

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 814
Judiciary I Committee Substitute Adopted 5/31/05
Third Edition Engrossed 6/1/05
House Committee Substitute Favorable 8/23/05**

Short Title: Modernize City/County Planning. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

**AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND
LAND•USE MANAGEMENT STATUTES.**

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.(a) G.S. 160A•364 reads as rewritten:

**"§ 160A•364. Procedure for ~~adopting or amending~~ adopting, amending, or
repealing ordinances under Article.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the

commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance."

SECTION 1.(b) G.S. 153A•323 reads as rewritten:

"§ 153A•323. Procedure for adopting or amending adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19.

(a) ~~Before adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance."

PART II. SUBDIVISION REGULATION

SECTION 2.(a) G.S. 160A•372 reads as rewritten:

"§ 160A•372. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of ~~streets and highway~~ transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and ~~rights of way~~ or easements for street and utility purposes including the dedication of ~~rights of way~~ pursuant to G.S. 136•66.10 or G.S. 136•66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~ that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that ~~the final plat~~plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance. plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning ~~agency~~board. In order for this authorization to become effective, before approving such plans the council or planning ~~agency~~board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning ~~agency~~board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning ~~agency~~board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.~~

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be

used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

SECTION 2.(b) G.S. 153A•331 reads as rewritten:

"§ 153A•331. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights•of•way or easements for street and utility purposes including the dedication of rights•of•way pursuant to G.S. 136•66.10 or G. S. 136•66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one

subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance. plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning ~~agency~~ board. For the authorization to reserve school sites to be effective, the board of commissioners or planning-~~agency~~ board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning ~~agency~~ board shall immediately notify the board of education. ~~That~~ The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning ~~agency~~ board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its~~

provisions whenever a subdivision of land takes place."

SECTION 3.(a) G.S. 160A•375 reads as rewritten:

"§ 160A•375. Penalties for transferring lots in unapproved subdivisions.

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G. S. 160A•417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15•day period the buyer or

lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds."

SECTION 3.(b) G.S. 153A•334 reads as rewritten:

"§ 153A•334. Penalties for transferring lots in unapproved subdivisions.

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A•357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final

recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds."

SECTION 4.(a) G.S. 160A•376 reads as rewritten:

"§ 160A•376. Definition.

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision ~~regulations;~~ regulations.

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is ~~involved;~~ involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system ~~corridors;~~ and corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(b) A city may provide for expedited review of specified classes of subdivisions."

SECTION 4.(b) G.S. 153A•335 reads as rewritten:

"§ 153A•335. "Subdivision" defined.

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres if no street ~~right•of•way~~ dedication is ~~involved;~~involved.

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system ~~corridors;~~and corridors.

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street ~~right•of•way~~ dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

(b) A county may provide for expedited review of specified classes of subdivisions."

PART III. ZONING REGULATION

SECTION 5.(a) G.S. 160A•381 reads as rewritten:

"§ 160A•381. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to land. The ordinance may provide density credits or severable development rights for dedicated ~~rights•of•way~~ pursuant to G.S. 136•66.10 or G.S. 136•66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be

authorized by variance.

(c) The regulations may also provide that the board of ~~adjustment~~ adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G. S. 160A-388.

~~(e) Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension

of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A•364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A•417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A•385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the

procedural requirements of this subsection."

SECTION 5.(b) G.S. 153A•340 reads as rewritten:

"§ 153A•340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to purposes. The ordinance may provide density credits or severable development rights for dedicated rights of way pursuant to G.S. 136•66.10 or G.S. 136•66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106•802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained~~contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights of way be dedicated to the public and that recreational space be provided. ~~When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and~~

every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

~~(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been

accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A•344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection."

SECTION 5.1.(a) G.S. 160A•75 reads as rewritten:

"§ 160A•75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the

member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14•234. 14•234, 160A•381(d), or 160A•388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 5.1.(b) G.S. 153A•44 reads as rewritten:

"§ 153A•44. Members excused from voting.

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14•234.~~ 14•234, 153A•340(g), or 153A•345(e1). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 6.(a) G.S. 160A•382 reads as rewritten:

"§ 160A•382. Districts.

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~ permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by

the petitioner or the city or its agencies, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

SECTION 6.(b) G.S. 153A•342 reads as rewritten:

"§ 153A•342. Districts; zoning less than entire jurisdiction.

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; ~~and~~ special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit; permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner or the county or its agencies, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial

jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 7.(a) G.S. 160A•383 reads as rewritten:

"§ 160A•383. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers;plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote healththe public health, safety, and the general welfare;welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city."

