

Community Planning, Land Development, and Related Topics

The General Assembly enacted significant legislation in the 2008 short session affecting land use, development, transportation, and code enforcement. It provided enabling authority to set into motion a program for disposing of abandoned manufactured homes that dot the countryside. New legislation will now require local governments that operate public water systems to develop and carry out various water conservation measures. The legislature also reworked stormwater management standards for parking lots throughout the state and chose to disapprove coastal stormwater rules adopted by the Environmental Management Commission (EMC) and to replace them with certain statutory standards.

The bigger story may have been the bills in this field that were eligible for consideration but were not enacted. Bills to drastically change the annexation laws were blocked; a study commission will take up annexation next year. An amendment to a bill that would have significantly limited the existing laws on development moratoria was withdrawn. A bill that would have prevented local governments from accepting developer contributions in connection with development proposals (a big issue where adequate—public-facility ordinances are used) died in committee. A proposal by outdoor advertising interests to allow them to cut trees within certain state highway rights-of-ways so that their signs could be better seen from the road ran into potent opposition. Still another bill that would have limited the ability of local governments to make periodic inspections of property to check for compliance with housing and fire codes and unsafe building conditions never made it to the Senate floor. Finally, a bill concerning the judicial review of quasi-judicial land use decisions languished because of lukewarm support.

Zoning

Among the most notable legislative activities regarding zoning in 2008 were two initiatives that failed.

The first initiative addressed the question of new limits on the use of development moratoria. Amendments to the zoning statutes in 2005 established a detailed process for the adoption of moratoria. The law requires public hearings in most instances and requires consideration and adoption of a written rationale for the moratorium. A local government must specify the reason for a moratorium and why other steps are inadequate, specify the length and coverage of the moratorium, and approve an action plan to address the problem that led to the imposition of the moratorium. The length of the moratorium is limited to a reasonable period given the stated purpose. There are limits on extensions of moratoria and limits on its applicability to completed applications submitted prior to the call for a public hearing on the moratorium. Despite these limitations, several moratoria have been adopted in recent years that sparked considerable local controversy. As a result, in the last days of the 2008 session, a Senate committee added a limitation on moratoria to a pending bill on North Carolina Department of Transportation (NCDOT) access permits (H 2313). The proposed limit would have prohibited the adoption of any moratorium if “the sole purpose” of the moratorium was to update or amend a local plan or ordinance. Cities and counties were concerned that because most moratoria are adopted to maintain the status quo pending an ordinance amendment of some description, this could be read to effectively prohibit the use of temporary moratoria in most situations. After several days of heated debate, the sponsor of the limitation amendment agreed to withdraw the proposal for the 2008 session.

The second initiative tackled judicial review of land use appeals. In 2007 the Senate approved S 212 to codify various aspects of the procedures for judicial review of local government quasi-judicial land use approvals, including appeals of decisions on special and conditional use permits, enforcement actions, variances, and some plats. S 212 addressed the content of the judicial petition used to start an appeal, standing to bring an appeal for individuals and groups, parties that must be named in the appeal, and the process for intervention. The bill also addressed the scope of review to be used by the courts, the degree of deference to the local decision-making board, and remedies available for consideration by the court. However, in 2008 the House used S 212 as a vehicle to address the confidentiality of records of participants in local park and recreation programs, deleting the relevant zoning provisions in S 212. The bill was enacted in that amended form.

Several bills were enacted affecting zoning as it pertains to specific local governments. Two of these acts expand upon prior local authorizations. Local legislation in 2003 allowed electronic rather than published notice of hearings for Cabarrus County, Raleigh, and Lake Waccamaw. In 2007 Apex, Garner, and Knightdale were also allowed to provide notice of public hearings through electronic means. S.L. 2008-5 (S 1579) adds Cary to the list of local governments authorized to substitute electronic notification of hearings for published notice. These electronic notices do not supersede statutory requirements for mailing notices of hearings or for posting notices of hearings on the site of affected properties, nor do they alter the schedule for making the notices. The second act extends the number of local governments explicitly authorized to use development regulations to provide incentives for energy conservation. In 2007 Asheville, Carrboro, Chapel Hill, Charlotte, and Wilmington were given the authority to grant density bonuses, adjust development regulations, and provide other incentives to developers of projects that make a significant contribution to reduction of energy consumption. S.L. 2008-22 (S 1597) adds Cary, Concord, Durham, Harrisburg, Kannapolis, Locust, Midland, Mount Pleasant, Stanfield, and Cabarrus County to the list of local governments authorized to do this. The third act of interest, S.L. 2008-41 (S 2126), amends the Winston-Salem charter regarding zoning penalties.

