



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

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CRC-21-36

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MEMORANDUM

To: Coastal Resources Commission
From: Tancred Miller, Policy & Planning Section Chief
Re: Continued Discussion: Amendments to 15A NCAC 7B CAMA Land Use Plans – Enforceable Policies

At your September meeting, staff presented proposed amendments to Subchapter 7B that would require local governments to clarify which of their land use policies exceed the Commission's coastal development rules, *and* which polices the local government wishes the Division to enforce during CAMA permitting reviews under G.S. 113A-120(a)(8).

We also reviewed a September 14th comment letter from Mr. Chris Millis, Director of Regulatory Affairs for the NC Home Builders Association, regarding the proposed amendments. The letter expressed support for the goal of clarifying enforceable policies, but also concern that the amendments alter existing powers that the Commission gives to local governments, enabling them to adopt ordinances that exceed the Commission's authority to enforce, putting the amendments in conflict with existing law. The letter states that the NC Home Builders Association,

"[Does] not support allowing the Commission and local governments to exceed the authority granted within GS 113A-106, 108, 111, and 120(a)(8)."

Staff requested time to further review and discuss the comments with the Commission's and Division's counsel. In establishing a state-local partnership, the Coastal Area Management Act (CAMA) § 113A-110 requires that land use plans shall,

"[C]onsist of statements of objectives, policies, and standards to be followed in public and private use of land within the county,"

The Commission's Subchapter 7B rules define the template that local land use plans must follow, and the topics that must be addressed in order to be certified by the Commission, but do not prohibit a local government from adopting policies or ordinances that are more stringent than the Commission's standards, or establishing standards for development activities that the Commission's rules do not address. For example, a local land use plan may prohibit the use of sandbags for oceanfront erosion control, which is more stringent than the Commission's rules, or may adopt building height standards, which is a development activity for which the Commission



does not have a standard. In these examples, CAMA, under G.S. 113A-120(a)(8), authorizes the Commission to deny a permit application that is inconsistent with the local land use plan.

Per our discussion with DCM and CRC counsel, the proposed amendments do not grant any new authority to local governments, nor do they seek to expand the commission's existing permitting authority. G.S. 160A-174 (see below) expressly authorizes a local government to adopt a standard that is more stringent than a State standard, and G.S. 113A-120(a)(8) requires the Division to deny a CAMA permit application that is inconsistent with a local land use plan. It is also important to note that CRC certification of a local land use plan is an acknowledgement that the plan has fulfilled the required planning elements under Subchapter 7B; a local government has the freedom to include any desired standard within its legislative authority.

Staff has added language to the proposed amendment to clarify that the term "exceeding" refers to a policy that is more stringent than a Commission development standard, or to an activity for which the Commission has no standard, and is within the Commission's jurisdiction by requiring a CAMA permit. We welcome further discussion with the Commission, and additional input from local governments, the NC Home Builders Association, and other interested stakeholders.

§ 160A-174. General ordinance-making power.

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

- (1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;
- (2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;
- (3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
- (4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;
- (5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;
- (6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)



SUBCHAPTER 07B – STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0700 – LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS

(a) Organization of the Plan. The land use plan or comprehensive plan, hereinafter referred to as "the plan", shall include a matrix that shows the location of the required elements as set forth in this Rule.

(b) Community Concerns and Aspirations. The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community to support the land use and development policies included in the plan. This element shall include:

- (1) Significant existing and emerging conditions: The plan shall describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: The plan shall describe the land use and development topics most important to the future of the planning area. This description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(2) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: The vision shall describe the general physical appearance and form that represents the local government's plan for the future. It shall include objectives to be achieved by the plan and identify changes that may be needed to achieve the planning vision as determined by the local government.

(c) Existing and Emerging Conditions. The purpose of this element is to provide a sound factual basis necessary to support the land use and development policies included in the plan. It shall describe the following:

- (1) Population, Housing, and Economy. The plan shall include discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics, including age and income, and
 - (iv) Thirty year projections of permanent and seasonal population in five-year increments.
 - (B) Housing stock: The plan shall include an estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured).
 - (C) Local economy: The plan shall describe employment by major sectors and community economic activity.
- (2) Natural systems. The plan shall describe the natural features and discuss the environmental conditions of the planning jurisdiction to include:
 - (A) Natural features as follows.
 - (i) Areas of Environmental Concern (AECs) as set forth in 15A NCAC 07H;
 - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
 - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations located at <http://portal.ncdenr.org/web/q/ps/csu/classifications> and provided at no fee; and Division of Marine Fisheries (DMF) shellfish growing areas and water quality conditions located at <http://portal.ncdenr.org/web/mf/shellfish-sanitation-and-recreational-water-quality> and provided at no fee;
 - (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands, including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas;
 - (ix) Environmentally fragile areas, such as wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and



