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**COLOMBIAN LEGAL FRAMEWORK FOR CREATING URBAN PLOTS, PUBLIC SPACES AND  
ALLOCATION OF BUILDING RIGHTS**

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## **0. Introduction**

The present piece seeks to bring a comprehensive explanation about three main urban processes in the Colombian territorial planning system: i. Creation of urban plots; ii. Creation of public space and iii. Allocation of buildability rights. The study will approach to these topics from a broad perspective that understands each of them as part of the general territorial processes, and as such will examine the specific regulations that determine them and analyse the consequences that the creation for plots and public space and the allocation of buildability rights could generated.

The regulations that will be studied are those formulated at national level, in the National Constitution of 1991, the Act 388 of 1997 and the national complementary regulation. The consequences that will be analysed in detail are those related with the physical conformation<sup>1</sup> of the territory and the property's rights conditions.

Therefore the first chapter will explain the key concepts and main legal procedures of the territorial planning processes. At this point the analysis will concentrate in two kinds of urban actions, the city planning decisions (actuaciones urbanísticas) and the urban development actions (acciones urbanísticas), in order to understand how the creation of urban plots and public spaces are determined by the decisions included in those actions and the tools that materialized them. This section will explain in detail the urban norms contained in the Master Plan (POT) as they regulate the use, occupation and utilization (aprovechamiento) of the territory.

Hence this first chapter will bring a complete legal context that will frame the analysis of the second chapter. In this apart the study will examine the creation of urban plots and public space, and the allocation of buildability rights. Each section will contain two parts: firstly a general description of each process and the urban norms applicable, specifically those related with urban

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<sup>1</sup> Conformation as concept will refer to territories' surface and volume ratio.

conditions and parameters; secondly an analysis on the impact of these norms on the plot's physical conformation and on the property rights' conditions.

## **1. General Context of Territorial Planning Processes in Colombia**

### **1.1. Key concepts and main legal principles**

The present chapter will explain the main characteristics of the urban planning processes to set the framework that would inform the following chapters. The explanation would be supported in the planning and land management rules included in the Colombian legal system, in order to understand the main procedures and tools, as well as the responsibilities of the municipalities, the national government and the private owners.

The Article 5 of the Act 388 of 1997, gives the following general definition of territorial planning process: "an assembly of political-administrative actions and of physical planning practices, undertaken by the municipalities or districts and metropolitan areas, in exercise of the public function, under the limits set by the Constitution and the laws, in order to arrange efficient instruments to orient the development of the territory under its jurisdiction and regulate the utilization, transformation and use of the space, according to the strategies of socioeconomic development and in harmony with the environment and the cultural and historic traditions".

In this sense, urban and territorial planning process involves public procedures that should be framed by legal principles. Some of them were established by the 1991 National Constitution (NC) and were regulated afterwards by the Act 388 of 1997, and are relevant for this study:

- i. General interest takes primacy on the individual interest.* The Article 1 of the Constitution of 1991 established general interest's primacy as a general principle that should be followed by the Estate and the citizens. In this same way the Article 1 of the Act 388 of 1997, establishes that this principle underpins all planning processes<sup>2</sup>, as it

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<sup>2</sup> | Act 388 of 1997. Article 2o. "PRINCIPLES. The territorial planning process is supported in the following principles. 1. The ecological and social function of the property. 2. The prevalence of the general interest on the individual. 3. The fair distribution of the loads and the benefits".

paves the way to adopt regulations for general interest projects, beyond individual aspirations.

- ii. *Social and ecological function of property right.* The Article 58 of 1991 CP establishes that the property right has also a social and an ecological function. Hence the holders of this right have not only benefits but also duties before the rest of the society in respect of social goals and environmental restrictions. This constitutional article establishes also, that even though the law protects the property rights, whenever their exercise is in conflict with general interest's regulations, these latter would take precedence on the property rights.

Among other actions that could be supported in this principle, the article mentioned refers specifically to the expropriation. This tool has been considered also as an application of the principle mentioned before<sup>3</sup>, and according with the Article 59 the expropriation could be used against private property without prior compensation based on public utility or social interest's causes defined by law<sup>4</sup>.

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<sup>3</sup> Pinilla, Juan Felipe, Propiedad Privada versus Planeación Urbana en Colombia, Quién manda a quien?, en "La Ciudad y el Derecho", Ediciones Uniandes, Editorial Temis, Bogotá, 2012, p. 262

<sup>4</sup> The Article 58 of Constitution of 1991 established that the expropriation could take place by judicial or administrative means. The Article 58 of the Act 388 of 1997 establishes some public utility causes that allow using the expropriation: ARTICULATE 58. The article 10 of the Law 9ª of 1989, will remain thus: "For effects to decree its expropriation and besides the specific motives in other laws in force is declared of public utility or social interest the acquisition of real estate to destine them to the following end