Land Subdivision and Development Fees

Land Partition

The partition of land owned jointly by tenants in common and its sale is important to those interested in land subdivision regulation. Both voluntary and involuntary partitions of land, common ways of dividing land among family members, are generally thought to be outside the scope of subdivision regulation. Sections 42.1 to 42.5 of the studies act, S.L. 2008-181 (H 2431), establish a joint Partition Sales Study Committee

to study how partitions sales procedures affect the economic use and loss of property by heirs in North Carolina. The committee must report to the General Assembly by March 1, 2009.

Local Acts

Chapel Hill secured the adoption of an amendment to an existing local act affecting “fees-in-lieu” of dedication of recreation lands and facilities. S.L. 2008-76 (H 2580) amends the town charter provisions applicable to new subdivisions to allow the town to require payment of fees instead of accepting dedications if the recreation areas involved would be less than four acres in size (previously, two acres). It also allows the town to require payments in lieu of accepting dedications of recreation land in connection with both residential and nonresidential development projects that are subject to special-use or conditional-use zoning permits.

Bills That Did Not Pass

In 2007 the Senate adopted S 1180, making it eligible for further consideration in the 2008 session. The bill prohibited a local government from imposing any tax or fee, or accepting a monetary contribution, in connection with development that is not specifically authorized by law. In particular the bill was targeted at local governments that invite developers to make “contributions” to defray certain infrastructure costs related to a development in order to meet “adequate-public-facility” standards in land development ordinances. The practice has become particularly common in a small number of metropolitan counties that enforce adequate-public-facility standards in connection with public schools. S 1180 was not taken up by the House and died in committee.

Community Appearance and Nuisances

Local Acts

Since 1999 over a half-dozen local acts have concerned the remedies that may be pursued by local governments in enforcing public nuisance ordinances (typically overgrown vegetation ordinances). Most include variations on the themes of providing notice to chronic ordinance violators, abating the nuisance, and establishing a lien against the property for unpaid costs. These local acts, however, may run afoul of Article II, section 24, of the North Carolina Constitution, which prohibits the General Assembly from enacting “any local, private, or special act . . . relating to health, sanitation, and the abatement of nuisances.”

In any event, S.L. 2008-6 (S 1653) allows Franklinton, Louisburg, Mount Airy, Pinetops, Smithfield, and Yadkinville to give annual notice to violators of overgrown vegetation ordinances. S.L. 2008-23 (S 1636) provides similar authority for Morehead City and Wilson; S.L. 2008-25 (S 1828) does so for Marshville, Wadesboro, and Wingate.

Bills That Did Not Pass

In 2007 the Senate adopted S 150, making it eligible for further consideration in the 2008 session. The bill, pushed by outdoor advertising interests, would have allowed owners of billboards to cut more trees that might obscure their signs within state highway rights-of-way. Owners of these advertising displays along certain federally aided highways offered to pay more in administrative fees to NCDOT; the money would also fund the replanting of new trees elsewhere. In return owners would have been allowed to remove trees, shrubs, and other vegetation within 375 feet of their signs, an increase from the current standard of 250 feet. S 150 represented the industry's third attempt in as many years to secure favorable legislation. However, the bill was opposed by Speaker of the House Joe Hackney and Governor Michael Easley, and it died in a House committee.