SECTION 7.(b) G.S. 153A•341 reads as rewritten:

"§ 153A•341. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to~~ lessen congestion in the streets; to secure safety from fire, panic, and other dangers;plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the board of county

commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and the general welfare; welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development."

part iv. infrastructure agreements

SECTION 8.(a) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A•499. Reimbursement agreements.

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the city."

SECTION 8.(b) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A•451. Reimbursement agreements.

(a) A county may enter into reimbursement agreements with private developers and property

owners for the design and construction of municipal infrastructure that is included on the county's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A county shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A county may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the county."

SECTION 8.(c) Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A•309. Intersection and roadway improvements.

A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars (\$250,000) and the city or its designated agency determines that:

(i) the public cost will not exceed the estimated cost of providing for those public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section."

SECTION 8.(d) Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A•320. Public enterprise improvements.

(a) Authorization. – A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars (\$250,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing

for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project."

SECTION 8.(e) Article 15 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A•280. Public enterprise improvements.

(a) Authorization. – A county may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the county to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the county's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars (\$250,000) and the county determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A county may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the county. The private party may assist the county in obtaining easements in favor of the county from private property owners on those properties that will be involved in or affected by the project. The contract between the county and the private party may be entered into before the acquisition of any real property necessary to the project."

part v. development agreements

SECTION 9.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"§ 160A•400.20. Authorization for development agreements.

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"§ 160A•400.21. Definitions.

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property,

or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land•use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G. S. 160A•361.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"§ 160A•400.22. Local governments authorized to enter into development agreements; approval of governing body required.

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

"§ 160A•400.23. Developed property must contain certain number of acres; permissible durations of agreements.

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"§ 160A•400.24. Public hearing.

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A•364 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"§ 160A•400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(a) A development agreement shall at a minimum include all of the following:

- (1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.
- (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
- (3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.
- (5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- (6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
- (7) A description of any conditions, terms, restrictions, or other requirements

determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A•400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"§ 160A•400.26. Law in effect at time of agreement governs development; exceptions.

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A•385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A•385 or G.S. 160A•385.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"§ 160A•400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(a) Procedures established pursuant to G.S. 160A•400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local

government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A•388(b).

"§ 160A•400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"§ 160A•400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"§ 160A•400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"§ 160A•400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt

and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"§ 160A•400.32. Relationship of agreement to building or housing code.

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations."

SECTION 9.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new Part to read:

"Part 3A. Development Agreements.

"§ 153A•379.1. Authorization for development agreements.

(a) The General Assembly finds:

(1) Large•scale development projects often occur in multiple phases extending over a period of years, requiring a long•term commitment of both public and private resources.

(2) Such large•scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large•scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large•scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large•scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site•specific development plans, phased development plans, or other provisions of law.

"§ 153A•379.2. Definitions.

The following definitions apply in this Part:

- (1) Comprehensive plan. – The comprehensive plan, land•use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.
- (2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.
- (3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.
- (4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.
- (5) Governing body. – The board of county commissioners of a county.
- (6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.
- (7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.
- (8) Property. – All real property subject to land•use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.
- (9) Local government. – Any county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.
- (10) Local planning board. – Any planning board established pursuant to G. S. 153A•321.
- (11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"§ 153A•379.3. Local governments authorized to enter into development agreements; approval of governing body required.

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

"§ 153A•379.4. Developed property must contain certain number of acres; permissible durations of agreements.

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"§ 153A•379.5. Public hearing.

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 153A•323 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"§ 153A•379.6. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(a) A development agreement shall at a minimum include all of the following:

- (1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.
- (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
- (3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available

concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 153A•379.8 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"§ 153A•379.7. Law in effect at time of agreement governs development; exceptions.

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 153A•344.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a

finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 153A•344 or G.S. 153A•344.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"§ 153A•379.8. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(a) Procedures established pursuant to G.S. 153A•379.3 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 153A•345(b).

"§ 153A•379.9. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"§ 153A•379.10. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"§ 153A•379.11. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"§ 153A•379.12. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"§ 153A•379.13. Relationship of agreement to building or housing code.

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations."

PART VI. LOCAL ACTS SAVING CLAUSE

SECTION 10. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

Part viI. effective date

SECTION 11. This section and G.S. 160A•381(e), as enacted by Section 5(a) of this act, and G. S. 153A•340(h), as enacted by Section 5(b) of this act, become effective September 1, 2005. Any renewal or extension on or after September 1, 2005, of a moratorium on development approvals that is in effect prior to or on that date, is subject to the provisions of this act. The remainder of this act becomes effective January 1, 2006.