



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

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Director

CRC-18-04

MEMORANDUM

TO: Coastal Resources Commission

FROM: Rachel Love-Adrick

DATE: January 8, 2018

SUBJECT: Fiscal Analysis for 15A NCAC 7B .0802 and .0803

Summary of Rule Change

The NC Coastal Area Management Act (CAMA) 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 approximately 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 development 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 on a voluntary basis at seven- to ten-year intervals with locally initiated amendments at more frequent intervals. Plans are certified by the Coastal Resources Commission (CRC), and are used in making CAMA permit decisions, as no permit may be issued that is inconsistent with the local LUP.

In 2015, the CRC amended the 7B CAMA Land Use Planning Program in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the CRC. The intent of these amendments was to provide increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, and to introduce a new process option for CAMA Major Permit Review.

The 2015 amendments also sought to facilitate a streamlined process for plan approval, amendments, and updates by delegating certification of land use plans and plan amendments to the Division. In 2017, House Bill 56 and subsequent session law (S.L. 2017-209) were passed, adding a subdivision to the Coastal Area Management Act Section 113A-124(c) which gave the Commission authority "To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department." The intent of the CAMA amendment was to streamline the certification process to allow either the CRC or a qualified employee of the Department to certify land use plans.

Summary of Fiscal Analysis

The amendments to 15A NCAC 07B .0802 and .0803 replicate the intent of SL 2017-209, and facilitate a streamlined plan approval, amendment, and update process.

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for 15A NCAC 7B .0802 and .0803 has been prepared by the Division and approved by DEQ and the Office of State Budget & Management (OSBM).

These amendments 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, NC DOT is not directly affected by the land use plan approval process.

These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. Division of Coastal Management Staff time savings will be minimal as Staff will still be reviewing plans for adherence to the 15A NCAC 7B Land Use Planning Requirements and will still prepare documentation for final agency action associated with certifications. These benefits may have an indirect fiscal impact on the Division as less coordination will be needed with local governments.

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. The amendments to 15A NCAC 7B .0802 and .0803 affect the procedures for certification of land use plans and plan amendments. These amendments; therefore, will not have a direct financial impact on private property owners.

Some plan amendments are undertaken due to requests for rezoning by property owners. As the proposed changes will result in time savings by streamlining the certification process, this may result in time savings that have an indirect positive economic impact on private property owners. However, any positive economic impact would vary based on project type, and may be nullified by other federal, state and/or local permitting requirements.

Staff recommends approval of the attached Fiscal Analysis of rule change to 15A NCAC 7B .0802 and .0803. If the Commission approves, the attached fiscal analysis and rule amendments will be sent to public hearing with a proposed effective date of June 1, 2018.

Fiscal Analysis

Land Use Plan and Amendment Review and Certification
Amendments to 15A NCAC 07B .0802 & .0803

Prepared by

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December 15, 2017

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	Land Use Plan and Amendment Review and Certification
Citation	15A NCAC 07B .0802 15A NCAC 07B .0803
Description of the Proposed Rule	Subchapter 07B establishes the criteria and procedures for certification of land use plan and plan amendments within the 20 coastal counties.
Agency Contact	Rachel Love-Adrick, District Planner – Morehead City rachel.love-adrick@ncdenr.gov (252) 808-2808 ext. 205
Authority	113A-106; 113A-107; 113A 110; 113A-124
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: No
Necessity	<p>The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Land Use Plan certification process, by allowing the CRC or a qualified employee of the Department to certify land use plans and plan amendments. These amendments will streamline the land use plan certification process; that include plan approval, amendments, and updates.</p> <p>These amendments are response to the Session Law 2017-209 which added a new subdivision to the Coastal Area Management Plan section 1113A-124(c) giving the CRC authority to delegate the power to approve land use plans. These changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.</p>

Summary

The NC Coastal Area Management Act (CAMA) 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 approximately 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 development 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 on a voluntary basis at seven- to ten-year intervals with locally initiated amendments at more frequent intervals. Plans are certified by the Coastal Resources Commission (CRC), and 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.

In 2015, the CRC amended the 7B CAMA Land Use Planning Program in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the CRC. The intent of these amendments was to provide increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, and to introduce a new process option for CAMA Major Permit Review.

The 2015 amendments also sought to facilitate a streamlined process for plan approval, amendments, and updates by delegating certification of land use plans and plan amendments to the Division. In 2017, House Bill 56 and subsequent session law (SL 2017-209) were passed, adding a subdivision to the Coastal Area Management Act Section 113A-124(c) which gave the Commission authority "To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department". The intent of the CAMA amendments was to update the certification process to allow either the CRC or a qualified employee of the Department to certify land use plans to facilitate a streamlined plan approval, amendment, and update process.

The amendments to 15A NCAC 07B .0802 and .0803 are in response to SL 2017-209 outlining the delegation of authority for the certification of land use plans intended to streamline the certification process. These amendments 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 amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in

the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

The proposed effective date of these amendments is June 1, 2018

Introduction and Purpose

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 land use 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 are 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 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 State Guidelines for Land Use Planning 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 and 2000s. The current planning rules came into effect in 2016.

Prior to the legislative changes in House Bill 56 and subsequent session law (SL 2017-209) all CAMA Land Use Plans and plan amendments were required to be certified by the CRC. The CAMA and CRC rules contain specific public hearing notice and public comment requirements that must be met for CRC certification. Additionally, the required documentation must be submitted to meet the deadlines for circulation of the CRC meeting materials. As the CRC only meets 4-5 times per year this process can be lengthy; plan or amendment certification can take anywhere from three to six months depending on whether or not a community meets the various deadline requirements and the CRC meeting schedule.

