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Land Use, Community Planning, Code Enforcement, and Transportation

Many observers expected an active legislative year in the fields of land use, planning, and transportation. A legislative study commission report on state smart growth issues was due to be presented in 2001, and various growth and development issues were receiving prominent attention from the public and local governments across the state. These issues concern the negative impacts of urban sprawl, farmland preservation, air and water quality protection, natural area acquisition, and the need for more efficient transportation. These concerns did not, however, lead to major statewide legislative initiatives in 2001. Rather, the year was characterized by incremental adjustments to a number of existing statutes and continued experimentation with new ideas and tools through local legislation. Among the more notable changes in state law is a new process for amending the State Building Code, which will now follow the rule amendment process of the state Administrative Procedure Act and increased state requirements for local hazard mitigation, land use, and transportation planning. Individual local governments were also granted new powers regarding tree preservation and greater flexibility in the rehabilitation of existing buildings.

Smart Growth and Planning

Smart Growth Commission

In 1999 the General Assembly created a thirty-seven-member Commission to Address Smart Growth, Growth Management, and Development Issues (sec. 16.7 of S.L. 1999-237). Several subsequent events substantially reduced the resources available to support the work of this commission. Hurricane Floyd struck the state in the fall of 1999, and the state suffered significant budget shortfalls in 2000. The commission did hold a series of public meetings in 2000 and established several work groups to study particular issues and develop recommendations for state action. In January 2001 the commission adopted its recommendations for legislative consideration, but the final commission report was not ready for presentation at the commencement of the 2001 session. Section 16.7 of the 2001 budget bill, S.L. 2001-424 (S 1005), extended the deadline for filing the commission's final report to November 1, 2001.

The Smart Growth Commission report was filed in November 2001. (It is available on the General Assembly's web site at <http://www.ncga.state.nc.us/SmartGrowthReport.pdf>.) The report recommended that planning be required of all municipalities and counties, with varying levels of planning required based on the size of the locality, its growth rate, and the presence of environmentally sensitive areas. All local plans must identify "planned growth areas" and "critical, important, and sensitive areas." For those preparing an intermediate level of planning, comprehensive plans would also be required; those facing the greatest growth pressures would further be required to include multimodal transportation, public facility, cultural resources, and intergovernmental coordination sections in their plans. Access to state funding would be tied to meeting plan requirements. The report also recommended provision of additional resources to support local planning, enhanced tools for local growth management, better coordination of local plans, strengthened regional planning, development of a state smart growth framework, oversight of state decisions related to smart growth, and a requirement that state decisions respect local and regional plans. Additional detailed recommendations were made concerning downtown vitality, open space preservation, and transportation.

The commission report appeared too late in the 2001 session to allow development and consideration of bills implementing its detailed recommendations. However, the studies bill, S.L. 2001-491 (S 166), did include one important implementing measure. Section 3.1 creates G.S. 120-70.120 to establish the Joint Legislative Growth Strategies Oversight Committee. The committee, consisting of six members each of the Senate and House of Representatives, is directed to examine growth and development issues and to make recommendations to the General Assembly on promoting comprehensive and coordinated local, regional, and state growth planning and investment, specifically including a review of the recommendations of the Smart Growth Commission. The committee is also to study the fiscal relationship between state agencies and the communities in which they are located. The committee is to have a three-year life, expiring on January 16, 2005. A final report is to be made by that date, although the committee is also authorized to make interim reports and legislative recommendations prior to that time.

Planning Incentives

Acts adopted in 2001 concerning emergency management and transportation issues included provisions creating new incentives for local government planning.

S.L. 2001-214 (S 300) revises the state's emergency management laws to provide for an updated system of emergency management during disasters. The law provides for damage assessment following a disaster and establishes three levels of disasters that may be declared by the Governor depending upon the extent of damage (Type I being disasters that do not meet the federal threshold for a presidentially declared major disaster, Type II being disasters that warrant such a presidential declaration, and Type III being those disasters that both warrant a presidential declaration and have a damage level so great as to prompt a special state legislative session). A Type I disaster declaration expires in thirty days; Types II and III, in twelve months. The act

creates a program of state disaster assistance to finance recovery efforts for which federal aid is either unavailable or inadequate. This state assistance program includes both individual assistance (for items such as temporary housing, medical expenses, and housing repair) and public assistance (for items such as debris clearance, repair of roads and bridges, crisis counseling, and public transportation). G.S. 166A-6A(b)(2) provides that local governments are eligible for state public assistance funds only if they have an approved hazard mitigation plan and, for flood damage assistance, are participating in the National Flood Insurance program. These requirements apply to disasters proclaimed after August 1, 2002.

S.L. 2001-168 (S 731), discussed in more detail later in this chapter, requires local adoption of a land development plan within the previous five years as a precondition to state Department of Transportation participation in the development and adoption of mandated local transportation plans.

Zoning and Land Use Regulation

The General Assembly adopted one law of statewide applicability that affects county zoning. S.L. 2001-505 (H 1019), which deals with several aspects of on-site waste management issues, adds G.S. 130A-291.1(g) to provide that production of a crop in association with an approved nutrient management plan that is permitted as a septage land application site shall be considered a bona fide farm purpose and thus exempt from county zoning. In addition, several bills affecting Coastal Area Management Act (CAMA) stream buffer regulations were adopted and are discussed in Chapter 10, "Environment and Natural Resources."