Historic Preservation

In 2007 Cary and Wake Forest secured local legislation that allows each of them to regulate the demolition of certain historic structures within their jurisdictions. Among the historic structures that may be regulated are (1) state, local, and national landmarks; (2) structures listed in national, state, or county registers of historic places; and (3) certain structures that "contribute" to the historic district in which they are located. However, the act also provides that towns may not prohibit the demolition of historic structures except in accordance with existing general law. The act apparently intends that G.S. 160A-400.14 applies to all of these historic structures. That statute allows a local government to delay the effective date of a certificate of appropriateness for a proposed demolition up to 365 days after it is approved. S.L. 2008-75 (H 2579) amends the 2007 act to extend the authority to Chapel Hill. S.L. 2008-58 (S 1970) includes essentially identical language to extend this same authority to the City of Wilson.

Code Enforcement

Managing Abandoned Manufactured Homes

Over the years an increasing number of old manufactured homes (formerly "mobile homes") have been abandoned, discarded, or vacated in back lots, mobile home parks, and isolated rural areas in North Carolina. There has not been an especially active repair market for older units, and the cost of dismantling and hauling the units away has often exceeded their value. Proposals to fund a program for dealing with nuisance manufactured homes by imposing a tax or fee on the purchase of new units have not

met with legislative success. This year, however, the General Assembly authorized a promising new multifaceted program, S.L. 2008-136 (H 1134), for funding the "deconstruction" and removal of units.

To break through the financial stumbling blocks that have thwarted past attempts at a solution, the General Assembly directs the Department of Environment and Natural Resources (DENR) to use up to \$1 million from the Solid Waste Management Trust Fund to fund the cleanup of abandoned units. The money is to be used by DENR to provide grants to counties to reimburse their expenses in undertaking a cleanup program, to provide technical assistance and support to counties, and to fund the administrative expenses of staffing, training, and program support. Reimbursement grants made to counties, a key feature of the program, are to be calculated on a per-unit basis and are based on the actual cost of cleanup activities, but may not exceed \$1,000 per manufactured home unit. However, a poor county (a tier-one development county or a tier-two development county for economic development purposes) is eligible to request a supplemental grant equal to 50 percent of the amount in excess of \$1,000 per unit. These poorer counties are also eligible for a special planning grant of \$2,500 from the Solid Waste Management Trust Fund. In making any of these grants DENR must review the budget submitted by the applicant county and settle on a grant amount that takes into account the availability of funds and the county's capacity to manage the program effectively and efficiently.

A county may choose whether or not to initiate an abandoned manufactured home program. If the county elects not to do so, the county must so state in the county comprehensive solid waste management plan that each county is required to develop. If the county decides to proceed with an abandoned manufactured home program, then it must develop a written plan outlining its intentions, which becomes a component of its comprehensive solid waste management plan. Among other things, the implementation plan must outline how an owner of a manufactured home may request designation of the unit as an abandoned manufactured home and how the county will dispose of units that are not "deconstructed." This latter matter is important because the act prohibits an intact abandoned manufactured home from being disposed of in a landfill. The act does, however, allow counties to charge a landfill disposal fee for deconstructed units.

The process for "managing" and removing such units is ambitious. Perhaps the key to S.L. 2008-136 is the definition of an "abandoned manufactured home." The unit must either qualify as a manufactured home (as defined for property tax assessment purposes in G.S. 105-164.3) or as a mobile classroom. It must also meet two additional tests. First, the unit must be either vacant or "in need of extensive repair." (Note that occupied units can still be deemed "abandoned.") Second, the unit must

pose an “unreasonable danger to the public health, safety, welfare, or the environment.” It appears likely that the public officials charged with enforcing this program will exercise considerable discretion.

The gist of the program is simply to locate those manufactured homes that meet the definition of “abandoned,” notify the “responsible party” (anyone possessing an ownership interest in the unit), give that party the opportunity to dispose of the unit, and, if the responsible party fails to do so, remove the unit from the premises and “deconstruct” it. Since much of the process is outlined in the statutes, an extensive implementing ordinance is probably not required. A county is authorized to contract with another unit of local government or private entity to carry out this program.

The “code enforcement” process for the counties that choose to participate in the program is as follows. The county must notify the responsible party and the owner of the land upon which the abandoned manufactured home is located that the unit must be disposed of. The notice must be in writing and served according to the Rules of Civil Procedure. The notice also informs the party that a hearing will be held before a designated public official not less than ten days nor more than thirty days after the notice is served. The notice must also declare that the responsible party has the right to file an “answer” to the order, to appear in person, and to give testimony in what is apparently a quasi-judicial hearing. If the hearing officer then determines that the unit is abandoned, then the officer must prepare findings of fact to support such a determination and order the responsible party to dispose of the unit within ninety days.