The proposed amendments to the 15A NCAC 7B .0802 and .0803 are in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the Coastal Resources Commission (CRC). The intent of the amendments is to provide a streamlined plan and amendment certification process by delegating the approval to the Division of Coastal Management as the CRC's role is primarily procedural.

Description of Rule Amendment

Subchapters 15A NCAC 07B .0802 and .0803 of the Coastal Resources Commission's rules establish the criteria and procedure for the certification of land use plans and plan amendments, and use of the plan. The following section outlines the proposed amendments and the intent of the changes to the subchapter.

15A NCAC 07B .0802 Public Hearing and Local Adoption Requirements

This section of the rules outlines the public hearing requirements and outlines the procedure for submitting a plan or plan amendment to the Division. The amendments to this section:

- Strikes the now unnecessary requirement that the locally adopted plan or plan amendment be sent to the Division 45 calendar days prior to the CRC meeting on which it is being considered for certification.

15A NCAC 07B .0803 Certification and Use of the Plan

This section of the rules focuses on the procedures for certification of the plan or plan amendments. The amendments to this section:

- Establishes that the DCM District Planning Staff can submit a written report to recommend certification to the CRC or a qualified employee of the Department, pursuant to G.S. 113A-124(c)(9).
- Establishes that plan and amendment certification decisions may be made by the CRC or a qualified employee of the Department, pursuant to G.S. 113A-124(c)(9).

Fiscal Impacts

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. The amendments to 15A NCAC 7B .0802 and .0803 affect the procedures for certification of land use plans and plan amendments. It is therefore unlikely that these amendments will have a direct financial impact on private property owners.

NC Department of Transportation (NC DOT):

These amendments 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.

Local Government:

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

Division of Coastal Management (DCM):

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. While these changes will reduce the complexity of the certification process for the Division of Coastal Management Staff, the savings will be minimal as Staff will still be reviewing plans for adherence to the 15A NCAC 7B Land Use Planning Requirements and will still prepare documentation for final agency action associated with certifications. These benefits may have an indirect fiscal impact on the Division as less coordination will be needed with local governments.

Cost/Benefits Summary

Property Owners:

Some plan amendment are undertaken due to requests for rezoning by property owners. As the proposed changes will result in time savings by streamlining the certification process, this may result in time savings that have a positive economic impact on private property owners. However, any positive economic impact would vary based on project type, and may be nullified by other federal, state and/or local permitting requirements.

Local Government:

The benefits of this proposed rule change take the form of a streamlined plan and plan amendment certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

1 15A NCAC 07B .0802 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

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3 **15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**

4 (a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice
5 of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter
6 referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice.
7 The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's
8 opportunity to provide written comment to the Secretary following local adoption of the plan.

9 (b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local
10 government.

11 (c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the
12 CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action,
13 and documentation that it has followed the public hearing process required in G.S. 113A-110. ~~The locally adopted
14 plan or amendment shall be submitted at least 45 calendar days prior to the CRC meeting on which it will be considered
15 for certification.~~

16 (d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and
17 independent authority to make amendments to the plan as it affects its jurisdiction.

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19 *History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;*
20 *Eff. August 1, 2002;*
21 *Amended Eff. January 1, 2007; February 1, 2006;*
22 *Readopted Eff. February 1, 2016.*
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1 15A NCAC 07B .0803 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

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3 **15A NCAC 07B .0803** **CERTIFICATION AND USE OF THE PLAN**
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5 (a) **CRC** Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for
6 locally adopted land use plans or comprehensive plans, hereinafter referred to as **"the plan"**, **"the plan,"** or plan
7 amendments. The procedures **are shall be** as follows:

8 (1) The Division District Planner shall submit a written report to the CRC **or qualified employee of the**
9 **Department, pursuant to G.S. 113A-124(c)(9)**, on the locally adopted plan or amendment and either
10 recommend certification or identify how the plan or amendment does not meet the procedures and
11 conditions for certification as set forth in Subparagraph (a)(3) of this Rule.

12 (2) The public shall have an opportunity to submit written objections or comments on the locally
13 adopted plan or amendment prior to **certification pursuant to G.S. 113A-110(e)**, **action by the CRC**.
14 Written objections or comments shall be received by the Division no more than 30 calendar days
15 after local adoption of the plan or amendment. Written objections shall be limited to the criteria for
16 certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan
17 elements that are opposed. Written objections or comments shall be sent by the Division to the local
18 government submitting the plan or amendment. Written objections or comments shall be considered
19 **by the CRC** in the certification of the local plan or amendment.

20 (3) The CRC **or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9)**, shall certify
21 plans and amendments following the procedures and conditions specified in this **rule. Rule. The**
22 **CRC shall certify plans and amendments which; that:**

- 23 (A) are consistent with the **Coastal Area Management Act G.S. 113A-110** **current federally**
24 **approved North Carolina Coastal Management Program;**
25 (B) are consistent with the rules of the CRC;
26 (C) do not violate ~~state~~ **State** or federal law; and
27 (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this
28 Subchapter.

29 (4) If the plan or amendment does not meet certification requirements, **the applicant shall be informed**
30 **by the Division of Coastal Management (the CRC shall** within 45 calendar days **inform the local**
31 **government regarding** how the plan or amendment does not meet the procedures and conditions for
32 certification.

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

36 (c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with
37 G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing
38 from the following:

39 (1) Local administration: The local government reviews the CAMA permits for consistency with the
40 plan;

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

4 (3) Division administration: The Division reviews the CAMA permits for consistency with the plan
5 policies, including the future land use map and implementation actions.

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

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10 *History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;*
11 *Eff. August 1, 2002;*
12 *Amended Eff. April 1, 2008; September 1, 2006;*
13 *Readopted and Amended Eff. February 1, 2016.*

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