Several notable local bills were also enacted, two of these affecting Mecklenburg County. The City of Charlotte has for many years employed an entirely legislative system of conditional zoning (even though the city termed the zoning districts used in this system "conditional use districts," no conditional use permits were actually issued, and all of the particularized development standards were incorporated into the district regulations). This approach was invalidated by a trial court in April 2000. The city subsequently revamped its procedures and secured local legislation in the 2000 session temporarily authorizing its practice of conditional zoning. In the summer of 2001, the trial court decision was reversed by the court of appeals. *Massey v. City of Charlotte*, 145 N.C. App. 345, 550 S.E.2d 838, *review denied*, 354 N.C. 219, 554 S.E.2d 342 (2001), held conditional zoning to be permissible under the state's general zoning enabling act. Nonetheless the city sought and obtained local legislation to make permanent its explicit authorization to use conditional zoning. S.L. 2001-276 (H 696) accomplishes this for the seven municipalities in Mecklenburg County, and S.L. 2001-275 (H 695) does the same for the county.

Three other local bills address zoning and land use regulatory authority. S.L. 2001-48 (H 664) adjusts the protest petition statute for the City of Rockingham to provide that rezonings subject to a valid protest petition may be adopted by three-fourths of the voting members of the city council, excluding the mayor. S.L. 2001-382 (S 587) authorizes the City of Durham to require owners of designated historic landmarks, contributing buildings, and all structures and sites within a historic district to maintain their property in good condition. S.L. 2001-429 (S 35) specifies that Swansboro may require sidewalk improvements as part of site plan review under the town zoning ordinance. The studies bill, S.L. 2001-491, authorizes a study of clear cutting and development growth management in Raleigh.

Land Subdivision Control

In the past several years virtually all of the legislation adopted by the General Assembly concerning land subdivision control has taken the form of local legislation, and 2001 was no exception to this trend. Two local acts modify the scope of local subdivision control ordinances by altering the definition of *subdivision* as it applies in those ordinances. S.L. 2001-50 (H 682)

amends existing local legislation (S.L. 1997-246), applicable to Harnett County and its municipalities, that exempted transfers of lots by the subdivider to lineal descendants and ascendants. The new law narrows the exception so that it applies to a one-time division and transfer of land to members of the grantor's immediate family (defined in the act to exclude siblings, nieces, and nephews), requires the lot transferred be for the residential use of the grantee, and limits the entire area of the land to be divided to one acre. S.L. 2001-189 (H 817) applies to Richmond County but not to its municipalities. This act does not expand or amend the exceptions to the scope of ordinance coverage. Instead it defines three subcategories of subdivisions: family subdivisions, minor subdivisions, and major subdivisions. The law apparently allows the county to categorize subdivisions this way if it chooses and to regulate them as it wishes.

A third local act, S.L. 2001-187 (S 533), applies both to Mecklenburg County and to the City of Charlotte. It allows both to amend their respective subdivision control ordinances to designate the location and placement of permanent control markers along property lines in subdivisions, notwithstanding G.S. 39-32.1, an old statute with statewide application that governs the same subject.

Jurisdiction

As in most recent sessions, the General Assembly in 2001 enacted several local bills adjusting the extraterritorial jurisdiction of individual municipalities. S.L. 2001-134 (H 929) grants extraterritorial jurisdiction to Minnesott Beach. A 1977 local act had removed extraterritorial jurisdiction for Pamlico County municipalities with populations under 1,000. The population of each of the county's nine municipalities fell under that level in the 2000 census. S.L. 2001-6 (H 175) adds a specified area to Rockingham's extraterritorial jurisdiction. S.L. 2001-228 (S 535) allows Charlotte to exercise extraterritorial jurisdiction within its "sphere of influence" adopted pursuant to annexation agreements with other Mecklenburg County municipalities. No county approval of the city's extraterritorial jurisdiction is required, but Charlotte must otherwise abide by the normal extraterritorial boundary ordinance amendment provisions of the statutes. This act also provides that the city may not secure jurisdiction over specified property owned by Mecklenburg County.

S.L. 2001-101 (S 651) requires Mount Airy to create a nine-member planning board and a nine-member board of adjustment upon establishing extraterritorial jurisdiction. In each instance five members are to be appointed by the city and four members by the county.

S.L. 2001-52 (H 726) authorizes Dare County to adopt ordinances regulating swimming, personal watercraft operation, surfing, and littering in the Atlantic Ocean and other waterways within the county. Municipalities within the county are given the option of allowing such county ordinances to be applied within the cities.

Building and Housing Code Enforcement

Building Code Subject to APA/Adoption of International Codes

S.L. 2001-141 (S 1036) amends G.S. 143-138, creating important implications for changes to the North Carolina State Building Code. The act makes amendments to the State Building Code subject to the North Carolina Administrative Procedures Act (APA). In so doing it scuttles the old statutory arrangement intended to ensure that code amendments adopted by the Building Code Council became effective only once every three years. One other effect is that building code regulations are now characterized as state administrative rules. The act also removes the restriction that the council may not adopt a code change having a substantial economic impact or that increases the costs of residential housing by at least \$80 per dwelling unit until at least sixty days after a fiscal note has been prepared. However, the requirement that a fiscal note be prepared in

such circumstances remains. The only obvious accommodation the act makes is providing that the only notice that must be published in the North Carolina Register is one advertising a public hearing on a proposed code change (this provision was amended by a subsequent act, discussed below). The council is not required to publish the text of a proposed code change in the Register before adopting it. Similarly, code changes need not be published in the North Carolina Administrative Code.

