

Fiscal Analysis

CAMA Land Use Planning and Local Planning and Management Grants Amendments to 15A NCAC 7B and 15A NCAC 7L .0213

Prepared by

Mike Lopazanski
NC Division of Coastal Management
(252) 808-2808 Ext. 223

April 7, 2015

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	CAMA Land Use Planning; Local Planning and Management Grants
Citation	15A NCAC 7B and 15A NCAC 07L
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). Subchapter 07L establishes the criteria for funding grants to local governments for planning and management projects within the 20 coastal counties.
Agency Contact	Mike Lopazanski, Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext 223
Authority	113A-107(a); 113A-110; 113A-124
Impact Summary	State government: No 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 and the Planning & Management Grant Program. These amendments include increased flexibility for plan content and format, clarification that updates and amendments are voluntary, a new process option for CAMA Major Permit Review, streamlined plan approval, amendment, and update processes, and integrated planning efforts. 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.

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 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 the local governments through the CAMA Local Planning and Management Grants Program (15A NCAC 7L) 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 and 15A NCAC 7L Local Planning and Management Grants 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 increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, to introduce a new process option for CAMA Major Permit Review, to facilitate streamlined plan approval, amendment, and update processes, and to promote the facilitation of integrated planning efforts.

The economic impacts of this proposed rule change are cost savings to local governments in the development, update, and amendment of land use plans. Local governments are expected to recoup savings from the proposed amendments to 15A NCAC 7B resulting from a reduction in analytical requirements. The proposed amendments remove the requirements for a Land Suitability Analysis, an environmental composite map, and other time-consuming analyses, which together comprise approximately 40% of the costs associated with developing a land use plan. Total financial benefits will be approximately \$56,000 - \$136,000 each year. Assuming an annual range of savings per year, the 10-year present value of the benefits of the proposed rule change to local governments is approximately \$390,000 -- \$960,000 using a 7% discount rate.

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 in order to be certified. The amendments to 15A NCAC 7L clarify the granting of funds to local governments for planning and management projects. Since NC DOT is not eligible for this funding, there will be no direct impact on the agency.

As funding for planning and management projects has not been available since 2008, there will be no direct fiscal impact to the Division of Coastal Management (DCM). However, the reduction in mapping requirements results in a time savings to DCM, as the division's planning staff will not have to review land use plans for compliance with mapping analysis provisions of the rules. DCM also expects improvements in the efficiency and efficacy of land-use plan reviews, as staff will be able to devote more time to the review of policy development, which is the core purpose of the land use planning program.

The proposed effective date of these amendments is February 1, 2016.

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 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. The current planning rules came into effect in 2002.

Up until the early 2000s, the planning program focused on providing grant funds for planning and management projects (15A NCAC 7L Local Planning and Management Grants), with the highest priority being land use plans and their updates. In addition to land use plans, funded projects included: waterfront access and revitalization plans; zoning, subdivision and development ordinances; population and housing studies; capital facilities plans; transportation corridor studies; hurricane evacuation plans; floodplain ordinances, hazard-mitigation plans; watershed protection and management plans; and drainage master plans. After 2002, all available grant monies were allocated to assist local governments in completing land use plans consistent with the revised planning rules. Grant monies for land use plans and management projects have not been available since 2008.

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. In addition to certification of a land use plan, the CRC can also take "non-certification" or "conditional certification" actions. Under non-certification, the local government is notified within 30 days as to how the plan might be changed so certification can be granted. Under conditional certification, the 30-day

window also applies, but the CRC Executive Secretary (DCM director) determines compliance with no further action required by the CRC. The CRC also reviews minor amendments that have been denied by the CRC Executive Secretary under his or her delegated authority. And, as reiterated in the CAMA, the CRC may prepare and adopt a county land use plan if a county chooses not to prepare and adopt a plan that meets the planning requirements.

