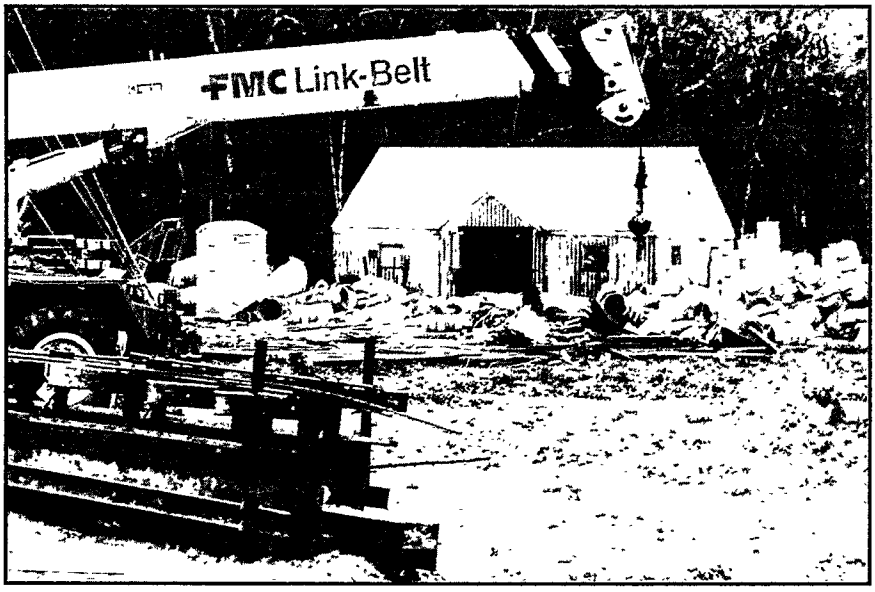
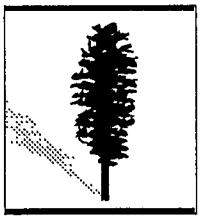


Jack Betts

Protecting the Land and Developing the Land—How Can We Do Both?

by Larry Spohn

Land-use issues in the past have been viewed geographically, as coastal, Piedmont, or mountain concerns. As growth accelerates in the urban Piedmont and in resort areas in the mountains and on the coast, ways to balance that growth with environmental protections need state-level attention. In the early 1970s, North Carolina was a national leader in state-level actions regarding land use. But ironically, as development has increased in the 1980s, the pendulum of land-use control has swung away from statewide standards to more emphasis on local control. Should state-level actions re-establish the balance between local and state control of the land, and at the same time rectify the imbalance between the development boom and environmental concerns?



For William McNeil, the choice between prosperity and preservation is anything but abstract. Standing in his High Point office, McNeil points to drawings of a 900-acre commercial development project planned for the land corridor leading to the Greensboro-High Point-Winston-Salem Regional Airport. Director of Planning and Development for the city of High Point, McNeil is encouraging such developments, even though the site lies in the watershed of High Point's primary water supply, the Deep River.

McNeil likes to show visitors sketches of the Piedmont Centre development, especially the greenways and buffers required by the city in the overall development area as well as in each individual project. Down the road from this project is the site for a proposed 112-acre planned regional shopping center. "We buffer it internally and on its edges," he says. "We require a master stormwater control plan that will ensure the runoff is gathered and treated in an environmentally sound way." This generally means channeling the stormwater into holding and settling ponds, says McNeil, who is immediate past president of the 580-member state chapter of the American Planning Association.

McNeil supports development in the city's watershed because of the tools the city has to regulate certain kinds of development. "We think we can do it and still protect the resource by weeding out poor development and working with the environmentally responsible development," he says. "People ask, 'Shouldn't there be a permanent greenbelt between High Point and Greensboro?' My answer is that the green will be built into each development project."

A morning's drive from the High Point watershed, into winding mountains, lies what may be the most extensive greenway in America. But it may not be that way for long. In September 1987, 52 years after it was begun, the Blue Ridge Parkway was finally completed and dedicated. Parkway officials and patrons have cause to worry, however, about its next half century. The clutter of mountainside development threatens the roadside overlooks and the peaceful drives bordered by split-rail fences. Few protections exist against continued encroachment of the nation's premier scenic roadway.