The primary effect of these changes is to increase the number of steps needed and to lengthen substantially the time period necessary for adopting code changes. Perhaps the most important effect of subjecting code amendments to the APA is that the North Carolina Rules Review Commission will now review each building code regulation. This commission reviews and approves state administrative rules, determining that they are clear and unambiguous and reasonably necessary for a state agency to fulfill its statutory duties. Even if the commission approves a permanent rule, the effective date of the rule is delayed by statute. An approved rule becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least twenty-five days after the commission approved the rule. The Rules Review Commission must make monthly reports to the Joint Legislative Administrative Procedure Oversight Committee concerning all rules that have been approved as well as those that have been returned to agencies during the past month. The APA also provides a procedure for delaying the effective date of a rule if a bill is filed in the General Assembly that would specifically disapprove the rule.

Although the act is not entirely clear on this point, it apparently will not affect revisions to the code adopted before January 1, 2002.

A second act, S.L. 2001-421 (H 355), was adopted by the General Assembly after S.L. 2001-141 became law. S.L. 2001-421 serves as an omnibus bill for the North Carolina Department of Insurance, but it also make a series of minor “clean-up” and conforming changes to G.S. 143-138. It provides that the Building Code Council is required, after all, to publish a notice of a rule-making proceeding in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. It also updates references to those building industry and testing organizations whose standards may be used in adopting code provisions (many of these have become international organizations) and gives the North Carolina Building Code Council express authority to use the standards of such international agencies.

In addition, S.L. 2001-141 includes new provisions governing setup requirements for manufactured homes. These are discussed below.

Manufactured Home Setup Requirements

One source of confusion among some code enforcement officials has been the extent of their duties in regards to the setup of manufactured homes. Manufactured homes are inspected for compliance with standards promulgated by the U.S. Department of Housing and Urban Development (HUD) and are labeled at the manufacturing site by a federally approved inspection agency. Generally speaking, the local building inspector is neither required nor authorized to inspect the manufactured home itself. Electrical, mechanical, and plumbing inspectors do, however, conduct inspections of manufactured homes to ensure that electrical, natural gas, and water supply connections are properly made; that heating, air-conditioning, and ventilation equipment for the unit operates properly; and that waste drain pipes are properly connected to the sewer or septic tank. If decks or storage areas are added to the manufactured homes, they must conform to the Residential Code for One- and Two-Family Dwellings and must be inspected by a certified inspector. However, it has been unclear whether a building inspector may enforce anchoring and tie-down requirements and regulations concerning piers, foundations, steps, and “marriage wall” connections on doublewide units. These standards are not part of the State Building Code but are set forth in the State of North Carolina Regulations for Manufactured/Mobile Homes adopted by the Commissioner of Insurance. S.L. 2001-421 amends G.S. 143-151.8(2) to clarify that although these regulations are still not part of the North Carolina

State Building Code, they can and must be enforced by certified code enforcement officials. The act expands the jurisdiction of code enforcement officials, particularly building inspectors, and has implications for their training and testing as well.

Contracting Out Building Inspection

S.L. 2001-278 (H 598) follows up legislation adopted in 1999 that allowed cities and counties to contract for building inspection services with a private individual or with the employer of such an individual as long as the individual performing the service is a certified code enforcement official. However, to counter fears that “contracting out” would become the norm, the 1999 legislation also specified that contracts for privately provided code enforcement inspections could be entered into only for “specifically designated projects.” It has been unclear whether this language required a local government to list by name specific building projects that could be inspected by a private inspector or whether the contract could designate specific classes of building projects (for example, all buildings requiring a Class III electrical inspection during the following twelve months) that would be so inspected. S.L. 2001-278 removes the ambiguity by deleting the requirement. Now local governments and private parties may negotiate, without limitation, the terms under which inspection services will be provided.

Changes in Municipal Unsafe Building Law

S.L. 2001-386 (S 885) is an important “clean up” act that eliminates some of the ambiguities created in the wake of last year’s changes to the municipal unsafe building statutes (also known as the building condemnation laws). The statutes involved are G.S. 160A-426 through 160A-432, and the changes apply only to cities and not to counties. Legislation adopted in 2000 expanded the power of cities to take enforcement action against vacant or abandoned nonresidential structures that exert blighting influences upon the neighborhood even though they do not meet the traditional “unsafe” standards. However, this legislation also appeared to remove the power of cities to take action against unsafe nonresidential buildings that are neither vacant nor abandoned. S.L. 2001-386 reaffirms that the traditional “unsafe building” condemnation authority may be used against either residential or nonresidential properties. The authority to condemn vacant or abandoned properties thus serves as a supplemental source of power.

