consideration of the affected parties. If this final solution is not agreed to by all affected parties, the process concludes without resolving the conflict.

**(c) Impartial Third Party.** The process manager shall assist the affected parties in identifying a suitable impartial third party to facilitate the alternative dispute resolution process. Since the affected parties' trust and confidence in the impartial third party is essential for successful resolution of the conflict, the affected parties should be given every reasonable opportunity to jointly agree on the impartial third party. To assist in the identification of an impartial third party, the Department will maintain an up-to-date clearinghouse linking to appropriate listings of persons qualified for serving as an impartial third party for alternative dispute resolution.

**(d) Costs.** The process manager will assist the affected parties in reaching agreement on allocation of the various costs related to the alternative dispute resolution process, such as incidental travel, lodging, meals, and professional fees of the impartial third party.

**(8) Initiation of Alternative Dispute Resolution.** If, after 30 days, the affected parties have not agreed upon the process specifics, the process manager will assign an impartial third party from the Department's list to facilitate a *mediation* process between the affected parties. The 90-day alternative dispute resolution time limit will not begin until either the affected parties agree on process specifics, or the 30-day time limit has passed and the process manager has assigned a mediator.

**(9) Meetings.** The official designee of each affected party must be present at each alternative dispute resolution session scheduled by agreement of the affected parties and the impartial third party.

**(10) Situational Assessments.** Any affected party may request that the impartial third party perform a *Situational Assessment* at any time before or after initiation of the alternative dispute resolution process. The *Situational Assessment* is a fact finding process that may involve examination of documents, interviews, and assessment meetings that result in a recommendation of issues to be addressed, parties that may participate, additional information needed, and/or appropriate resolution procedures, such as a proposed schedule for completing the alternative dispute resolution process.

**(11) Participation.** If the Department determines that any affected party is not participating in the alternative dispute resolution process in good faith, the party will lose its qualified local government status or, in the case of an Regional Commission, eligibility for state contract

funding, for a period of either six months or until the party is determined to again be participating in good faith, whichever is longer.

**(12) Conclusion of Alternative Dispute Resolution.** The alternative dispute resolution process is intended to last until a settlement is reached, or 90 days, whichever occurs first. If alternative dispute resolution does not result in a settlement at the end of 90 days, the time-limit may be extended by consent of all affected parties. If the alternative dispute resolution process results in an settlement, the impartial third party will be responsible for documenting the settlement (in the form of a contract, inter-jurisdictional agreement, memorandum of understanding, plan amendments, deed restrictions, or other forms as appropriate) and the process manager will be responsible for monitoring and reporting to the affected parties, the Regional Commission, and the Department on progress with implementation of the settlement.

**(13) Reporting.** Within 10 days of conclusion of the alternative dispute resolution process, the impartial third party, with assistance of the process manager, must prepare a final report on the outcome of the process. This report must be provided to the affected parties, the Regional Commission, and the Department. The report will be a public document and must include the following:

**(a)** A factual summary of the issues discussed and the progress made during the alternative dispute resolution process;

**(b)** Description of any settlements reached;

**(c)** Copies of any settlement instruments (such as signed contracts or inter-jurisdictional agreements); and

**(d)** A description of the responsibilities and schedules for implementation and enforcement of settlements reached.

**(14) Other Dispute Resolution Processes.** Participation in this alternative dispute resolution process shall not alter the right of any affected party to initiate other legal or administrative proceedings to resolve the subject conflict, although all parties are encouraged, as an act of good faith, to suspend pursuit of other dispute resolution processes while the alternative dispute resolution process provided in these rules is underway.

## **CHAPTER 110-12-5-.03 DEFINITIONS**

### **110-12-5-.03 Definitions.**

**(1)** For the purpose of these rules, the following words will have the meaning as contained herein unless the context does not permit such meaning. Terms not defined in these rules but defined in

O.C.G.A. 50-8-1 et seq., will have the meanings contained therein. Terms not defined in these rules, or in O.C.G.A. 50-8-1 et seq., will have ascribed to them the ordinary accepted meanings such as the context may imply.

**(a)** ‘Affected Parties’ means: 1) the local government or Regional Commission that files a petition for alternative dispute resolution; 2) the local government or Regional Commission whose plan or proposed action is the subject of the conflict; and 3) any other local government, public agency, or private interests (such as technical experts) that the above two parties agree to include in the alternative dispute resolution process.

**(b)** ‘Days’ means calendar days.

**(c)** ‘Department’ means the Department of Community Affairs.

**(d)** ‘Development of Regional Impact’ means any project that exceeds the minimum thresholds established by the Department.

**(e)** ‘Good Faith’ means participating in the alternative dispute resolution process in a sincere effort to resolve any conflict. This includes full-time attendance by the affected party’s official designee at all alternative dispute resolution sessions and withholding final action or decisions on any project subject to the dispute until the alternative dispute resolution process is concluded..

**(f)** ‘Interjurisdictional’ means among two or more local governments or Regional Commissions.

**(g)** ‘Local government’ means any county, municipality, consolidated government or other political subdivision of the state.

**(h)** ‘Local Plan’ means the comprehensive plan or solid waste management plan for a local government prepared in accordance with the requirements established by the Department

**(i)** ‘Official Designee’ means the individual who is designated (through official action, such as resolution of the city council or county commission) by an affected party as its official representative to the alternative dispute resolution process. This individual must be given authority to act for, and represent the interests of the affected party.

**(i)** ‘Process Manager’ means a staff person at the Regional Commission or the Department who is trained in the alternative dispute resolution process. This person serves as the point of contact and process administrator for the affected parties throughout the alternative dispute resolution process.

**(j)** ‘Qualified Local Government’ means a county or municipality that:

- Adopts and maintains a comprehensive plan in conformity with the local planning requirements;
- Establishes regulations consistent with its comprehensive plan and with the local planning requirements; and

- Does not fail to participate in the Department's mediation or other means of resolving conflicts in a manner in which, in the judgment of the Department, reflects a good faith effort to resolve any conflict.

**(k)** 'Regional Commission' means any commission established under O.C.G.A. 50-8-32 (effective July 1, 2009).

**(l)** 'Regional Plan' means the comprehensive plan for a region prepared by the Regional Commission in accordance with the requirements established by the Department.

**(m)** 'Regionally Important Resource' means any natural or cultural resource area identified for protection by an Regional Commission following the minimum requirements established by the Department.