If the responsible party fails to comply with the order, the county may dispose of the unit. Specifically, the county may enter the property where the unit is located and arrange to “deconstruct” and dispose of it in a manner consistent with the county’s plans. G.S. 130A-309.113(d) specifically provides that an “intact” abandoned manufactured home (one from which the wheels and axles, white goods, and recyclable materials have not been removed) may not be disposed of in a landfill. G.S. 130A-309.114 specifically provides that if the responsible party is not the owner of the land upon which the unit is located, the county may order the land owner to permit entry onto the land to permit the removal and disposal of the unit. It is unclear how this provision complements the state’s trespass statutes.

If the county removes, deconstructs, and disposes of the unit (whether by force account or by independent contractor), the responsible party is liable for the actual costs incurred. Such costs include not only abatement activities, but administrative and legal expenses as well, minus the amount of any grant money received by the county for disposing of that unit. Nonpayment of any portion of the county’s costs results in the imposition of a lien on any real property in the county that is owned by

the responsible party. Although the new abandoned manufactured home statutes treat such units as if they were public nuisances, the legislation clarifies that it does not affect the existing legal ability of local governments to abate public nuisances or exercise any existing powers that a city may have under G.S. Chapter 160A or that a county may have under G.S. Chapter 153A.

Carbon Monoxide Detectors

Public discussion of global warming and carbon footprints has highlighted the growing menace of carbon dioxide in our atmosphere. However, carbon dioxide has a sibling, carbon monoxide, that can be lethal in confined quarters, particularly on residential premises. Because of the invisible, odorless danger caused by carbon monoxide, the North Carolina Child Fatality Task Force recommended legislation requiring the installation of carbon monoxide detectors in new residences (through the amendment of the North Carolina State Building Code) and in existing residential rental units as well.

Much of S.L. 2008-219 (S 1924) represents a compromise among a number of parties including landlords, builders, and those concerned with the public health and safety problems created by the gas. First, the act amends G.S. 143-138(b) to allow, but not compel, the North Carolina Building Code Council to amend the code to require either battery-operated or electrical carbon monoxide detectors in certain new residential units. The express authorization applies to each new dwelling unit with an attached garage, a fireplace, or a fossil-fuel-burning heater or appliance. The detectors to be used must be listed by certain nationally recognized testing laboratories and must be installed in accordance with either National Fire Protection Association standards or the standards outlined in the manufacturer’s instructions. It also authorizes the use of carbon monoxide detectors that are combined with smoke detectors.

The act also requires that carbon monoxide detectors be installed by landlords by January 1, 2010, for each building level of each rental dwelling unit with an attached garage, a fireplace, or a fossil-fuel-burning heater. Unless there is an agreement with the tenant to the contrary, the landlord is obligated to install new batteries in a battery-operated detector at the beginning of each tenancy, and the tenant is obligated to replace them as needed. In this regard, the relative obligations are similar to those that apply to the installation and maintenance of smoke detectors in residential rental units.

Finally, the act directs the Building Code Council to study the needs and benefits of carbon monoxide detectors and to report the results of its study to the General Assembly no later than July 1, 2009.

Greenhouses Exempt from Building Code

Another new directive affecting the contents of the State Building Code, G.S. 143-138(b), grows out of S.L. 2008-176 (H 2313). This act deals primarily with driveway permits along state highways. However, one section of the act makes the Code inapplicable to greenhouses that are within a municipality's "building-rules" jurisdiction (apparently any area within which a municipality enforces the State Building Code, including, where applicable, a municipality's extraterritorial planning jurisdiction). A greenhouse is defined as a structure that

1. has a glass or plastic roof,
2. has one or more glass or plastic walls,
3. has an area over 95 percent of which is used to grow or cultivate plants,
4. is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and
5. is not used for retail sales.

However, the act requires local governments subject to the exemption to approve additional requirements addressing various life safety hazards posed by greenhouses.