- a) Social infrastructure construction projects in the sectors of the health, education, recreation, head offices of supply and security citizen;
- b) Social housing projects, including those of legalization of titles in urbanizations in fact or illegal different to them contemplated in the article 53 of the Law 9ª of 1989, the rehabilitation of tenancies and the resettlement of communities located in sectors of high risk;
- c) Execution of programs and projects of urban regeneration and provision of urban public spaces;
- d) Production, enlargement, provision and distribution of public services,
- e) Execution of programs and projects of road infrastructure and of systems of massive transportation;
- f) Adornment projects Execution, tourism and sports;
- g) Operation of the administrative headquarters of the public companies, with exception of the commercial and industrial businesses of the State and those of the companies of mixed economy, whenever their locating and the consideration of public utility they be clearly you determined in the plans of code or in the instruments that they develop them;
- h) Preservation of the natural and cultural patrimony of local, regional, and national interest, included the environmental, historic and architectural values
- i) Delimitation of areas for the future expansion of the cities;
- j) Delimitation of areas for the protection of the environment and the water resources;

- iii. *Capital gains sharing.* According with the Article 82 CP, public entities would participate in the capital gains generated by urban interventions. In the same way, the Article 73 of the Act 388 of 1997, established that city planning actions that regulates land use increases it's avails, therefore public entities are allow to participate in the capital gains obtained as result of said actions. These resources should be destined to boost the urban development quality of the municipality. The local council is in charge of formulating the norms that enable the collection and use of the capital gains.
- iv. *Equitable distribution of benefits and burdens of planning.* The Act 388 of 1998, establishes in the Article 38, that the master plans (POT) and the urban norms should determine mechanisms that guarantee the fair distribution of the burdens and benefits derived from the transformation of the territory, among individuals and public entities. As mechanisms to guarantee the equitable distribution, the article includes, among others, the urban action units<sup>5</sup>, building rights' compensation and land transfers.
- v. *Municipal autonomy.* Both the 1991 Constitution and the Act 388 considers that the municipality plays a definitive role at a local level, especially for territorial planning processes. The 1991 Constitution considers that the municipality is the main territorial entity in the political and territorial system. Then, among other duties, the city councils regulate the uses of the municipal territory (Art.330 CP). The Act 388 in its Articles 5 and 8 of emphasizes the municipality role, establishing that land development processes are materialized in specific urban actions advanced by the local authorities.
- vi. *Urbanism as public function.* The Article 3 of the Act 388 of 1998, establishes that urbanism is a practice that should be considered as a public function. Local authorities in execution of this function and regarding on the role that was determined by the Constitution must pursue the following goals:

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k) Urbanization projects execution and of priority construction in the terms predicted in the plans of code, according with this law provisions;

l) Execution of urbanization projects, development and urban renewal through the action units modality, by means of the instruments to readjust of lands, integration real estate, cooperation or the other systems predicted in this law;

M) Resettlement populations by imminent physical risks."

<sup>5</sup> This concept will be explained later in the text.

- Enabling the access for the inhabitants, to the public ways, infrastructures of transportation and other public spaces. Guarantee its destination to common use as materialization of their constitutional rights of access to decent housing and public services.
- Answer to land use changes, adapting it for the sake of the common interest, encouraging its rational utilization in harmony with the social function of the property to which is it inherent an ecological function.
- Seek the improvement of the quality of life of the inhabitants, the fair distribution of the benefits and burdens and the preservation of the natural and cultural patrimony.

## **1.2. Territorial planning actions:**

As it's been previously said, territorial development is a complex process where decisions from local authorities and private owners' actions determine the land utilization and encourage or hamper development trends. According with the Act 388 two kinds of actions could take place:

### **1.2.1. City planning actions:**

According with the Article 8 of the Act 388 of 1997, as the urbanism is a public function, municipalities should take decisions related with land management and zoning. Among others the main planning actions established by the Article 8 Act 388, are:

- I. Classifying the territory in rural, urban, protection and urban expansion land.
- II. Localizing and indicating the characteristics of the infrastructure needed for transportation, public services, disposition and processing of residues, and the construction of public amenities (hospitals, schools or airports)
- III. Zoning the territory, for commercial, residential or public activities. Defining specific uses, intensities, the land transfers and occupation conditions.
- IV. Determining free spaces for parks and public green areas, in adequate proportion to the collective needs.
- V. Determining the characteristics and dimensions of the urban action units (unidades de actuación urbanística)
- VI. Directing and carrying out infrastructure works for the transportation, the home public utilities and the public equipment, directly or in association with other entities or with private actors.

VII. Expropriating the lands whose acquisition is declared as of public use or social interest.

This Article also points out that all these actions must be included or authorized by the Master Plans(POT) or in other planning instruments.

#### **1.2.1.1. Master Plan (POT)**

The POT is the main tool by which the municipalities could direct, manage and regulate the physical use of their territories. This instrument would contain the development goals of the area and the policies and rules that should be applied to achieve them. The conditions established in the POT might determine a general framework in which local authorities and citizens must use the land. Therefore, for the present analysis is relevant to understand which kind of rules would be included in the POT to regulate the land use, its occupation and exploitation and also the development rights regime.