"Naturally, the federal government can't be expected to buy all the land within view of the parkway," says Parkway Superintendent Gary Everhardt. Only some kind of land-use regulations can help stem the tide, he says. Historically, mountain residents have resisted such restrictions, especially when imposed by politicians way down in Raleigh. But in 1983, a 10-story condominium appeared like a bolt of lightning atop Sugar Top Mountain in Avery County. Nothing like it had ever been done. With that, even mountain folks softened their opposition. Responding to the statewide cry for action, the legislature passed the Mountain Ridge Protection Act, which restricts the height of buildings on mountain ridges.[1] The act passed, say many observers, only because the authority to enforce it remained with the individual mountain counties.[2]

"I hope the Ridge Act is a signal of softening mountain opposition to land-use regulation," says Everhardt. "Innovative proposals are needed to establish a corridor of controlled, quality development along the 470-mile parkway in North Carolina and Virginia. The Ridge Act indicates that potential support exists for such innovative action."

The 1983 Ridge Act came nine years after mountain officials successfully opposed the creation of a state law which would have mandated region-wide land-use regulations. Called the Mountain Area Management Act, it was to be the sister legislation to the Coastal Area Management Act (CAMA for short), adopted by the legislature in 1974.[3] With its requirements for land-use plans and development permits in a 20-county coastal area, CAMA has in its 14-year life received praise from outside the state but been controversial in eastern North Carolina. Under CAMA, the 20 counties must develop a land-use plan every five years, but they do *not* have to pass zoning or other regulations to enforce the plan.

"The process of developing land-use plans has been very helpful on the coast, in terms of forcing people to think about environmental issues," says Karen Gottovi, who has chaired the New Hanover County Commissioners and currently is on the Coastal Resources Commission. "But we need the next step, to make it mandatory for the counties to pass the ordinances that would enforce their plans."

Even on the coast, development of fragile coastal lands continues to slip through the regulatory cracks. Many governmental observers and local residents fear that CAMA is not enough to protect the entire coastal environment. Take wetlands, for example. "Even though CAMA and the federal Clean Water Act have done a tremendous job in terms of protecting regularly flooded wetlands, they

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Larry Spohn, a freelance writer living in Kernersville, has covered environmental issues for the Greensboro News & Record.

haven't been able to adequately protect the freshwater, forested wetland system," says Linda K. "Mike" Gantt, field supervisor for the U.S. Fish and Wildlife Service. Under the Clean Water Act, the U.S. Army Corps of Engineers administers the permit application system for altering wetlands. Federal regulations, working in conjunction with CAMA, explain which activities on a wetland require a permit.[4]

In the case of the Beau Rivage development near Wilmington, says Gantt, "the developer removed peat from the wetland and put it on high ground. Basically, they drained and dredged it without needing a permit. Where's the opportunity even to make a comment?" Normally, when a permit is filed to modify wetlands, the U.S. Fish and Wildlife Service provides a legal report to the Corps of Engineers on how the proposed work would affect fish and wildlife. Gantt's efforts to get state agencies to intervene in the Beau Rivage situation under mining and water pollution permit regulations were unsuccessful.

The public on the coast is only now coming to appreciate the critical importance of wetlands, she continues. "But what about the inland wetlands, those riparian strips along the rivers and streams? They are not being preserved, but they are very important wildlife corridors, useful in filtering pollutants coming off the land, for stormwater retention and for recharging groundwater" (for more on wetlands, see page 73).