Government Liability for Negligence

The so-called public duty doctrine holds that the government and its agents cannot generally be held responsible for damages or injuries that occur to members of the public simply because government has not adequately protected them from the actions of third parties. Thus government owes no duty of protection to the public generally; in effect a duty to everyone is a duty to no one. S.L. 2008-170 (H 1113) affects the ability of state departments and agencies to use the doctrine as a defense against suits for alleged negligence. It does not directly affect local government liability for the negligence of code enforcement officials. In fact the act declares that nothing in it "shall limit the assertion of the public duty doctrine as a defense on the part of a unit of local government or its officers, employees, or agents." Its real purpose is to codify for the first time the portion of governmental liability law that applies to state government.

The act enacts new G.S. 143-299.1A, which generally limits the use of the public duty doctrine to two circumstances. The first involves the alleged negligence of a state law enforcement officer in protecting the claimant from the actions of others or from an act of God. The second involves the alleged negligent failure of a state official or agent to properly perform a health or safety inspection required by statute. It is worth noting that North Carolina courts have refused to apply the public duty doctrine

to local government code enforcement officials involving the failure to conduct properly building or housing code or septic tank inspections. The new legislation is effective for claims made on or after October 1, 2008.

Studies

Section 18.1 of the studies act, S.L. 2008-181 directs the North Carolina Building Code Council to "reexamine" its adoption of certain sections of the North Carolina Electrical Code to determine "whether they are necessary and cost-effective." The sections concern circuit-interrupter protection, allowable ampacities in certain cables, and tamper-resistant receptacles in dwelling units.

Section 34.1 continues the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery. One of the topics it is directed to study is "(w)hether the State building code sufficiently addresses issues related to commercial and residential construction in hurricane and flood prone areas." The committee's final report, including any proposed legislation, must be delivered to the General Assembly by December 31, 2009.

Local Acts

Building permit thresholds. In 1983 G.S. 160A-417 and G.S. 153A-357 were both amended to increase from \$2,500 to \$5,000 the value of the construction work below which no building permit was required. However, the act (Section 5 of S.L. 1983-614) specifically exempted Edgecombe, Nash, and Wilson counties from the increase in this threshold so that a stricter standard for building permits applied in those counties. This summer, twenty-four years later, the General Assembly enacted S.L. 2008-65 (H 2255), which repeals the exemption for these counties, thereby bringing these counties back under the \$5,000 threshold that continues to exist to this day. The act became effective September 1, 2008.

Building condemnation authority. About a dozen cities are subject to G.S. 160A-425.1. The statute allows named cities to declare nonresidential as well as residential buildings in community development target areas to be unsafe and order their removal. S.L. 2008-59 (S 1971) adds Rocky Mount and Wilson to the list of cities that may use this authority.

Bills That Did Not Pass

The Senate passed S 1507 in 2007, making it eligible for further consideration in the 2008 session. It would have restricted the circumstances under which a local government could require periodic inspections in order to check for compliance with fire prevention regulations, minimum housing ordinances, and conditions giving rise to

building condemnation. Under the bill a local government could require periodic inspections in response to “blighted or potentially blighted conditions” in a designated target area. Otherwise periodic inspections could be conducted only where there was “probable cause.”

The bill, however, also included provisions that would enhance the choices available to local minimum housing inspectors. It would have amended the housing statutes to provide that if a dwelling can be repaired or improved, the inspector could so require and would not have to allow the owner to comply by vacating and closing the dwelling. There are an increasing number of complaints about owners who simply board up houses to avoid having to repair them.

S 1507 never made it out of the House committee to which it was referred.

Transportation

State Road Connection and Encroachment Permits

One portion of S.L. 2008-176 reflects a legislative recommendation made by the Joint Legislative Transportation Oversight Committee. Section 1 of the act enacts new G.S. 136-93.1 to establish an express permitting review program for permits authorizing connections to the state highway system. The program applies to all permits for connections to the road system by way of a driveway, intersecting street, signal, drainage way, or any other encroachment. The problem has lain in the fact that some such permits take four months or more in some areas of North Carolina.

