

## **Fiscal Analysis**

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### **CAMA Land Use Planning**

Amendments to 15A NCAC 7B – CAMA Land Use Plans - Enforceable Policies

Prepared by

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## Basic Information

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Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	CAMA Land Use Planning; Enforceable Policies
Citation	15A NCAC 7B
Description of the Proposed Rule	Subchapter 07B establishes the rules that local governments must follow in developing and adopting land use plans as required by the Coastal Area Management Act (CAMA).
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Authority	113A-110; 113A-124
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: No
Necessity	The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Land Use Planning Program. These amendments include increased flexibility for plan content and policy statements. Specifically, these amendments will allow local governments to identify which enforceable land use plan (LUP) policies shall apply to CAMA permitting reviews within the bounds of CAMA and NCAC 07B. Currently, all LUP policies that exceed CRC rules apply to CAMA permitting reviews.

## Summary

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The NC Coastal Area Management Act (CAMA) §113A-110 requires that the 20 coastal counties prepare and update land use plans according to state guidelines (15A NCAC 7B). Municipalities have the option of preparing individual plans if they are delegated authority by the county and meet specific community standards. There are a total of 100 local governments in coastal North Carolina with 60 individual or joint land use plans (LUP). The Division of Coastal Management (DCM) has provided both financial and technical assistance to local governments for many of these plans. Technical assistance and training to local government officials and local planners includes guidance on preparing land use plan updates and amendments, LUP policy, and ordinance inquiries. Plans are generally updated at seven- to ten-year intervals with locally initiated amendments at more frequent intervals. Certified plans are used in making CAMA permit decisions, as no permit may be issued that is inconsistent with the local LUP. Updated and amended land use plans are submitted to the NOAA Office of Coastal Management for approval before they may be used for federal consistency determinations.

The proposed amendments to 15A NCAC 7B Land Use Planning Requirements are in response to issues related to the lack of clearly defined enforceable policies in local land use plans, including which policies a community wishes to be considered in CAMA permit decisions. Land use plan policies are used by a local government as a guide for local decision making, to influence or steer local ordinances, actions, and other long-range plans, and are also used by DCM in the review of CAMA permit applications. While most policies are considered non-regulatory, those policies that are definitive and regulatory in their wording are considered “enforceable” and can be the basis to deny a permit application. Enforceable policies are particularly significant when they exceed CRC’s regulatory use standards, or address topics for which the CRC has no use standards or authority to address, for example, building height limits or filling of 404 wetlands.

DCM planning staff reviews all permit applications for consistency with the enforceable policies within local land use plans and advise regulatory staff of any inconsistencies. When inconsistencies with enforceable policies are discovered, they are usually addressed through revisions to the proposed development to make it consistent with the land use plan, or by an amendment and re-certification of the land use plan to accommodate the development.

However, it is not always clear which policies within a land use plan are enforceable, or intended to exceed the CRC’s use standards, as some policies may be intended to be guiding in nature rather than regulatory. DCM tries to avoid misinterpreting policies as this could lead to a recommendation of denial on a permit application. There have been occasions in recent years where DCM staff consulted with a local government to clarify whether a policy within their land use plan is intended to be enforceable. In most cases communication with the local government has resolved the question, but in other cases there have been regulatory-style policies, such as specific density and height limits which have been challenging to interpret as non-regulatory, even if that was the local government’s intent.

The CRC’s Land Use Planning Requirements, 15A NCAC 07B .0700, currently require local land use plans to identify policies that exceed the CRC’s 7H use standards. However, 7B does not require plans to identify which policies are intended to be enforceable or utilized by DCM during permit review.

Allowing local governments to identify which policies they desire to be enforceable for CAMA permit reviews will help resolve ambiguity and differences in interpretation on permit decisions.

This amendment will have no impact on NC Department of Transportation (NC DOT) projects. While it is possible that NC DOT could be affected by the substance of the land use plans, the 15A NCAC 7B State Guidelines for Land Use Planning require that land use plan policies do not violate state or federal law to be certified.

The proposed effective date of these amendments is April 2023.

## **Introduction and Purpose**

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The Coastal Area Management Act (CAMA) established a cooperative program of coastal area management between local governments and the State, where local governments have the responsibility for developing plans, with the State acting primarily in a supportive, standard-setting, and review capacity. Permitting and enforcement responsibilities are shared between the State and local governments. Under CAMA, each of the 20 coastal counties is required to develop and adopt a land use plan. Municipalities within the 20-county jurisdiction are not required to have a land use plan; however, they may be delegated planning authority if they are currently enforcing a zoning ordinance, subdivision regulations, and the State Building Code. Otherwise, they are considered to be part of the county land use plan.