The proposed amendments to the rules in 7B CAMA Land Use Planning Requirements and 7L Local Planning and Management Grants 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 Commission. The amendments include input from local elected officials, local planning staff, consultants, and other interested stakeholders. The intent of the amendments is to provide increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, to introduce a new process option for CAMA Major Permit Review, to facilitate streamlined plan approval, amendment, and update processes, and to promote the facilitation of integrated planning efforts.

Specifically, the proposed amendments achieve the following major goals:

- Significantly reduce the regulatory burden on local governments while maintaining coastal management standards for local planning activities.
- Shift emphasis toward local-government-directed policy and implementation in support of coastal management goals and objectives while reducing data and analysis requirements.
- Institute shorter timelines for state review and certification to speed up the land use plan- and amendment-review process.
- Delegate land use plan and amendment certification authority to the Division Director, eliminating the need for CRC involvement while maintaining the CRC oversight and standard-setting role.

Description of Rule Amendment

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 – STATE GUIDELINES FOR LAND USE PLANNING

15A NCAC 7B .0600 Introduction

This section provides authority for the state planning program. The CRC intends to allow communities the ability to use existing comprehensive plans and other planning documents to meet the CRC's planning guidelines. New language allows a shift from CAMA Land Use Plans to land use plans that also meet CRC land use planning requirements.

15A NCAC 7B .0601 Examples

This rule is deleted, as it is no longer necessary.

15A NCAC 7B .0701 Planning Options & 7B .0702 Land Use Plan Elements

This section of the rules focus on the CRC and CAMA goals and objectives and outlines what needs to be included in a plan to meet those goals and objectives. The amendments remove unnecessary, redundant, and prescriptive planning requirements. The changes encourage local planning initiatives focusing on issues that are most important and unique to the jurisdiction, while maintaining a focus on coastal resource management. The emphasis of land use plans is shifted to policy and implementation of the plan, rather than on background data and technical assistance. The amendments to this section:

- Removes the type of plan to be provided, as this will be determined by the community provided that it also meets the requirements of CAMA.
- Removes the mapping requirements for natural features, environmental constraints, existing land uses, future land needs (making them optional) as well as the associated analysis.
- Deletes the requirement for a review of the current land use plan as part of the submittal for a land use plan update.
- Consolidates the Land Use Management Topics into the Planning Objectives to reduce redundancy.
- Deletes Local Areas of Concern Management Topic, as additional polices are provided at the discretion of the local government.
- Reduces the Future Land Use Maps requirements to reduce local government mapping burdens.

15A NCAC 7B .0800 Land Use Plan and Amendment Review and Certification

This section outlines the procedure for certification of a land use plan or amendment by the CRC. The amendments address the timeframe for receiving comments and for having a plan certified. The new language proposes a formal timeline for the comment period and certification process. Furthermore, responsibility for certification has been shifted to the Director of the Division of Coastal Management. This change provides a quicker turnaround for certifications and greater flexibility for local governments.

15A NCAC 7B .0801 State Review and Comment on Draft Plan

The amendments create a new section establishing a procedure and timeframe for state review and comment on draft and use plans.

15A NCAC 7B .0802 Public Hearing and Local Adoption Requirements

- Establishes a timeframe (five business days) to notify the DCM of a public hearing for local adoption of a land use plan and a requirement that it include a disclosure of the public's opportunity to provide written comments to the Division.
- Clarifies that the final content of a land use plan is to be adopted by the local government.
- Clarifies when the land use plan is to be transmitted to the Division for certification.

15A NCAC 7B .0803 Certification and Use of the Plan

- Deletes the requirement that land use plans be updated within six years of the effective date of the rule. This was old language that applied to the update of land use plans after the last major re-write of the land use planning guidelines in 2002.
- Establishes the process of DCM District Planning Staff to transmit land use plans for certification and verify that they have met the 15A NCAC 7B State Guidelines for Land Use Planning.