If a particular NCDOT highway division office routinely reviews and issues special commercial permits within an average of forty-five days, then the division is not compelled to adopt an expedited permit review process. Otherwise an express permit program must be established, supported by permit fees. A uniform system of fees must be adopted by NCDOT that is applicable to all participating divisions. Unless NCDOT contracts out for the permit review to be conducted by an engineering firm, the most that can be charged for the express review of all of the permits listed above is \$4,000. Program fee revenues are earmarked for the administration of the program, including the costs of program staff salaries and contract firms.

One other feature of the expedited application review process is that once the application is deemed to be complete, the permit must be issued or denied within forty-five days. Yet the act provides that if the application is neither denied or the permit issued within forty-five days, the failure is deemed to be a denial of the express permit application.

The act requires NCDOT to report annually to the Fiscal Research Division and the Joint Legislative Transportation Oversight Committee concerning how the program is working.

Local Government Participation in State Highway Projects

Legislation adopted in 2006 opened the way for counties to play a larger role in the programming and funding of projects on the state highway system, if they choose to do so. S.L. 2008-180 (H 2314) represents a further expansion of the role of counties in such projects. In each instance the changes allows counties, like cities, to “participate” financially in the acquisition of land for and the construction and maintenance of state highway projects.

A number of statutory conforming changes have been made. First, the act amends G.S. 143B-350(f1) to provide that the fact that a county (as well as a city) participates financially in a state highway project “shall not be a factor considered by the Board of Transportation” in the development of its transportation improvement plan. Second, the act amends G.S. 136-18(27) to allow NCDOT to adopt rules for voluntary participation in state highway projects by counties as well as cities. Third, the act amends G.S. 136-66.3 to extend powers now held by cities to counties. The most notable of these are as follows. Where enabling authority allows it, counties, like cities, may require improvements to a state road such as additional travel lanes, turn lanes, curb and gutter, and drainage facilities in connection with land development projects abutting a state road. Similarly, a county as well as a city may pay for improvements to a road project in the state Transportation Improvement Plan that are in addition to the improvements that NCDOT would normally include in the project. In such instances NCDOT may now allow counties as well as cities a period of at least three years from the date the project is initiated to reimburse NCDOT an agreed upon share of the cost. Also, counties may now not only use eminent domain to acquire right-of-way for state projects, they may also employ the “quick-take” procedure available to NCDOT and cities. Fourth, an amendment to G.S. 136-98(c) seems intended to reassure counties that their participation is voluntary; it also provides that NCDOT “shall not transfer any of its responsibilities to counties without specific statutory authority.” Finally, the act amends the roadway corridor official map statutes (G.S. 136-44.50 to 136-44.53) so as to allow counties to adopt such maps. Remarkably, the new legislation fails to clarify the nature of the geographic area for which a county may adopt an official map. It seems likely, however, that a county is authorized to adopt such a map for a road project located within the county’s planning jurisdiction.

One other change made by S.L. 2008-180 amends G.S. 136-18(2) to add “broadband communications” to the list of infrastructural improvements and utilities that NCDOT may locate within a state road right-of-way and for which it may acquire right-of-way.

Studies

The studies act, S.L. 2008-181 provides for the possibility of several transportation-related studies. Sections 27.1 and 27.2 direct NCDOT to study the amending of its standards so as to allow construction of sound barriers along existing state highways that generate significant noise in order to protect adjacent residential communities. The study, which is to include the costs of changing the standards and potential sources of funding, is to be submitted to the Joint Legislative Transportation Oversight Committee by March 1, 2009. Section 4.4 authorizes the Joint Legislative Transportation Oversight Committee to study, and report to the 2009 session, whether North Carolina should enter into a compact with South Carolina, Tennessee, and Virginia to coordinate efforts to establish an inland port. Section 6.2 authorizes the Environmental Review Commission to study the costs and benefits of adopting the California motor vehicle emission standards for North Carolina. Section 26.1 directs NCDOT to study the Piedmont and Northern Railway line in Gaston County to determine the cost of bringing the full line back into operation. The report to the Joint Legislative Oversight Committee is due by January 15, 2009.