##### **1.2.1.1.1 Urban Norms classification:**

According with the Act 388 of 1997 in the POT there are general dispositions about programs and projects and also specific urban norms. These regulations define the following issues:

- Land classification
- Uses and activities allowed (Zoning)
- Land management conditions and procedures.
- Building rights standards

The Article 15 of the Act 388 defines three different kinds of norms that work as criterions for the intervention in the territory. The next table shows the differences between them:

**Table 1: Urban norms classification.**

Kind of norm	Objective	Contents
<b>Structural</b>	Achieve general goals and support strategies included in the POT.	<ul style="list-style-type: none"><li>▪ Land classification.</li><li>▪ Urban managing conditions for historical preservation.</li><li>▪ Delimitation of areas for basic infrastructure for public services.</li></ul>



		<ul style="list-style-type: none"> <li>▪ <u>Delimitation of free spaces for parks and green areas, and all dispositions related with public space in general terms.</u></li> <li>▪ <u>Definition of urban actions units. Including the criterions, procedures and tools applicable.</u></li> <li>▪ <u>Guidelines for the formulation of partial plans.</u></li> </ul>
<b>General</b>	Regulate uses, intensities, and urban guides. Establishes procedures for urban actions s: parcelling, urbanization, construction and incorporation of undeveloped land to urban perimeter.	<ul style="list-style-type: none"> <li>▪ <u>The specifications of isolations, volumetries and heights for the processes of building.</u></li> <li>▪ The decision of the zones of renewal, jointly with the definition of priorities, procedures and intervention programs.</li> <li>▪ The characteristics of the secondary road network, and the localization of collective equipment of public or social interest, free spaces at zonal or local scale.</li> <li>▪ The specifications of the secondary network public services.</li> <li>▪ The specifications of the free land transfers.</li> </ul>
<b>Complementary</b>	Related with the implementation of programs and projects included in the POT. These norms also regulate exceptional urban interventions, or those that need to be implement in short terms.	<ul style="list-style-type: none"> <li>▪ The statement and identification of the lands and real estate of development or priority construction.</li> <li>▪ The locating of lands whose use is that of social housing and resettlement purposes.</li> <li>▪ The specific urban standards formulated in partial plans for units of urban development action and for other operations.</li> </ul>

Source: Article 15. Act 388 of 1997.

The previous table shows dissimilar contents and also a different planning scale defined by the kind of decisions adopted. The structural norms would determine development conditions at a city level and the general ones would detail those conditions to the physical dimension of the interventions, defining minimal areas and plots, and specifications for buildings. The complementary norms establish special conditions for the implementation of rules included in the other two kinds of rules.

From the norms showed here, are relevant for the present study the general and structural norms, and particularly those that determine the development conditions for each plot, the benefits authorized and the physical standards that the constructions must follow.

#### **a. Urban managing conditions**

The Urban managing conditions (tratamientos urbanísticos) are a fundamental component of the urban norms because they show the development goals that the local authority has decided for each area of the city. The Decree 4065 of 2008<sup>6</sup>, define these conditions as the decisions of the POT that define a specific way of management for different sectors in the urban land of the city, according with their physical characteristics. This Decree indicates that is possible to define managing conditions for the following processes: urban regeneration, development, conservation, consolidation, and upgrading.

National complementary regulations have defined what kind of rules should be formulated for each kind of urban conditions:

- i. *Urban managing conditions for development*: According with the Article 7 of the Decree 4065 of 2008, this conditions are included in the urban component of the POT and regulate the urbanization of plots suitable that have not been developed yet, localized in urban or urban expansion land. These conditions must define land uses, deciding which are complementary, restrictive and forbidden<sup>7</sup>. These rules also determine minimal area for blocks (manzanas), big blocks (supermanzanas) and plots.

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<sup>6</sup> Decree 4065 of 2008. "Regulate the provisions of the Act 388 of 1997 related with urbanization processes and development of plots in areas in urban land and urban expansion land. Includes also rules applicable for the collection of capital gains ins urbanization and construction process".

<sup>7</sup> The Decree 3600 of 2007, includes a definition each kind of use: a. Main use: It is the desirable use that corresponds with the specific function of the area and offers the greatest advantages for a sustainable development. B. Complementary Use: It is a use that is not opposite to the main use; matches with its possibilities, productivity capacity and protection rules. C. Restricted: where the use is incompatible with the main use in a certain degree, but is possible to adapt it according with urban norms. D. Forbidden: Incompatible use with the main use of an area; it is against ecological conservation objectives and territorial planning conditions.