The other particularly notable feature of this act allows cities to take action without a court order to remove or demolish nonresidential structures and to impose a lien on properties for the costs of doing so. This power is available with respect to nonresidential properties under a city’s traditional unsafe building condemnation authority. It also is now available for nonresidential structures that qualify as either vacant or abandoned if they have a blighting influence on the neighborhood.

After S.L. 2001-386 was enacted, the General Assembly adopted another bill that amends G.S. 160A-432. S.L. 2001-448 (S 352) allows a city to impose a lien for the unpaid costs of demolition and repair not only on the property that is subject to the action but also on certain other land owned by the person in default. S.L. 2001-448 is discussed below in the section entitled “Appearance and Nuisance Control.”

Pilot Program for Building Rehabilitation

S.L. 2001-372 (S 633) establishes a pilot program for applying new building code standards to the rehabilitation of existing buildings and is intended to help stimulate the revitalization of older commercial areas, particularly downtowns. Once established, the code will apply to the four-year period from January 1, 2002, to January 1, 2006. Perhaps the most extraordinary feature of the act is the interplay between Mecklenburg County and the North Carolina Department of Insurance (NCDI) in the development of the code. For purposes of the act, Mecklenburg County is known as the “local lead organization” (a jurisdiction that currently has a population of over 650,000 that has been approved by the Building Code Council to perform local plan review and

approval). Currently Mecklenburg County is the only local government in the state that meets these criteria. As such, it is authorized under the act to develop, in consultation with NCDOT, a pilot code based on the New Jersey Uniform Construction Code Rehabilitation Subcode. The county has until February 17, 2002, to develop suitable cross-references between the pilot code and various volumes of the existing North Carolina State Building Code and to deliver the cross-referenced code to NCDOT. NCDOT then has thirty days within which to comment on the proposal. NCDOT's comments may address the coordination of the pilot code with existing State Building Code volumes and cross-referencing between the codes but may not call for substantive changes to the standards established in the New Jersey model code. The county is subsequently required to incorporate the suggested comments (revisions). The resulting document then becomes the pilot code.

The pilot rehabilitation code may be adopted not only by Mecklenburg County but also by any city or county whose building inspection departments have been approved by the North Carolina Building Code Council to conduct local plan review and approval in accordance with Section 602.2.3 of the Administrative Volume of the State Building Code. For any local government other than the "lead local jurisdiction," the pilot code becomes effective when its governing board adopts the code and the local government informs NCDOT and Mecklenburg County of that fact.

The pilot code expires for all local governments adopting it on January 1, 2006. In no case, however, may structures or projects built in compliance with the pilot code be required to be retrofitted to come into compliance with the North Carolina State Building Code after the pilot program expires.

The act also directs the lead local jurisdiction (Mecklenburg County) to submit an interim report on the effectiveness of the pilot program to the Building Code Council, NCDOT, and the General Assembly by December 1, 2004, and a final report by April 1, 2006. The report must include statistics on the utilization of the code by participating jurisdictions, analyze administrative and cost issues, recommend whether the pilot program should be extended or made permanent, and, if so, determine whether the code should become part of a statewide code.

Sewer Cleanout

S.L. 2001-296 (H 824) is intended to help alleviate problems associated with backed-up sewer lines on private property. The act amends G.S. 87-10(b1) to impose a new requirement on public utility contractors installing sewer lines for houses and other buildings. These contractors must install, as an extension of the public sewer line, a sewer cleanout at the junction of the public sewer line and the line to the building. The cleanout must terminate at or above the finished grade and be located at or near the property line. The act became effective October 1, 2001, and applies to any installation of sewer lines to houses and other buildings that occurs on or after that date.

Door Locks and Toilets

S.L. 2001-324 (S 817) is an example of a general law that apparently was drafted with a particular property owner in mind but, as written, applies statewide. S.L. 2001-324 concerns Chapter 10 of Volume I of the North Carolina State Building Code, which establishes requirements for automatic door-unlocking mechanisms activated when a smoke, fire, or break-in alarm system is triggered. The act exempts from these requirements certain businesses that sell firearms or ammunition and that also operate a firing range. The exemption applies only if the business has obtained a special door lock permit from the North Carolina Department of Insurance. A business can obtain such a permit if it provides assurances that it will (1) furnish employees with a written facility locking plan and (2) post a sign at each entrance of the building warning that the building is exempt from the door lock requirements of the State Building Code and that after business hours the building will remain locked from the inside even in case of fire.

S.L. 2001-219 (S 342), on the other hand, began its life as a local bill applicable to one specific county. It was revised in such a way that it became a statewide law while still affecting

only that same county. The act essentially allows Gaston County to adopt an ordinance specifying the number of toilets required for buildings used primarily for outdoor sporting events. Such an ordinance may supersede the State Building Code and any other public or local law to the contrary.

Contractor Licensing

S.L. 2001-140 (S 431) makes changes in the types of projects that general contractors with intermediate licenses and limited licenses may undertake. Because general contractors must present satisfactory proof that they are properly licensed before they may qualify for building permits, this new statute has important implications for inspection departments. The holder of an unlimited license may continue to act as a general contractor without restriction as to the value of any single project. However, under the new law, the holder of an intermediate license may act as a general contractor for any single project with a value of up to \$700,000 (up from \$500,000). In addition, the holder of a limited license may now act as a general contractor for any single project with a value of up to \$350,000 (up from \$250,000). These changes became effective May 31, 2001.