As a member of the policy committee for the federally funded, five-year National Albemarle-Pamlico Estuarine Study, Gantt has the responsibility for looking at the big picture. "North Carolina has one of the most excellent coastal management laws on the books," she says, "but what we really need is a *state law* that protects freshwater wetlands, on the coast and inland. People still don't get it: *What happens on the land upstream affects these sounds.*"

Traditionally, to discuss land use issues in North Carolina, analysts, reporters, legislators, and others turn to the traditional coastal, Piedmont, and mountain regions.[5] Certainly, the unique features of the Albemarle-Pamlico Estuary differ significantly from Sugar Top Mountain and Piedmont watersheds. Hence, the purposes of land-use regulations vary, from protecting fertile shellfish waters to retaining scenic mountain views to maintaining water quality in the Piedmont. But an increasing number of people are arriving at the same conclusion that Mike Gantt has reached. Despite these differences within the state, *land use is a statewide issue, and tools are needed to treat it that way.*

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"We abuse land because we regard it as a commodity belonging to us. When we begin to see land as a community to which we belong, we may begin to use it with love and respect."

—Aldo Leopold

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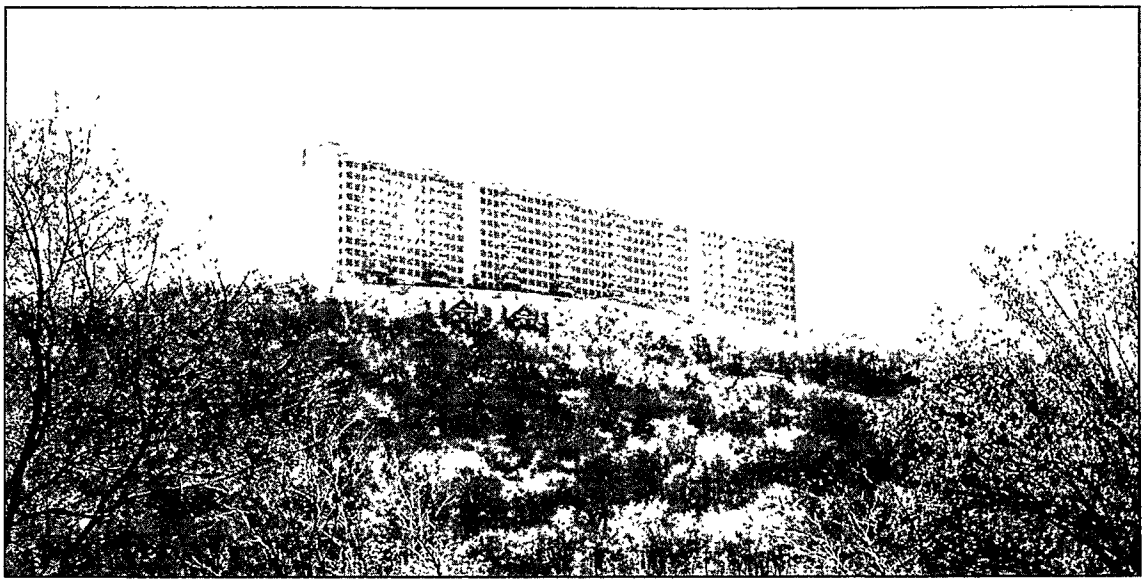
In designing development permits, only a few cities with the most environmentally sensitive planners, places like High Point, have added such stipulations as greenways and buffers. In the mountains, separate groups of county commissioners have the power to decide how much development can be located a stone's throw from the Blue Ridge Parkway and other scenic areas. And under CAMA, reconciling the coastal development boom with the fragile ecosystem is at best a joint effort between state and local officials, through county land-use plans and state-mandated regulations.

The boomtown conditions in the state's cities and resort areas dramatize the dilemmas of development and the environment, of growth and conservation. "Checks and balances and consistent land-use regulations are needed," says Anne Taylor, of the Department of Natural Resources and Community Development's Office of Planning and Assessment. "In spite of the state's raw natural beauty and rural tradition, even the most basic conservation ethic appears to be lacking on a widespread basis."

Typically, citizens want to protect the environment against unrestrained development only when the threat is "in my own backyard," says Taylor.



Greensboro News & Record

Mountain-top condo project sparked the debate which led to the 1983 Mountain Ridge Protection Act.