- ii. *Urban managing conditions for conservation*: The Decree 151 of 1998<sup>8</sup> (Articles 2 and 3), established that these conditions are applicable for those areas where historical, ecological or architectural reasons limit the physical transformation of areas, private plots, public works and public space elements. The application of these conditions constraint the property rights, so these limitations must be compensated using the development rights transfer<sup>9</sup>.
- iii. *Urban managing conditions for upgrading*: These conditions have not been defined by national complementary regulations. However this kind of conditions might support<sup>10</sup> the process of legalization<sup>11</sup>, so the provisions for this process established in the Decree 564 of 2006 give general parameters to understand the urban managing conditions for upgrading. The Article 129 of this decree determines that as part of the legalization process is necessary to define the urban conditions of the area, following the provisions included in the POT, specially those that defines the areas for the construction of road network and public services, delimitation of protected areas, risk areas, land classification, land uses and upgrading programs.
- iv. *Urban managing conditions for urban regeneration*<sup>12</sup>: These conditions have not been defined either. The Ministry of City, Housing and Territory<sup>13</sup>, considers that these kind of conditions must include provisions related with:
  - Allocation of uses and densities,
  - Urban standards,
  - Block's minimal area and instructions for planning instrument's application.

<sup>8</sup> Decree 181 of 1998. " Include rules related with the mechanisms applicable to arrange compensations for urban managing conditions in conservation using buildability rights transfer".

<sup>9</sup> This kind of rights will be studied in the last chapter of the study.

<sup>10</sup> Ministry of City, Housing and Territory, presentation, " Formulation of the POT: Urban component", at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.antioqui.a.gov.co%2FPDF%2Fseminario\\_revision%2F280413\\_COMPONENTE%2520URBANO\\_mvct%25202013.pptx&ei=ASgyU-K\\_IsyMkAelhoHQCw&usg=AFQjCNFeW3doJe43vkEzLaCkjinJrBcdaQ&sig2=mqQFjzKaG002o5s8i8cyug&bvm=bv.63738703,d.eW0](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.antioqui.a.gov.co%2FPDF%2Fseminario_revision%2F280413_COMPONENTE%2520URBANO_mvct%25202013.pptx&ei=ASgyU-K_IsyMkAelhoHQCw&usg=AFQjCNFeW3doJe43vkEzLaCkjinJrBcdaQ&sig2=mqQFjzKaG002o5s8i8cyug&bvm=bv.63738703,d.eW0)

<sup>11</sup> Decree 564 of 2006, Article 122: Legalization is the process used by the local authority to acknowledge the existence of human settlements (social housing dwellers) set before the 27<sup>th</sup> of June in 2003.

<sup>12</sup> The Decree 075 of 2013, includes two definitions in relation with redensification and percentages of public housing needed a. Urban managing conditions for urban regeneration in reactivation schemes: it refers to the rules that regulate those zones where is necessary to modify the existing buildings in the plots, seeking to promote re-densification processes. Under this kind of rules is possible to change, keep or modify the sector through development b. Urban managing conditions for urban regeneration in development schemes: these conditions apply for those zones that required to advance re-urbanization process in order to generate new public private and public spaces, and therefore they need also new urban standards about uses and benefits. (Decree 0075 of 2008)

<sup>13</sup> Op. Cit, Ministry of City, Housing and Territory

The local authorities must follow the definitions just explained that are included in the law and in the national complementary regulations, however is the POT, the planning instrument that would determine the territorial development of their areas.

#### **b. Urban parameters**

This component of the urban norms refers to the specifications for the development processes in an area, according with the **development allocation system (reparto de cargas y beneficios)** established in the POT. These standards would govern the physical conformation of plots and buildings and the benefits that could be obtained as a result of the interventions in the territory.

The Act 388 of 1997 in the Article 38 establishes that is necessary to have mechanisms to guarantee a fair distribution of burdens and benefits derived from territorial planning process among the people that could be affected for them. This article points out that the urban action units, the compensation and the construction rights transfer and development are some of the mechanisms could be used for this purpose. As it was previously explained this is one of the general principles under which the urban norms would seek to protect the right to equality between individuals but also support the construction of the infrastructure needed to provide services and amenities.

The definition of those burdens and benefits is included in the Decree 2181 of 2006<sup>14</sup>. The Article 27 establishes two kinds of burdens:

- i. *General or structural burdens:* This kind of burden refers to the construction of the main road network, primary infrastructure for public services. The owners of the area where these constructions would take place must undertake the responsibility of the construction. The sources destined to support this burden could be recover by fares, betterment contributions, annual tax on immovable property or any other mechanisms that could guarantee and equal distribution.
- ii. *Local burdens:* This burden refers to the construction of secondary public services network, free transfers for parks and green areas, secondary road network and construction of communal amenities. The owners of the urban action unit must assume these constructions.

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<sup>14</sup> Decree 2181 of 2006. "Regulates partially those provisions related with partial plans included in the Act 388 of 1997 and dictate other norms about urban issues"

The Article 2 of this same decree defines the benefits as it follows:

- i. Building potential (aprovechamiento urbanístico): square metres authorized to be build according with the uses established by the urban norms.
- ii. Basic Building Potential: is the urban benefit that indicates the maximal buildable area that a private owner might obtain according with its participation in the local urban burdens.
- iii. Additional Building Potential: Is the maximal buildable area above the Basic building potential authorized to the private owners that participate in the general urban burdens.