- Establishes the timeframe for public comments on the locally adopted land use plan to be transmitted to the Division of Coastal Management.
- Delegates authority to certify land use plans to the Secretary of the Department of Environment and Natural Resources (DENR) in the same manner as CAMA permits.
- Outlines the basis for certification of land use plans.
- Establishes a timeframe for a certification decision on a locally adopted land use plan or amendment by the Department.
- Establishes options for local governments for the use of land use plans in the review of CAMA permits for consistency with land use plans.
- Clarifies that land use plan updates and amendments are voluntary.
- Deletes the requirement for certification action by the CRC.

15A NCAC 7B .0804 Required Periodic Implementation Status Reports

- Removes existing requirement that jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report every two years from 15A NCAC 7L to 15A NCAC 7B to separate and consolidate land use planning guidelines from planning and management grants.
- Clarifies that implementation status reports are due two years from the date of initial certification.

15A NCAC 7B .0901

This rule is deleted, as the procedures for amending land use plans have been incorporated into 15A NCAC 7B .0800.

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. DCM planning staff experience with local governments in the development of land use plans has found that much of the analysis and mapping requirements were having little impact on the development of policies and their deletion through these amendments will not significantly impact the substance of the plans. 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. In addition, the current Guidelines require public participation and this requirement and its documentation have also been retained in the amended guidelines. It is therefore unlikely that these amendments will have a direct financial impact on private property owners. The amendments to 15A NCAC 7L Planning and Management Grants affect the procedures for granting funds to local governments for planning and management activities. As private property owners are not eligible for this funding, they are unlikely to be directly affected by these amendments.

NC Department of Transportation (NC DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .034(2) 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 in order to be certified. 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 for NC DOT will be affected by these amendments. The amendments to 15A NCAC 7L Planning and Management Grants outlines the procedures for the granting of funds to local governments for planning and management activities. As NC DOT is not eligible for this funding, the agency is unlikely to be affected by these amendments.

Local Government:

15A NCAC 7B State Guidelines for Land Use Planning

Prior to 2008, funding was provided to local governments for the development and amendment of land use plans. Plans were funded based on the NC Department of Commerce’s tier designations, size of community (county or municipality), whether the proposed plan would be a joint plan (multiple jurisdictions or municipality and county), and if an advanced core plan was being prepared (the most complex option).

In order to estimate the costs to communities associated with the development of land use plans, the Division of Coastal Management categorized the ~~funding of reported~~ costs of county and municipal land use plans over the most recent 10-year period since the 15A NCAC 7B State Guidelines for Land Use Planning were updated in 2002. The total cost of developing county plans averaged \$60,000, with local government costs ranging from \$15,000 - \$30,000 based on a typical local match of 25%-50%. The total cost of developing a plan for a large/medium municipality also averaged \$60,000, with local government costs ranging from \$24,000 - \$30,000 based on a typical local match of 40%-50%. Total costs for plans for small municipalities averaged \$35,000, with local government costs of approximately \$14,000 based on a typical local match of 40%. Joint plans had an average total cost of \$85,000, with local government costs ranging from \$17,000 - \$34,000 based on a typical local match of 20%-40%.

Table 1. Local Government Costs Associated with Land Use Plan Updates

Local Gov’t Category	Avg. Total Cost	Local Gov’t Match	Local Gov’t Cost
County	\$60,000	25% - 50%	\$15,000 - \$30,000
Lg/Med Municipality	\$60,000	40% - 50%	\$24,000 - \$30,000
Small Municipality	\$35,000	40%	\$14,000
Joint Plan	\$85,000	20% - 40%	\$17,000 - \$34,000

Also over the last 10 years, fifty-seven (57) land use plan (LUP) updates and thirty-six (36) LUP amendments have been certified by the CRC. Of those numbers, eighteen (18) updates and nineteen (19) amendments have been certified in the past five (5) years for an average of four updates and four amendments per year. Since the land use planning guidelines do not have a requirement to update a land use plan but leave it to the discretion of the local government, DCM staff assume that the trend in updates and amendments over the past five years will continue.