- (x) Additional natural features or conditions identified by the local government.
- (B) Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features:
 - (i) Water quality:
 - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Resources Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Marine Fisheries;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
 - (ii) Natural hazards:
 - (I) Areas subject to recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas (as defined in Sub-Part (c)(2)(A)(ix) of this Rule) or areas where resource functions are impacted as a result of development; and
 - (II) Natural resource areas that are being impacted or lost as a result of incompatible development. These may include, but are not limited to the following: coastal wetlands, protected open space, and agricultural land.
- (3) Existing Land Use and Development. The plan shall include a map and descriptions of the following:
 - (A) Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, and forestry. Land use descriptions shall include estimates of the land area allocated to each land use and characteristics of each land use category.
 - (B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.
- (4) Community Facilities. The plan shall evaluate existing and planned capacity, location, and adequacy of community facilities that serve the community's existing and planned population and economic base; as well as those that protect important environmental factors such as water quality; and that guide land development in the coastal area. The evaluation shall include:
 - (A) Public and private water supply and wastewater systems. The plan shall describe existing public and private systems, including existing condition and capacity. It shall describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health as documented by the Division of Water Resources (DWR). It shall indicate future needs based on population projections. The plan shall include a map of existing and planned service areas.
 - (B) Transportation systems. The plan shall include a map of the existing and planned multimodal systems and port and airport facilities. It shall describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service as documented in the most recent NCDOT Transportation and/or Thoroughfare Plan. It shall describe highway facilities on the current thoroughfare plan or facilities on the current transportation improvement plan. It shall describe the impact of existing facilities on land use patterns.
 - (C) Stormwater systems. The plan shall describe the existing public stormwater management system. It shall identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff.



(d) Future Land Use. This element of the plan is intended to guide the development and use of land in a manner that achieves the goals of the Coastal Area Management Act through local government land use and development policies, including a future land use map. This element shall include:

- (1) Policies.
 - (A) Definitions.
 - (i) Policy: A specified policy statement and the future land use map and its designation descriptions.
 - (ii) Exceeding Policy: A policy that is more stringent than the use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern, or that establishes a standard for a development activity not addressed within Subchapter 7H.
 - (iii) Enforceable Policy: A policy that is definitive and regulatory in its wording and not open to broad interpretation.
 - ~~(A)~~(B) Community Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government plan policies as required in Rule .0702(b) and (c) of this Section.
 - ~~(B)~~(C) Policies shall be consistent with the goals of the CAMA, shall address the Land Use Plan Management Topics set forth in Subparagraph (d)(2) of this Rule, and comply with all state and federal rules.
 - ~~(C)~~(D) Policies that exceed use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern, Exceeding policies shall be identified in the plan. For each policy that exceeds the use standards and permitting requirements found in Subchapter 7H, a description that cites the rule being exceeded and explains how the rule is exceeded shall be provided.
 - (E) Enforceable policies shall be identified in the plan.
 - (F) Local governments shall select from the list of exceeding and enforceable policies those that will be used in the review of CAMA permits.
 - (G) Local governments with plans certified prior to the effective date of this rule may amend their plan to identify enforceable policies and select from the identified enforceable policies those that will be used in the review of CAMA permits. In the absence of local government selected enforceable policies, the Division and its Local Permit Officer shall use all policies that meet the definition of enforceable in the review of CAMA permits.
- (2) Land Use Plan Management Topics. The purposes of the CRC management topics are to ensure that plans support the goals of the CAMA, define the CRC's expectations for land use policies, and provide a basis for plan review and certification by the CRC. In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each management topic includes two components: a management goal and planning objectives.
 - (A) Public Access:
 - (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
 - (ii) Planning Objectives: The plan shall include policies that address access needs and opportunities, with strategies to develop public access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.
 - (B) Land Use Compatibility:
 - (i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoids risks to public health, safety, and welfare.
 - (ii) Planning Objectives: The plan shall include policies that characterize future land use development patterns and establish mitigation criteria and concepts to minimize conflicts.
 - (C) Infrastructure Carrying Capacity:
 - (i) Management Goal: Ensure that public infrastructure systems are sized, located, and managed so the quality and productivity of AECs and other fragile areas are protected or restored.