The rules to obtain the benefits explained here would be included in the POT or in other instruments adopted (partial plans) and would define the following urban parameters:

- Development index: defined by the same decree as the proportion of the area that could be occupied by a building in the first floor. Therefore the index is the result of the division of the height into the total area of the plot.
- Building index: this index is the maximal times in which the plot's surface could become into build area. The index is the result of the division of the authorized building area in the total area of the plot.
- Buildability rules: these kinds of rules refer to the isolations between buildings, volumetric and heights authorized.

#### **1.2.1.2. Land management mechanisms**

The structural norms include decisions related with the application of planning and land management mechanisms that would translate POT provisions for specific cases and would help to advance urban development actions. For the present analysis is relevant to explain the following instruments:

##### *a. Partial Plans<sup>15</sup>:*

According with the Article 19 of the Act 388, the partial plans are instruments used to complement and implement the POT, for determined areas in urban and expansion land.

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<sup>15</sup> The specific process for the partial plans formulation and approbation is included in the Decree 2181 of 2006.

Therefore the partial plans include also urban decisions that would specify POT provisions and determine rules and mechanisms for different areas of the city:

- Delimitation and characterization of the area where the urban intervention would take place.
- Definition of development goals for the area. Including building standards, public space conditions, and upgrading or regeneration programs.
- Formulation of urban norms that define land uses, building index, buildability rules, distances between constructions etc.
- Description of other instruments for urban planning, collection of capital gains and distribution of benefits and burdens.

Citizens or private entities could propose partial plans following the POT provisions, to be approved by the local planning authorities. In this same way, the POT could determine that other areas of the city must be developed using other kind of instruments, as the urban actions units or mega urban projects.

*b. Urban action units:*

The Article 39 of the Act 388 of 1997 established that these units are areas composed by one or more plots that are categorical delimited by the urban norms in the POT, as areas that must be developed as planning unit. This mechanism seeks to encourage a rational land use, guarantee that urban norms would be respected and secure the construction of infrastructure for transportation, public services and amenities, supported in the distribution of benefits and gains.

The POT provisions would determine the urban action units, but they will be implemented as part of a partial plan. Then local authorities or citizens would propose the units delimitation, and it will be accepted by the planning authority after the partial plan is approved (Article 42 Act 388 of 1998). As a consequence the areas included in an action unit, will be managed and develop in a joint scheme between the private owners that are part of the unit.

**1.2.1.3. Urban control instruments**

**a. Urban Licenses**

The urban license is the tool that local authorities can use to guarantee that private owners and public entities effectively follow the regulations included in the POT. The Decree 1469 of 2010<sup>16</sup> states different kind of urban licenses and established the requirements needed.

The first article of this decree defines the urban licenses, as the previously authorization enacted by the local authorities or an urban curator<sup>17</sup> that according with the urban norms would permit or not urbanization works, subdivision, construction, building demolition, intervention and use of public space. Regarding on the land classification and the kind of intervention the Decree 1469 defines five different kinds of license:

- i. *Development License*: is the authorization to advance in one or a group of plots within urban land, all the actions needed to adapt and subdivide those plots for future construction processes. These actions encompass the creation of public and private spaces, road network and infrastructure and public services works (Article 4).
- ii. *Parcelling License*: is the permit needed to advance in one or a group of plots within rural and suburban land, the same kind of actions previously mentioned but fulfilling the rules established in the POT for rural uses (Article 5).
- iii. *Subdivision License*: this license would be need to divide one or a group of plots located in rural, urban or urban expansion land. This kind of license could be an authorization for division of urban land (urban subdivision) or for rural area ( rural subdivision). ( Article 6)
- iv. *Construction License*: is the permit needed to advance constructions, circulation areas and social areas. In this kind of licenses the urban norms (uses, buildability, heights etc) would be specifically approved. (Article 7).

This kind of license has three modalities:

- a. New work
- b. Adaptation
- c. Reparation
- d. Modification

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<sup>16</sup> The Article 101 of the Act 388 of 1997 defines the urban curator as: private actor that is in charge of study and enact urban licenses requested by solicitors, for the parcellation, development, construction or demolition, and for the creation and subdivision of plots. According with the Article 73 of the Decree 1469 of 2010, the urban curator executes a public function verifying that the urban norms are fulfilled by the projects presented for approbation.

- v. Public space use and intervention: This license is needed to use and affect public use goods in the public space.

### **1.2.2. Urban development actions:**

#### **1.2.2.1. General description of Parcelling, Urbanization and Construction:**

As it was explained previously the city planning actions determine the conditions on which the territory could be intervene. The Act 388 also refers to the ways these interventions could take place and tclassifies them as urban development actions that could be advanced by public entities or private owners.

These actions are:

- i. Parcelling<sup>18</sup>
- ii. Urbanization
- iii. Construction

Each of these actions contains a series of procedures that are regulated by the POT and it's urban norms. According with the Decrees 4065 of 2008 and 1469 of 2010, these two actions two actions would seek to adapt the land for future construction processes, according with the urban norms of the POT.