Local Acts

S.L. 2008-16 (S 1748) allows Chapel Hill to increase motor vehicle registration fees by an additional \$10 annually to support public transportation.

Bills That Did Not Pass

In 2007 the House passed two transportation-related bills, H 1576 and H 1559, making them eligible for further consideration in the 2008 session. H 1576 would have authorized NCDOT, municipalities, and metropolitan planning organizations to devise and implement a comprehensive traffic control plan to coordinate traffic signals on certain state highways to reduce energy consumption. H 1559 would have authorized operators of transit systems to erect certain “transit amenities” (such as transit shelters, trash receptacles, and commercial advertising displays) within public rights-of-way. Both bills were left to die in the Senate committees to which they were referred.

Environment

Stormwater

The legislature enacted two notable acts regarding stormwater management in 2008 that have planning and development regulation implications. The first deals with a statewide requirement regarding parking lots and the second deals with coastal stormwater rules.

The parking lot provision had its origins in the 2007 budget bill. That act included a special provision on stormwater management that created G.S. 143-214.7(d2) requiring (as of October 1, 2008) that all surface parking lots have no more than 80 percent built-upon area and that the remaining 20 percent of the parking area have either permeable pavement or other design requirements for stormwater management (such as grass or other permeable surfaces, bioretention ponds, or other water retention devices). This requirement was modified in 2008. Section 8 of S.L. 2008-198 (S 845) repeals the 2007 provision and replaces it with a requirement that only applies in areas not subject to other stormwater management regulations (including rules applicable to water supply watersheds, high quality waters, outstanding resource waters, nutrient sensitive waters in the Neuse and Tar-Pamlico basins, the Randleman Lake watershed, and areas subject to Phase II or coastal counties stormwater rules). For other areas, the requirement applies to parking areas that have land disturbing activities (as defined by the Sedimentation Pollution Control Act) of an acre or more. The requirement gives two options for these lots: (1) the parking area may contain no more than 80 percent impervious surface; or (2) the stormwater runoff generated by the first two inches of rain that falls on at least 20 percent of the parking area must flow to an appropriately sized bioretention area. The bioretention area must meet standards to be set by DENR. Compliance with these requirements is also made a precondition for building permits for these projects.

The state has been wrestling with general stormwater management regulations for the better part of two decades. Statutes, regulations, and litigation have dealt with runoff standards applicable to a variety of areas. Perhaps none has been more controversial than the stormwater requirements for the coastal area. One result of this debate was legislative action in 2008 to take over the decision-making on the standards to be applied for coastal stormwater management. S.L. 2008-211 (S 1967) disapproves the coastal stormwater rules adopted by EMC in early 2008 and replaces those rules with the standards set out in the act. The standards differ based on the adjacent water bodies, with separate rules for (1) lands within 575 feet of Outstanding Resource Waters, (2) lands within one-half mile of and draining into waters with an “SA” classification, and (3) other development in coastal counties. The rules limit the amount of impervious surface coverage, require vegetated buffers adjacent to some waters, allow engineered solutions with some high density options, set standards for structural stormwater controls, and provide for vesting of some previously approved projects. Coastal jurisdictions generally are to comply with these rules rather than Phase II stormwater requirements. Also, S.L. 2008-198 (S 845) limits any new EMC rule-making covering coastal stormwater rules from becoming effective until October 1, 2013.

Water Supply

A severe drought has affected many parts of the state over the past two years. The legislature updated the statutes to address this issue in 2008. S.L. 2008-143 (H 2499) adds a number of items to the statutes to deal with these concerns.

A key component of the new legislation is new G.S. 143-355.2. This statute requires each local government that provides public water to develop and implement water conservation measures to respond to a drought, including a water shortage response plan that must be reviewed and approved by DENR. The plan must include tiered levels of water conservation measures based on drought severity (but it may not include metering or regulating private drinking water wells). The state is authorized to order a local government to implement its management plan if the local government has not acted and action is necessary to minimize the harmful impacts of a drought and may, under extreme conditions, order a local government to move to a more stringent tier under its plan. A state default plan can be imposed if a local government fails to adopt its own plan. Newly enacted G.S. 143-355.3 authorizes the governor to declare a water shortage emergency. Once that declaration is made, DENR can require local governments to allow temporary interconnections among water systems and impose emergency rules on conservation and use of water in the affected area.