The State's coastal program employs a two-tiered approach to managing coastal resources. Critical resource areas, designated as Areas of Environmental Concern (AECs), comprise the first tier. The Division of Coastal Management (DCM) regulates activities in these areas through CAMA permits. CAMA permits are required to be consistent with an approved local CAMA land use plan. The second tier comprises non-AEC areas. These areas are managed through a coordinated effort of other state laws, local land use plans, and the requirement for State agency actions to be consistent with local land use plans. Plans are also used in the review of federal actions and federal permits. Local land use plans require approval of the Coastal Resources Commission (CRC) to become effective. Plans are reviewed for consistency with the CRC's 15A NCAC 7B land use planning guidelines and the requirements of CAMA.

The CRC has adopted standards and procedures for the development of land use plans by local governments that include public participation requirements, analyses, and minimum issues to be addressed. Local governments are responsible for developing policies to address the minimum issues as well as those dealing with community character and traditional land use concerns. The initial planning rules came into effect in 1975 and were amended during the 1990s through 2021.

In addition to establishing the standards for the development of land use plans, the CRC's primary role in land use planning is the certification of land use plans and plan amendments in accordance with the requirements of 15A NCAC 7B. The CRC certifies plans and amendments that are consistent with its administrative rules, do not violate state or federal law, contain policies that address the required Land Use Plan Management Topics, and are found by the local government to be internally consistent with local laws and ordinances.

The proposed amendments to the rules in 7B CAMA Land Use Planning Requirements are in response to issues related to the lack of clearly defined enforceable policies in local land use plans, including which policies a community wishes to be considered in CAMA permit decisions. In response, the CRC directed staff to propose amendments to Subchapter 7B that would require local governments to clarify which of the land use policies exceed the Commission's rules, and which policies the local government wishes the Division to apply to CAMA permitting reviews. The goal is to resolve ambiguity and differences in interpretation on permit decisions during the CAMA permit review process.

## **Description of Rule Amendment**

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Subchapter 15A NCAC 7B of the Coastal Resources Commission's rules outline the state guidelines for the development of CAMA Land Use Plans. The following section outlines the proposed amendments and the intent of the changes to each section.

## SUBCHAPTER 7B .0702 – STATE GUIDELINES FOR LAND USE PLANNING

### 15A NCAC 7B .0702(d) Future Land Use

This section provides guidance in the development and use of land in a manner that achieves the goals of the Coastal Area Management Act (CAMA) through local government land use and development policies, including a future land use map. Through this amendment, definitions have been added to this section to include a definition for Policy, Exceeding Policy, and Enforceable Policy, as well as a requirement that local governments identify enforceable policies and describe how those policies will be used in the review of CAMA permits.

### 15A NCAC 7B .0702(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, and, if applicable, how enforceable policies are used in CAMA permit reviews. Language was added to require that plans 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.

## SUBCHAPTER 07B .0800 Land Use Plan Amendment Review and Certification

### 15A NCAC 07B .0803(c) Use of the Plan

Language is added to this section to provide guidance on how enforceable policies within a certified plan are used by Local Permitting Officers and other officials in the CAMA permit review process and provides clarification as to the local administration of the CAMA permit review process versus the joint administration of the review process.

## **Fiscal Impacts**

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### Private Property Owners:

While private property owners have an interest in the development of land use plans, their interest is primarily confined to the substance of the plans and not necessarily the procedures. Local governments clarifying which policies are to be used in the CAMA permit review process will have minimal impact to property owners. However, because of these amendments, private property owners may realize a cost savings due to the application of more clearly worded enforceable policy statements in the permit review process. Because of this, private property owners may not have to revise development plans as frequently due to policy misinterpretation. Since development projects vary extensively in size and scope, it is impossible to quantify an accurate monetary cost savings.

### NC Department of Transportation (NC DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments will not affect environmental permitting for NC DOT. While it is possible that NC DOT could be affected by the substance of the land use plans, the 15A NCAC 7B State Guidelines for Land Use Planning require that land use plan

policies do not violate state or federal law. The CRC's 15A NCAC 7B State Guidelines for Land Use Planning dictate the topics to be covered in a land use plan but not the local policies. The topics to be included in a land use plan are not changed by these amendments and are therefore unlikely to affect the substance of the plans. It is therefore not anticipated that environmental permitting nor costs for NC DOT will be affected by these amendments.

Local Government:

These amendments will have minimal impact to local governments. The amendments do not require a local government to amend their land use plan nor hold a public hearing to codify which policies are considered enforceable and used for CAMA permit purposes until the local government decides to update or write a new land use plan. At that time, there will be an opportunity cost (time) to local government planning staff associated with developing recommendations for which policies should be used for permit review purposes. In the long term, however, having clearly identified enforceable policies should allow local governments to save staff time during the development review process due to policy misinterpretation.

Division of Coastal Management (DCM):

The impacts of this proposed rule change shall have no monetary impact to DCM as the amendments do not result in significant changes in how various projects are reviewed or permitted by the Division of Coastal Management, and the Division does not anticipate any changes in permitting receipts due to the proposed action. However, in the future these amendments may result in fewer meetings, less than five (5) each year, between DCM staff and local government officials because of policy misinterpretations, freeing up more DCM staff time to dedicate to other duties.