The actions related with parcelling and urbanization, include these five (5) fundamental processes:

- i. Creation of public and private space
- ii. Creation of urban or rural plots:
- iii. Construction of public infrastructure: road network, public services and amenities
- iv. Allocation of construction potential
- v. Allocation of building rights

These processes are determined by the norms included in the POT in different ways that would underpin all the territorial management process. Therefore, the next chapters will analyse their interaction, focusing in two specific dimensions:

- The physical characteristics of the plots after each process
- The Impact on property rights.

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<sup>18</sup> This piece specifically focus on urban development actios in urban land.



## 2. Specific processes

The previous sections gave a the elements to understand how the interventions in the territory advance by private or public means, are regulated by legal provisions and are part of a complex process of planning determined by the characteristics of the territory and the development goals. The interventions, that basically consist on adapt or change the existing conditions of an area as urban development actions and are determined by city planning actions.

The following diagram shows this relationship:

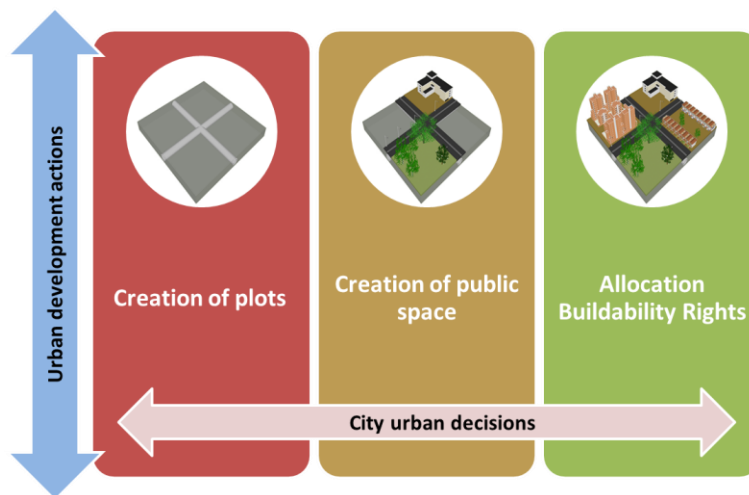


Diagram 1

These processes are determined by city planning decisions contained in the POT expressed basically as urban norms. For the analysis is relevant to take into account the norms related with: Classifying land, Definition of Uses and activities allowed and those that define urban managing conditions. In this same sense is important to explain if those activities required an urban license or not, as at the end the license will be the materialization of the urban norms of the POT.

In order to understand how the urban norms would determine the urban actions of urbanization and construction, the next sections will first explain how each process is part of an urban development action and then it will focus in analyse those urban norms that result applicable for each process. At this point the analysis will highlight those that might affect the physical characteristics of the territory, from buildability rules to urban benefits authorized. Then the study will explore also the effects generated for private property rights' conditions regulations.

### **2.1. Creation of urban plots**

As it was explained before, the urban development actions, and especially the urbanization, consists basically on adapt the existing territory to be suitable for future construction processes. Then the plots in rural or urban land are fully linked with the existing network through the provision of basic services, roads, communal and recreational areas. Therefore the following analysis is set in a context of undeveloped land, where the actions required should be previously included in the POT and any intervention should be also authorized by the local authorities.

The creation of plots, is determined by city planning decisions included in the POT and other urban norms and the activities that could take place will be authorized or not by urban licenses. In this sense, the present chapter will start explaining how the creation of plots should be understood as a process of the urban development action of the urbanization. Then the text will explore in detail those urban norms applicable for this process. For this purpose the explanation will follow the provisions included in the Act 388 of 1997, the Decrees 2181 of 2006 and 4065 of 2008<sup>19</sup>. Finally, once the urban conditions that affect the creation of plots are clear the study will analyze the consequences of the process in two dimensions. First in the physical conformation of the plots; here the analysis will show how urban conditions managing and urban standards might define specific characteristics for these areas. The second dimension is the property rights' conditions, at this point the study will analyze the how the requirement of an urban license might affect those conditions and also how the exercise of the right will be necessary limited by the distribution of burdens and benefits.

### **2.2. Creation of urban plots**

As it was explained before, the urban development actions, and especially the urbanization, consists basically on adapt the existing territory to be suitable for future construction processes. Then the plots in rural or urban land are fully linked with the existing network through the provision of basic services, roads, communal and recreational areas.

The following analysis is set in a context of undeveloped land, so the actions required should be previously included in the city planning decisions (POT) and any intervention should be also authorized by the local authorities (urban licenses). Therefore this chapter will first study the

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<sup>19</sup> Decree that regulates the legal provisions of the Act 388 of 1997 related with actions and procedures for urbanization process and development of plots and areas localized in urban and urban expansion land.

creation of plots as part of urbanization following the provisions included in the Act 388 of 1997, the Decrees 2181 of 2006 and 4065 of 2008<sup>20</sup>. Then the analysis will also explore the requirements that creation of plots might follow to be authorized according with the Decree 1469 of 2010.