Under the terms of S.L. 2001-159 (S 396), the North Carolina State Board of Electrical Contractors is authorized to acquire real property (for a new home office building), to establish a system of staggered license renewals for electrical contractors, and to increase substantially the fees associated with granting or renewing a license or administering an examination.

S.L. 2001-270 (S 395) increases fees for new licenses and license renewals for plumbing and heating contractors and rewrites certain other licensing and examination requirements. In addition, the act changes the scope of the work defined for "heating, group two" and "heating, group three."

Manufactured Homes as Real Property

S.L. 2001-506 (H 253) makes several important clarifying changes to the law as it affects the classification of manufactured homes as real property. Previously a manufactured home was treated as real property for taxation and conveyance purposes if the unit was a multisectioned residential structure; the unit's moving hitch, wheels, and axles were removed; and the unit was situated upon a permanent enclosed foundation on land belonging to the owner of the manufactured home. The new law makes otherwise qualifying single-wide units real property as well and removes the ambiguous requirement that the permanent foundation be enclosed. S.L. 2001-506 makes this change effective with respect to the taxation of such units for taxable years beginning on or after July 1, 2002. The act also requires the owner to surrender the certificate of title to the Division of Motor Vehicles when a unit becomes real property and to file evidence of the surrender of title with the register of deeds. These changes affecting conveyance of title became effective January 1, 2002.

Energy Conservation Pilot Program

S.L. 2001-415 (H 1272) requires state agencies to use life-cycle cost analysis in the construction and renovation of state facilities or state-assisted facilities of 20,000 square feet or more (was, 40,000 square feet or more). The new act clarifies that the cost analysis is to be submitted to the North Carolina Department of Administration (NCDOA) prior to the selection of a design option and the advertising of bids for operation. In addition, the department may require compliance with the project features as suggested by the certified cost analysis. The act also establishes an energy conservation pilot program, administered by NCDOA, to use the "High Performance Guidelines" developed by the Triangle J Council of Governments to evaluate selected state construction projects. For purposes of these guidelines, a *high performing facility* is one that:

- is energy efficient,
- incorporates reusable and renewable resources,
- provides natural lighting,
- is constructed of nontoxic materials,
- requires low maintenance,
- is congruent with the natural characteristics of the site,
- incorporates water conservation measures, and
- causes minimum adverse impacts to the environment.

NCDOA is directed to submit an interim report on the program to the General Assembly by December 15, 2002, and a final report not later than eighteen months after completion of the last project participating in the program.

Studies

Section 2.1(4) of S.L. 2001-491, the Studies Act, authorizes the Legislative Research Commission to study safety requirements in the State Building Code.

Minimum Housing Ordinances

Since 1989 North Carolina law [G.S. 160A-443(5a)] has allowed certain larger cities in the state to demolish boarded-up, deteriorated buildings that have a blighting influence upon a neighborhood. The city must first find that the building owner has abandoned any intention of repairing or improving the structure, and the structure must have remained vacant and closed for at least one year after the city ordered code compliance. Legislation adopted in 2000 expanded this authority to include all municipalities located in counties with a population in excess of 71,000. S.L. 2001-283 (H 307) adjusts G.S. 160A-443(5a) to allow a city to use this authority if the city spills into several counties, only one of which need have a population of over 71,000.

Greenville Service of Process

Building inspectors pursuing building condemnation actions and housing inspectors enforcing minimum housing codes often find it difficult to locate and provide formal notification to the owners of the affected properties. S.L. 2001-104 (H 866) allows the City of Greenville to require owners of rental property within the city to designate someone residing in Pitt County to serve as the owner's agent for purposes of accepting service of process. This information must be supplied on a form supplied by the city clerk, and an owner must notify the clerk of any change in the information within ten days after the change occurs. This new legislation, however, does not apply to owners of rental property who reside in Pitt County.

Transportation

Transportation Planning

Some have heralded S.L. 2001-168 as the first "smart growth" piece of legislation enacted in 2001. Regardless of the hype, the act does revise transportation planning, particularly at the local level. It nudges local governments toward developing more creative solutions to their transportation problems. This legislation affects G.S. 136-66.2, the statute that for decades has directed municipalities to develop street and thoroughfare plans that must be mutually adopted by the city and the North Carolina Department of Transportation (NCDOT). The new law amends G.S. 136-66.2 in the following ways:

- It revises the statute so that it now applies primarily to local governments that are *not* part of a metropolitan planning organization (MPO). This statute complements legislation adopted in

1999 and 2000 that provides for local transportation planning within metropolitan regions (G.S. 136-200 through 136-203).