The act provides that

- separate meters must be installed for new in-ground irrigation systems;
- local governments or large community water systems must meet specified requirements to be eligible for funding to extend waterlines or expand water treatment capacity, including that water rate structures not be discounted for high volume users, that localities have a leak detection system, and that consumer education programs be enacted;
- water reuse must be studied and is encouraged.

The act also allows limited use of grey water for watering trees, plants, and shrubs at single-family homes; adds new reporting requirements for large-scale agricultural water users; and limits restrictive covenants that require watering of lawns during droughts.

In other action affecting water supply issues, S.L. 2008-10 (S 1872) extends the Environmental Review Commission's Water Allocation Study to allow an interim report to the 2009 General Assembly and require a final report by October 1, 2010. S.L. 2008-137 (S 1046) requires the Environmental Review Commission to study the impacts of a new fifty-year license being considered by the Federal Energy Regulatory Commission for Alcoa's Badin facility.

Hazards and Emergency Preparedness

S.L. 2008-162 (H 2432) directs the state Division of Emergency Management to study ways and develop plans to increase the capacity of counties to plan for, respond to, and manage disasters. The study is to examine mandating that counties establish and maintain a county emergency management agency, having full-time local emergency management coordinators in each county, implementing an emergency management certification program for local staff, and developing registry programs for functionally and medically fragile persons who will need assistance during a disaster. The Division is to consult with the Association of County Commissioners when preparing the study and is to report its results to the legislature's Joint Select Committee on Emergency Preparedness and Disaster Management Recovery and the relevant Appropriations subcommittees by December 1, 2008. A comparable provision for this study was also included in the 2008 Studies Act, Section 20.1 of S.L. 2008-181.

Other Environmental Legislation

Legislators enacted a variety of other legislation on environmental issues that have implications for planning and development regulation. Many of these acts are discussed in more detail in Chapter 11, "Environment and Natural Resources."

S.L. 2008-152 (S 1885) amends G.S. 1432-14.11 to add provisions for private parties to provide compensatory mitigation for wetland alteration through use of private wetlands mitigation banks that have been approved either by DENR for resources regulated under the Neuse or Tar-Pamlico rules or by the U.S. Army Corps of Engineers.

S.L. 2008-171 (H 1889) extends use-value property taxation to wildlife conservation land. To qualify, the property must have at least twenty contiguous acres, and be under a written wildlife habitat conservation agreement with the Wildlife Resources Commission. No more than 100 acres of an owner's land in any one county may be included nor may land owned by businesses that are publicly traded.

S.L. 2008-203 (S 1946) sets energy and water efficiency standards for state funded buildings.

The 2008 Studies Act, S.L. 2008-181 authorizes a variety of environmental studies, including consolidation of environmental regulatory programs, state permits for wind turbines, hazard disclosures in coastal real estate transactions, phasing out hog lagoons, and limits on use of eminent domain for conservation lands. Section 36 of the act also creates a fourteen-member Legislative Study Commission on Urban Growth and Infrastructure Issues. The Commission is directed to study options for fostering regional planning for water and transportation infrastructure, strategies for encouraging the use of incentive-based

planning in urban areas (including additional local land use regulatory tools), and strategies to help urban communities and regions address the challenges presented by rapid growth and resultant demands on schools, roads, and other public services. State agencies and local governments are directed to provide the Commission with any requested information in their possession or available to them. The Commission is to report to the 2009 General Assembly upon its convening.

Miscellaneous

Real Property Reappraisal

S.L. 2008-146 (S 1878) allows counties to reassess real property more frequently than once every eight years and requires certain counties to reassess within three years if their sales/assessment ratios deviate too far from the norm.

Bills That Did Not Pass

H 878 passed the House in 2007, making it eligible for further consideration in the 2008 session. It would have called for a statewide voter referendum to consider an amendment to Article I, section 19 of the North Carolina Constitution to expressly prohibit the use of eminent domain for economic development purposes. The bill died in the Senate committee to which it was referred.

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