### **2.2.1. Description as part of an urban development action**

As it was previously explained, the urbanization is one of those urban development actions that could take place in the territory. The process could be easily related with the transformation of an area to be suitable for construction; the legal definitions have specified what is about that transformation and what are the rules and conditions that would determine it. In this way the Article 2 of the Decree 4065 of 2008, defines the urbanization as the group of actions to adapt a plot or a group of plots undeveloped, to provide them with public services' infrastructure, local road network, amenities and public space that would transform them to be suitable for future construction. These actions could be advanced by public authorities or by private owners, individually or as part of a group, by their decision or compelled by urban norms.

From this definition is important to have in mind three elements: the territory where the urbanization could take place, the actions involve and the legal tools available to advance this process. The Article 2 gives basic definitions about these elements that will be used in the following sections:

- i. *Undeveloped areas or plots.* Those areas or plots that haven not been develop and where the urbanization is allowed by the urban norms. Those areas that count with development license but the territory has not been urbanized could be understood also as undeveloped areas.
- ii. *Areas for urbanization.* Areas that could be urbanized and has urban managing conditions for development according or undeveloped areas that have any other urban managing condition.
- iii. *Reserved areas for structural systems.* Are those areas of the land that according with the POT or other urban norms must be destined for main road network for transportation, primary public services infrastructure and conservation areas for natural resources protection.

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<sup>20</sup> Decree that regulates the legal provisions of the Act 388 of 1997 related with actions and procedures for urbanization process and development of plots and areas localized in urban and urban expansion land.

- iv. *Public transfer areas.* Areas destined for the construction of secondary public services infrastructure, local road network, amenities, public space and parks. These areas must be transfer to the local authorities to be part of the public space the municipality.

### **2.2.2. Urban norms applicable for the process**

The creation of plots, as part of the urbanization process is determined by city planning decisions included in the POT and other urban norms. The next table shows the specific interactions between this process and the application of some of those norms. In this same sense the creation of urban plots should not be understood separated from the creation of public space, but each of them would be described separately in order to give a complete explanation about them.

#### **2.1.2 Relevant impacts:**

##### 2.1.2.1 Physical conformation:

The physical conformation of and area or a plot is the result of a series of decisions reflected in urban norms. To start two main decisions that are part of the structural urban norms (See Table 1) need to be explained: land classification and definition of land management mechanisms (urban action units and partial plans).

According with the Articles 1 and 4 of the Decree 4065 of 2008 the land classification included in the POT determine that this process could take place in urban or expansion land, and according with this classification that urbanization conditions might be different. As general rule the Article 1 explains that the urbanization could be advance by public entities or by private owners individually delivered or compelled, when the POT requires adopting an urban action unit.

Then if the intervention takes place in urban or expansion land the land management mechanism may vary:

- i. When the process takes place in expansion land it would be necessary to adopt a partial plan always.
- ii. When the process is going to be advance in urban land the mechanism may vary:
  - a. Adopting a partial plan when is needed a joint land management through urban action units or others special urban operations.

- b. Through the approbation of a development license, when the plots or plot has direct access to public services and fulfill one of these conditions:
  - The plots' size is not over 10 hectares and area part of a consolidated area or counts with development license.
  - The plots size is over 10 hectares but they do not required joint and management.

**a. Urban managing conditions**

The urban managing conditions impact the creation of urban plots and therefore their physical conformation. As it was explained before the urbanization process might take place in those areas that has urban managing conditions for development. The Article 7 of the Decree 4065 explains that those conditions might defined at least:

- i. Minimal areas for megablocks, blocks, super-plots and plots.
- ii. Volumetric norms
- iii. Building and development index
- iv. Distance between buildings
- v. Entrance garden (antepatio)
- vi. Setbacks
- vii. Garages
- viii. Ramps
- ix. Stairs
- x. Parking lots
- xi. Free transfers

The Decree 4065 also defines specific conditions that must be considered in the urbanization processes in areas under urban managing conditions of development. The Article 5 of this Decree establishes that **subdivision of plots in urban land**, suitable for urbanization that are still undeveloped could not be subdivided before the urbanization process. However the subdivision could take place in the following cases:

- Subdivisions ordered by judicial decisions
- Is required to advance public utility works

- The division would separate areas localized in urban land from areas in expansion or rural land.
- If the POT or other instruments include special regulations about subdivision

For processes in urban expansion and rural land, the Article 6 determines that the plots could not be subdivide into areas smaller than the familiar farm unit<sup>21</sup>, before the partial plans for the area are approved. Any exception would need to be accredited in the urban license, and those plots have to be destined for those uses authorized by the POT.

The regulations included in the urban managing conditions would define the physical conformation of the urban plots as a result of an urbanization process, thus the urban norms included in the POT or other instruments adopted (p.e Partial plans) will give the parameters needed to advance any intervention in the territory. The law and the national complementary regulations have gave minimal issues that must be incorporated by the local authorities, however the specific conditions could only be understood in each case following the POT provisions.