There will be a backlash against such development, she adds, when "enough people have had it hit *their* backyard." The theme even has spawned an acronym, NIMBY (Not In My Backyard). Without state leadership setting reasonable, achievable objectives and minimum land-use standards, says Taylor, "North Carolina cannot avoid the environmental degradation and the deterioration of quality of life so associated with unbridled development in other boom states."

Balancing a Backyard Land-Use Ethic

In the mid-1970s, North Carolina was on the cutting edge of land-use issues in the country. In 1974, the General Assembly passed CAMA after field hearings and legislative compromise overcame much local opposition to mandatory land-use planning. "The rising tide of environmentalism at the time and prompting from the scientific community" helped boost the CAMA legislation, says Dr. Arthur Cooper, a strong advocate of resource management during the Scott (1969-73) and Holshouser (1973-77) administrations and now a professor at N.C. State University. Through the leadership of then-Rep. Willis Whichard (now a N.C. Supreme Court justice) and Sen. William Staton (who left the Senate but has returned), the CAMA legislation incorporated the deeply rooted instincts for local control of the land into a state-level administrative and regulatory structure (for more on CAMA and coastal issues in general, see page 70). The upbeat environmental mood of 1973-74 legislative session also produced a Land Policy Act[6] and a Sedimentation Pollution Control Act.[7]

The impetus for state-level regulatory authority was shortlived, however. In the 1983 *N.C. 2000* report, the land-use recommendations emphasized expanding the capacity of *local governments* regarding control of development, not of state-level regulations. "Most decision-making powers affecting land use in North Carolina have traditionally been exercised at the local level, and this should continue to be the case," explained the report. This is difficult, it said, as fast-paced development requires complex technical decisions and a deliberate decision process at the local level. "The coastal counties now have this capacity within the framework of the Coastal Area Management Act," the report concluded.[8] It described CAMA as a way to assist local governments rather than emphasizing its state-level regulatory authority, as many advocates of CAMA do.

What is remarkable is how quickly the direction of state-level leadership moved from the bipartisan effort towards greater state-level involvement in land-use regulations (which peaked in 1973-74 with CAMA and other legislation) to an emphasis on enhancing local control. By the mid-1980s, legisla-

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"I hear an awful lot of talk about controlled development, but I don't really see anybody doing anything about it."

—Bill Holman
Sierra Club and Conservation Council of North Carolina

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tive and administrative efforts generally emphasized enabling statutes and incentives for local governments to take over such regulatory programs as sedimentation permits, watershed ordinances, county-wide zoning, and other regulatory mechanisms.

Mary Joan Pugh, assistant secretary at the Department of Natural Resources and Community Development, believes the current governmental approach to land-use issues is proper. "Traditionally, North Carolina has given the authority for land-use regulation to local governments," she says. "Only when the problem becomes multi-jurisdictional such as coastal management or ridge protection does the state step in. When the state does step in, it has defined its role as providing leadership and general guidelines to be implemented at the local level. I don't think this partnership is evidence of poor land-use management. But we're often reactive instead of pro-active. We often wait until we're in a quagmire before acting."

Bill Holman, the leading environmental lobbyist in the state, says that land-use protections increasingly stem from local—not state—actions. "All the watershed protection that's happening is due to the initiative of *local* governments," says Holman. "The state should have a role in that. The state is not providing leadership in land-use planning, so many local governments are taking the initiative to regulate land and plan for themselves."

Whether viewed as a proper state-local partnership or a lack of state leadership, the shift from the state level to local leadership has evolved during a period when major national investors were moving into North Carolina, building industrial parks, condominiums, multi-purpose residential and commercial parks, and other developments. From 1967 to 1977, the cropland and forest land in the state shrunk by 1.9 million acres; one study estimates that by the year 2000, another 2.5 million acres could shift to non-agricultural uses.[9] On the coast, the figures are more dramatic. Of the state's original 2.2 million acres of pocosin wetlands, only about 695,000 remain unaltered. Since the early 1970s, an estimated 4,300 acres of coastal marshes alone have been altered.[10]