- (ii) Planning Objectives: The plan shall include policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.
- (D) Natural Hazard Areas:
 - (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
 - (ii) Planning Objectives: The plan shall include policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from erosion, high winds, storm surge, flooding, or other natural hazards.
- (E) Water Quality:
 - (i) Management Goal: Maintain, protect, and where possible enhance water quality in all coastal wetlands, rivers, streams, and estuaries.
 - (ii) Planning Objectives: The plan shall include policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water quality.
- (3) Future land use map. The plan shall include a map that depicts the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. The plan shall include map designations with descriptions of land uses and development.
- (e) Tools for Managing Development. The purpose of this element is to describe the management tools and actions the local government will use to implement the ~~plan~~ plan, and, if applicable, how enforceable policies are used in CAMA permit reviews. This element shall include:
 - (1) Guide for land use decision-making. The plan shall describe the role of the plan policies, including the future land use map, in local decisions regarding land use and development.
 - (2) Development program. The plan shall describe the community's development management program, including local ordinances, codes, other plans and policies.
 - (3) Action plan and implementation schedule. The plan shall describe the actions that will be taken by the local government to implement policies that meet the CRC's management topic goals and objectives. It shall specify the fiscal year(s) in which each action is anticipated to start and finish. It shall describe the specific steps the local government plans to take to implement the policies, including the adoption and amendment of local ordinances, other plans, and special projects. The action plan shall be used to prepare the implementation status report for the plan.
 - (4) The plan shall describe the role of any enforceable policies selected by the local government for use in the review of CAMA permits in accordance with G.S. 113A-111.

History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110; 113A-111; 113A-124; Eff. August 1, 2002; Amended Eff. April 1, 2003; Readopted Eff. February 1, 2016. Amended Eff. Month X, Year.

SECTION .0800 –LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

15A NCAC 07B .0803 CERTIFICATION AND USE OF THE PLAN

(a) Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for locally adopted land use plans or comprehensive plans, hereinafter referred to as "the plan," or plan amendments. The procedures shall be as follows:

- (1) The Division District Planner shall submit a written report to the CRC, or qualified employee of the Department pursuant to G.S. 113A-124(c)(9), on the locally adopted plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification as set forth in Subparagraph (a)(3) of this Rule.
- (2) The public shall have an opportunity to submit written objections or comments on the locally adopted plan or amendment prior to certification pursuant to G.S. 113A-110(e). Written objections or comments shall be received by the Division no more than 30 calendar days after local adoption



of the plan or amendment. Written objections shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the plan or amendment. Written objections or comments shall be considered in the certification of the local plan or amendment.

- (3) The CRC or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9), shall certify plans and amendments following the procedures and conditions specified in this Rule, and that the plans and amendments meet the following conditions:
 - (A) are consistent with the Coastal Area Management Act G.S. 113A-110;
 - (B) are consistent with the rules of the CRC;
 - (C) do not violate State or federal law; and
 - (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this Subchapter.
- (4) If the plan or amendment does not meet certification requirements, the applicant shall be informed by the Division of Coastal Management within 45 calendar days regarding how the plan or amendment does not meet the procedures and conditions for certification.

(b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the Plan. Local governments shall implement the plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with G.S. 113A-111. Once certified, any enforceable policies selected by the local government shall be used by the Division and its Local Permit Officer in the review of CAMA permits in accordance with G. S. 113A-111. For plans certified prior to the effective date of this rule, in the absence of clearly identified enforceable policies the Division and its Local Permit Officer shall use all policies that meet the definition of enforceable under 7B .0702(d)(1)(A) in the review of CAMA permits. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

- (1) Local administration: The local government reviews the CAMA permits for consistency with the plan;
- (2) Joint administration: The local government identifies enforceable policies, including the future land use map and implementation actions that will be used by the Division for the CAMA permit consistency reviews or reviews.
- ~~(3) Division administration: The Division reviews the CAMA permits for consistency with the plan policies, including the future land use map and implementation actions.~~

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;
Eff. August 1, 2002;
Amended Eff. April 1, 2008; September 1, 2006;
Readopted Eff. February 1, 2016;
Amended Eff. Month, XX, Year; February 1, 2019.