#### **b. Urban parameters**

As it was explained before the urban standards define the specifications and benefits authorized for the interventions in the territory, according with the development allocation system that is established in the POT. In this way, these standards might vary regarding on the way the burdens are assumed and also in the urban managing conditions determined for each area.

In the creation of urban plots the urban standards would determine the proportion of the area that could be occupied and built, as well as the conditions of heights and isolations for the buildings that could be constructed. Therefore the relevant decisions would be taken in three levels: Firstly, the general provisions of the POT related with the burdens and benefits scheme and the urban managing conditions allocated for a specific area. In a second level the specific rules included in the POT for the urban managing conditions, for the case of urban managing conditions for development, it will define among others the following aspects: Minimal areas for mega blocks, blocks, super-plots and plots, volumetric norms, building and development index and distance between buildings. Finally, if the process will take place in expansion land, the partial plan is the instrument that will applied the scheme to distribute burdens and benefits, detail the urban

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<sup>21</sup> According with the Law 160 of 1994 these units are the basic area of agricultural, livestock, poultry production, which extension regarding on environmental conditions and accurate technology, allows a family to payback the work done and count with money excess to add to their capital.

managing conditions and will establish also the basic building potential and additional building potential.

#### *2.1.2.2. Property Right's conditions*

In the first section of this study were analyzed two general principles that could be considered as corner stones for the territorial planning processes. The rule that sets that the general interest take primacy on the individual interest allow the formulation of urban norms that following general motives could restrict or even extinguish the property rights. In this same sense, understand that these rights also implies a social and ecological function, implies that private owners should follow the social goals defined by the local authority and should also respect the environmental restrictions.

For this reason the city planning norms determine the way the urban development actions could take place, defining not only the physical conformation of the plots and buildings but also establishing the required authorizations and the burdens and benefits that will be shoulder by private owners.

### **2.2. Creation of public space**

As it has been explained the urbanization process involves actions to adapt the existing territory to connect a plot or a group of plots with the urban structure of the rest of the city and to provide the urban services needed to advance future construction works. One of those actions is the creation of public space, as one of the interventions in the territory that occurs as a result of other process as the creation of urban plots explained before.

However in this study the process will be considered as a different process, underpinned by a comprehensive definition of public space that includes two kinds of areas. Firstly the public space understood as the free land that the owners should transfer to build local road networks and amenities established in the Article 37 of the Act 388. The second kind of public space is defined by the Article 5 of the Act 9 of 1989, as the public buildings and architectonic and natural elements of the private buildings, destined for its use and affectation, to satisfy urban collective needs beyond individual interests.

Consequently the present chapter will start by explaining how public space is considered in urbanization as an urban development action following part of the provisions that were also studied in the chapter 2.2. The urban norms included in the POT will also determine the way those areas will be created and how they will be part of the rest of the intervention in territory. Hence the explanation will be supported by the Decree 1504 of 1998, 2181 of 2006 and 4065 of 2008. Then the study will focus on the concept of land transfer defined by the Act 9 of 1989, as it is main instrument that allows local authorities to obtain land for without using to land purchase or expropriation. Finally, the piece will explore the implications of the creation of public space in the property rights ' conditions, understanding first the consequences of the land transfers for the owners and then those requirements that should be achieve to advance an authorized intervention in the public space.

### **2.3. Allocation of Buildability rights:**

As it was explained in the first chapter, the allocation of urban avails represents in basic terms those conditions that would allow the owners to exploit their plots and obtain specific benefits. These decisions, expressed in urban standards, will be the result of the application of the POT provisions about urban managing conditions and the development allocation system. In the chapters studied before was clear that the POT approved by each municipality will follow the provisions included in the national complementary regulations, but it will define specific conditions and rules for the distribution of burdens and benefits.

The different aspects studied in the previous chapters about the way urban development actions are determined, have showed a specific characteristic of the territorial planning process in Colombia. The principle that requires that the general interest takes primacy on the individual interest enhance the formulation of planning rules to regulate the use land and transforms the way the property rights' should be exercise. This transformation has a specific consequence on the possibility of differentiate the property right of the land and right to build<sup>22</sup>. The latter, also known as development rights are included in the Act 388 of 1997 in two specific cases. Firstly, as the possibility of the local authorities to convert development indexes in these kind of rights. Secondly

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<sup>22</sup> Op. Cit, Pinilla, 2012, p. 281



local authorities could use these rights as a mechanism to apply the capital gains obtained in an area through the issue of securities<sup>23</sup>.

Therefore is necessary to understand how these development rights could be allocated. This will be the starting point of the present chapter. Then the analysis will explore the urban norms related with the allocation of development rights, using the provisions of the Act 388 of 1997 and the Decree 151 of 1998, that regulates specifically how these rights can work as compensation on the urban managing conditions for conservation.

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<sup>23</sup> Ibid, p. 283