Local governments typically hire consultants to complete the majority of the work of the plans and for GIS analysis and mapping, with the remainder of the plan (policy development) being completed by the local government. A DCM review of land use plan contracts over the past 10 years as shown the cost of GIS analysis and mapping ranged from \$65-\$115 per hour. The number of hours ranged from 48-126, with the Land Suitability Analysis (LSA) and the

environmental composite map consisting of the most hours. DCM planning staff estimate that GIS and other mapping analysis comprised approximately 40% of the consultant subcontract.

As the proposed amendment to 15A NCAC 7B remove the LSA, the environmental composite map, and many analytical requirements, DCM staff assume that there will be savings to local governments equal to approximately 40% associated with the update of land use plans. These cost savings are estimated to range from \$14,000 for a small municipality to \$34,000 for a joint plan. Assuming the most recent five-year period is representative of the number of LUP updates in the years ahead, the proposed rule amendments will result in \$56,000 - \$136,000 per year in savings to local governments.

Amendments to land use plans involve a less complex process and can range from text edits and small map changes to larger amendments involving significant mapping and multiple meetings. DCM planning staff estimate the cost of amendments ranges from \$500 (local government staff time and public hearing) to \$15,000 for more involved amendments where the local government utilizes the services of a consultant. As almost all local governments have locally adopted land use plans that will require only future amendment, DCM planning staff expect that the past five-year trend will continue in this range of costs to local governments land use plan amendments. These costs are not anticipated to change and are therefore not included in the fiscal impacts.

DCM planning staff experience with local governments in the development of land use plans has found that much of the analysis and mapping requirements were having little impact on the development of policies and their deletion through these amendments will not significantly impact the substance of the plans. 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 therefore are unlikely to affect the substance of the plans. In addition, the current Guidelines require public participation and this requirement and its documentation have also been retained in the amended guidelines.

15A NCAC 7L Planning and Management Grants

The primary purpose of the amendments to the 15A NCAC 7L Local Planning and Management Grants has been to separate requirements for public participation and the adoption of land use plans, amendments, and updates from provisions for the funding associated with a variety of land use planning projects. No funds for planning and management grants have been available since 2008, and DCM staff do not believe any funds will be available in the coming years. Therefore, DCM staff do not anticipate any fiscal impacts to local governments from amendments to 15A NCAC 7L Planning and Management Grants.

Division of Coastal Management (DCM):

Due to budget reductions, the Division of Coastal Management has not made funding available for local governments to update or amend land use plans since 2008. However, the reduction in mapping requirements results in a time savings to the DCM as DCM planning staff will not have to review land use plans for compliance with mapping analysis provisions of the rules. DCM staff also expect improvements in the efficiency and efficacy of land-use plan reviews, as staff

will be able to devote more time to the review of policy development, which is the core purpose of the land use planning program.

These amendments do not reflect significant changes in how various projects are reviewed or permitted by the Division of Coastal Management, and the Division does not anticipate significant changes in permitting receipts due to the proposed action.

Cost/Benefits Summary

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. DCM planning staff experience with local governments in the development of land use plans has found that much of the analysis and mapping requirements were having little impact on the development of policies and their deletion through these amendments will not significantly impact the substance of the plans. 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. In addition, the current Guidelines require public participation and this requirement and its documentation have also been retained in the amended guidelines. It is therefore unlikely that these amendments will have a direct financial impact on private property owners. The amendments to 15A NCAC 7L Planning and Management Grants affect the procedures for granting funds to local governments for planning and management activities. It is therefore unlikely that these amendments will have a direct financial impact on private property owners.

Local Government:

The economic and fiscal impacts of this proposed rule change take the form of cost savings to local governments when developing, updating, and amending land use plans. As the proposed amendments remove the requirements for a Land Suitability Analysis, an environmental composite map, and other time-consuming analyses, which together comprise approximately 40% of the costs associated with a land use plan, local governments are expected to recoup savings. Total financial benefits will be approximately \$56,000 - \$136,000 each year. Assuming an annual range of savings per year, the 10-year present value of the benefits of the proposed rule change to local governments is approximately \$390,000 -- \$960,000 using a 7% discount rate.