- It modifies some of the statutory terminology to reflect a desired change in emphasis. The statute now refers to transportation plans and systems rather than simply highway and street plans and systems. Local transportation plans must consider all transportation modes (including transit alternatives and bicycle and pedestrian facilities) and strategies for operating them.
- It now expressly authorizes (but does not compel) counties outside metropolitan areas to develop comprehensive transportation plans in cooperation with NCDOT. Such plans may be mutually adopted by the county and NCDOT. Multiple cities and counties may cooperatively adopt local transportation plans as well.
- It now expressly allows municipalities and metropolitan planning organizations (MPOs) to adopt collector street plans to complement the roadway (highway) elements of the transportation plan. In such a case NCDOT may review the collector street plan but is not required to approve it.
- It stipulates that NCDOT will “participate” in the development and adoption of a transportation plan only if all of the local governments in the planning area have adopted land development plans within the previous five years or are in the process of developing such a plan. Although the elements or features of a “land development plan” are not spelled out in the new law, any of the following qualify: a comprehensive plan, land use plan, master plan, strategic plan, or “any type of plan or policy document that expresses a jurisdiction’s goals and objectives” for the development of land within that jurisdiction.
- It requires that each MPO in the state develop, in cooperation with NCDOT, a comprehensive plan meeting federal planning requirements so that the MPO can qualify for federal transportation financial aid. The MPO plan may include projects that are not included in a financially constrained plan or that will be needed after the horizon year. Local governments within an MPO should note that the MPO takes on the responsibility for developing the plan on a metropolitan-wide basis. For purposes of transportation planning and programming, the MPO represents municipal interests to NCDOT.

School Location and Traffic

Section 27.27 of the Appropriations Act (S.L. 2001-424) addresses the significant traffic problems that can be associated with the location of schools around the state. It directs NCDOT to provide written evaluations of and recommendations concerning school driveway access and operational impacts on the state highway system resulting from the location of schools. The act also directs all public and private school entities that are constructing, relocating, or expanding a school to request from NCDOT written evaluations and recommendations to help ensure that all proposed school traffic access points comply with the state’s street and driveway access policies. The act clarifies that schools are not bound by the NCDOT recommendations.

Municipal Extraterritorial Road Construction

Two acts with similar purposes expand the power of certain cities to spend municipal funds to construct and improve roads outside their city limits. S.L. 2001-261 (S 408) applies only to cities with a population of 250,000 or more according to the last federal census (Charlotte and Raleigh are the only cities that currently meet this criterion). It adds new G.S. 160A-296(a1) to allow those cities to open, widen, extend, build, and acquire the land for streets, sidewalks, alleys, and bridges within their extraterritorial planning jurisdictions. Before making improvements to such streets, however, the city must enter into a memorandum of understanding with NCDOT that NCDOT will provide maintenance for these streets.

S.L. 2001-245 (S 614) is a local act that applies to the named cities of Monroe, Concord, and Charlotte and the towns of Cary and Weddington. It adds new G.S. 160A-296.1 and amends

G.S. 143-350(f)(4) to apply to just those municipalities. It allows these municipalities to construct or contribute toward the cost of roads in areas beyond their respective extraterritorial planning and zoning jurisdictions. The authority applies, however, only to roads owned by the state and maintained by NCDOT.

Rural Roads

S.L. 2001-501 (S 1038) represents an attempt to address the difficulties in qualifying rural roads for public use and includes two rather different initiatives. The first amends G.S. 136-44.7 to compel NCDOT to condemn certain right-of-ways in preparation for certain secondary road paving or maintenance projects. Condemnation is required if (1) one or more property owners have not dedicated the necessary right-of-way; (2) at least 75 percent of the owners of property adjacent to the project and the owners of 75 percent of the road frontage adjacent to the project have dedicated the necessary right-of-way and have provided funds required by NCDOT rule to cover the costs of condemning the remaining property; and (3) NCDOT has tried unsuccessfully, over a period of at least six months, to persuade property owners unwilling to relinquish right-of-ways to do so voluntarily.

The second initiative adds new G.S. 136-96.1 to authorize a new special proceeding that allows a county clerk of court to declare a public right-of-way if the following four conditions are met: (1) the landowners of tracts constituting two-thirds of the road frontage of the land abutting the right-of-way join in the action; (2) the right-of-way is depicted on an unrecorded map, plat, or survey; (3) the right-of-way has been actually open and used by the public; and (4) recorded deeds for at least three separate parcels abutting the right-of-way recite the existence of the right-of-way as a named street or road. The new law does not apply to a right-of-way established by adverse possession or by a cartway proceeding.

County Road Naming

In the past, G.S. 153A-239.1, the statute authorizing counties to name and rename roads, has not expressly authorized the counties to adopt an ordinance setting forth the procedure by which the naming and renaming shall occur. S.L. 2001-145 (S 380) remedies this deficiency by amending the statute to provide for such authority. The new law requires that a notice of the hearing to consider the adoption of a county road-naming-procedure ordinance must be published in a newspaper at least ten days before the date of the hearing. Perhaps more importantly, the new legislation clarifies that names may be initially assigned to new roads when an approved subdivision plat is recorded. Apparently it makes no difference whether the plat is approved by a county or by a city acting within the city's extraterritorial planning jurisdiction—in these cases the procedures set forth in a county road-naming-procedure ordinance do not apply.

Road Transportation Studies

Part III of S.L. 2001-491 authorizes the Joint Legislative Transportation Oversight Committee to study a variety of transportation topics and to report to either the 2002 or the 2003 session of the General Assembly. Among the topics that the committee may study are (1) subdivision roads that do not meet standards for being accepted into the state highway system, (2) transportation funding generally, and (3) NCDOT's payment of the nonbetterment costs of relocating utility lines.

Rail Transportation

There were several legislative developments in 2001 that concern rail transportation. Section 27.4(b) of the Appropriations Act, S.L. 2001-424, allocates \$250,000 for an engineering study of the infrastructure improvements (and their costs) required to provide passenger rail service to western North Carolina on an existing freight rail line owned by Norfolk Southern. Section 27.5(c) of the same act also directs NCDOT to negotiate with Norfolk Southern concerning the use of its

tracks to provide this passenger rail service. NCDOT is to report back to various legislative committees concerning both the engineering study and the negotiations with Norfolk Southern and to do so by January 15, 2002, and every six months thereafter. In addition, Section 27.5(a) of the Appropriations Act allocates \$300,000 to NCDOT to acquire land for a new train station to be built in Asheville's Biltmore Village, south of downtown. Section 27.7 directs NCDOT to report to the Joint Legislative Transportation Committee (JLTC) by February 5, 2002, on the status of the development of the downtown intermodal transportation station in Charlotte. Finally, Section 5.1 of S.L. 2001-491 directs NCDOT to study the feasibility of acquiring rail lines or the rights to use such lines in Forsyth, Guilford, and neighboring counties for a commuter rail service to be operated by the Piedmont Authority for Regional Transportation. NCDOT is to report these findings to the JLTC by May 1, 2002.

The federal government is also entertaining proposals to establish high-speed rail corridors across the country, including the Southeast. In early 2001 the Virginia General Assembly adopted a resolution providing for the creation of the Virginia-North Carolina Interstate High-Speed Rail Commission. The purpose of such a commission is to explore the costs, benefits, and required legislative actions associated with establishing high-speed passenger rail service between Virginia and North Carolina and destinations to the northeast and southeast. In response, the North Carolina General Assembly adopted S.L. 2001-266 (S 9), which provides for the appointment of the six North Carolina members of the commission, three to be appointed by the Speaker of the House and three to be appointed by the President Pro Tempore of the Senate. The act also calls for the Rail Division of NCDOT to provide technical support to the commission and for North Carolina's Legislative Services Officer to assign professional and clerical staff to assist the commission. The commission must report its findings and any recommendations to the Governor and the General Assembly by October 20, 2002. It may also make an interim report upon the convening of the 2002 legislative session, again to both the Governor and the General Assembly.

Eminent Domain

Certain governmental entities (for example, NCDOT) may use the "quick-take" procedure in the exercise of eminent domain. This procedure allows the condemnor to take possession of the property being acquired before (rather than after) the amount of the damage award is finally determined. Two rather different governmental entities that were already allowed to condemn land were authorized by this year's General Assembly to use the quick-take procedure. The first, and more controversial piece of legislation, S.L. 2001-239 (S 719), amends G.S. 40-42(a) to permit a regional public transportation authority to acquire property in this manner. S.L. 2001-73 (H 555) amends the charter of the Halifax Regional Airport Authority (S.L. 1997-275) to allow it to use the quick-take procedure as well.

Infrastructure

Two acts amend state law regarding local provisions of water and sewer. S.L. 2001-238 (S 123) amends G.S. 159I-30 to authorize local governments to issue special obligation bonds for water and wastewater projects. S.L. 2001-416 (S 247) makes several changes regarding state financial support for infrastructure. It delays until January 1, 2002, the issuance of Clean Water Bonds authorized for unsewered community grants, natural gas facilities, or public school building capital improvements. The law withdraws \$71 million in Clean Water Bond proceeds reserved for loans to local governments for water and wastewater projects and reallocates them to grants for unsewered communities (\$35.6 million) and supplemental grants to local governments to match state and federal grants and loans for water and sewer projects (\$35.6 million). The supplemental grants are capped at \$21.5 million for each fiscal year through June 30, 2005. The Rural Economic Development Center, which administers these grants, is further authorized to make reallocations of funds from unsewered community grants to supplemental grants, and vice versa, if the relative

needs warrant such reallocation in a given fiscal year. The act requires the Rural Economic Development Center to file a report each year regarding these grants, including an itemized accounting of expenditures of bond funds and a detailed description of the criteria and award system used in making the grants.

Two acts make modest amendments to the laws governing organization for provision of infrastructure. S.L. 2001-224 (S 432) allows nonprofit water corporations and the state to join water and sewer authorities that have been organized by three or more political subdivisions. S.L. 2001-301 (H 236) creates G.S. 130A-70.1 to allow sanitary districts that include municipalities to annex territory that is also annexed by the municipality and to allow the district to contract with the county to assume a portion of any county indebtedness related to utility lines constructed or operated by the county in such areas.

Three local acts provide Charlotte with additional flexibility and authority concerning infrastructure provision. S.L. 2001-329 (S 405) allows Charlotte to enter into reimbursement agreements with private developers and property owners for design and construction of water, sewer, street, sidewalk, and other associated facilities. S.L. 2001-304 (S 407) allows Charlotte to use expedited condemnation (quick-take) procedures to acquire property for stormwater and public transportation systems. S.L. 2001-248 (S 534) permits Charlotte to enter into contracts with private parties for the provision of storm drainage and public intersection and roadway improvements without complying with the bid laws, provided that in each instance the project cost does not exceed \$175,000.

Appearance and Nuisance Control

Tree Protection

The topics of tree protection and clear-cutting continued to generate controversy in the 2001 General Assembly. In 2000 the towns of Apex, Cary, Garner, Kinston, and Morrisville gained authority to adopt ordinances regulating the planting, removal, and preservation of trees and shrubs [S.L. 2000-108 (H 684)]. Such ordinances, however, had to exclude property to be developed for single-family or duplex residential uses as well as property used for forestry activities conducted according to a forestry management plan. The municipalities believed these exceptions created a sizable loophole they were unequipped to address—namely, that of property owners clear-cutting sites in anticipation of later submitting a development application for the site or selling the land to a developer. In the 2001 session, Cary, Garner, and Morrisville, along with their sister Wake County municipalities of Knightdale and Fuquay-Varina, and the two cities of Durham and Spencer returned to the General Assembly to further clarify and expand their authority in this matter.

S.L. 2001-191 (H 910) expressly authorizes these seven municipalities to create regulations governing the removal and preservation of existing trees and shrubs prior to development within certain buffer zones. The perimeter buffer zone extends up to sixty-five feet along roadways and property boundaries adjacent to developed properties and up to thirty-two feet along property boundaries adjacent to undeveloped properties. The regulations must allow reasonable access onto and within the land they affect. In addition, they must exclude normal forestry activities that either are taxed at present-use value (under the state's program for use-value taxation) or are conducted pursuant to a forestry management plan prepared or approved by a registered forester.

The cities did gain two important additional powers under the act. First, if all or substantially all of the perimeter buffer trees which should have been protected from clear-cutting are removed, and afterward a property owner seeks a permit or plan approval for that tract of land, the city may deny the building permit or refuse to approve the site or subdivision plan for that site for a period of five years following the "harvest." Second, a municipality subject to the act may adopt regulations governing the removal and preservation of specimen or "champion" trees on sites being planned for new development. The application of these specimen or champion tree

regulations is not restricted to the corridors or buffer zones that are subject to the clear cutting restrictions.

All of the powers described above may be employed by the municipality both within its corporate limits and within its extraterritorial planning jurisdiction.

Nuisance Control

The most important nuisance control legislation adopted in 2001 is legislation that may make it easier for cities to enforce liens against an owner of property that is the subject of a nuisance action. S.L. 2001-448 amends G.S. 160A-193 (municipal public health and safety nuisances), G.S. 160A-432 (municipal structures that are unsafe or that have a blighting influence), and G.S. 160A-443 (dwelling units demolished or repaired by local governments under minimum housing ordinances). The act first clarifies that liens imposed by local governments to recover the costs associated with the nuisance that apply to the premises where the nuisance occurred shall have the same priority and be collected as unpaid ad valorem taxes.

The act also provides for a new and more controversial lien to recover costs. Under this new act, the expense of any of these nuisance actions is also a lien on any other real property owned by the person in default that is located within the city or within one mile of the city limits, except for the person's primary residence. This second type of lien is inferior to all prior liens and is collected as a money judgment. There is one important exception to this new type of lien: If the person in default can show that the nuisance was created solely by the actions of another person, the lien is inapplicable.

One local act, S.L. 2001-107 (S 453), extends special powers to the cities of Lexington and Winston-Salem that are already enjoyed by Gastonia, High Point, and Roanoke Rapids. These cities may adopt a property maintenance ordinance dealing with trash, obnoxious weeds, overgrowth, solid waste, and the like. If affected owners fail to comply with the ordinance, the municipality may in certain instances go on the property to perform any work necessary to bring it into compliance with the ordinance (a "self-help" remedy). This statute, however, now applicable to these five cities, allows the use of such a self-help remedy only if the owner is a chronic violator of the ordinance (defined as an owner whose property is subject to remedial action at least three times during the previous calendar year).

Sign Control

The most noteworthy legislation affecting the control of outdoor advertising and other signs is S.L. 2001-383 (S 206). This act adds new Article 11B to G.S. Chapter 136, directing NCDOT to establish a tourist-oriented directional sign (TODS) program. The amended statute authorizes new directional signs for tourist businesses and facilities to be exhibited within the highway right-of-way on certain logo-type "panels." The TODS program applies to highways for which the access is not controlled. It is intended to supplement, not replace, the state's popular logo sign program, which applies to highways that are access controlled.

Tourist-oriented businesses and facilities are defined in the act, must be open to the general public, and must meet all applicable laws concerning public accommodations. NCDOT is directed to adopt program rules reflecting a variety of restrictions and program features. It must establish standards for the signs' size, color, and letter height as specified in the National Manual of Uniform Traffic Control Devices for Streets and Highways. Only one tourist-oriented business or facility may be advertised on each sign panel, and no more than six sign panels may be erected per intersection. A TODS may not be placed "immediately in advance of the business or facility" if the business or facility and its on-premise advertising signs are "readily visible from the roadway." No TODS may be placed more than five miles from the business or facility.

Local governments will be interested to know that the placement of these signs is limited to "rural areas in and around towns or cities with a population of less than 40,000." Perhaps more importantly, no TODS may be placed where prohibited by local ordinance.

The act became effective January 1, 2002.

Littering

S.L. 2001-512 (S 1014), which revises the statutes dealing with littering and the dumping of solid wastes, is discussed in Chapter 10, “Environment and Natural Resources.”

Richard D. Ducker

David W. Owens