Holman and other environmentalists, many with a decade of experience by the late 1980s, have begun to speak out more strongly than ever about such trends. Last year, for example, the North Carolina Wildlife Federation and Trout Unlimited released an analysis of the state's Sediment and Erosion Control Program, begun in 1973 under the Sedimentation Pollution Control Act. The program regulates developments of projects of more than one acre, exempting agricultural and forest lands. The report concluded that the law provides insufficient authority, fines, bonding requirements, and legal staff to deal with non-complying developers.[11] "This report confirms our belief that the current law is not taken seriously by development interests and needs major improvements," says Michael F. Corcoran, executive vice president of the North Carolina Wildlife Federation.

Holman puts it in stronger terms. "I hear an awful lot of talk about controlled development, but I don't really see anybody doing anything about it," says Holman, who lobbies for the Conservation Council of North Carolina, the Sierra Club, and the N.C. Chapter of the American Planning Association. "The attraction of the state and the failure to conserve and protect the land means North Carolina is dying the death of a thousand cuts."

Many of the pro-environmental efforts, both from outside advocacy groups and from officials working within governmental systems, have focused on the impact of land uses on other parts of the environment—water quality, wildlife, and beachfront development. One of the sad facts about the environmental consciousness of the last two decades is that the land itself has had no clear advocate, says Lawrence S. Earley, associate editor of *Wildlife in North Carolina*, a monthly magazine

published by the N.C. Wildlife Resources Commission. Moreover, developers have found ways of exploiting loopholes in land-use controls that do exist, says Earley.

"In the wetlands, they clear them and drain them, since the law only prohibits filling," says Earley. "In the mountains, developers use the timber exemption to get around the sedimentation control act. Once they've got the trees out, then they go in with their condos."

Picture the prosperity vs. preservation equation as a scale of balance. Currently, because of the development boom *and* the structure of land-use regulations, the scale is tilted towards development—leaving the environmental side dangling in the air. To bring balance to the scale, five changes in the current system of land-use regulation could be considered: 1) statewide land-use standards; 2) watershed protection districts; 3) statewide enabling legislation for development impact fees; 4) restricted zoning districts to protect unique land resources or features; and 5) improved land-use information and analysis.

Statewide Land-Use Standards

Current state law regarding land use emphasizes enabling legislation to allow local governments to adopt zoning and subdivision ordinances, establish planning boards and local erosion control ordinances, and even to utilize such powers in an extra-territorial jurisdiction along their borders. The joint Winston-Salem/ Forsyth County planning department, for example, has a "Comprehensive Plan" for the year 2005, emphasizing growth management concepts. The same department has a plan to protect the Salem Lake Watershed, including shoreline acquisition, and helped develop a unique Agricultural Preservation Plan, considered a model for the Southeast.[12]

The enabling laws in North Carolina "provide most of the tools to accommodate growth and plan for the future," concedes Holman. "What's been missing is the political will to adopt the zoning and other ordinances necessary to protect the resources." Local control should prevail, says Holman, but the state can no longer abdicate its primary responsibility for land stewardship. "We need some form of basic, minimum standard requirements for every county or local government in the state. A good example of a statewide standard that affects what local governments can do is the statewide building code."

Local planners, county commissioners, and city councils determine the requirements for the items listed below. No statewide standards exist for:

- zoning ordinances and citizen planning and zoning commissions;
- comprehensive transportation plans as a part of land use;
- master plans for orderly installation of water and sewer services;
- watershed protection ordinances, if applicable;
- capital facilities plans (which might include drainage, water and sewer, and roads);
- wetlands protection;
- stormwater regulations; and
- surveys of historical, cultural, and natural resources needing protection.

Currently, 93 of the state's 100 counties have planning or zoning boards, but only 50 have county-wide zoning. Similarly, 80 have land-use plans but only 55 have any subdivision regulations, and only 23 have a capital facility plan.[13] The Division of Community Assistance in NRCD, with 30 field staff working out of seven regional offices, advises local governments on zoning, land-use plans, and other such regulations. "Over the past few years, the emphasis of land-use controls has shifted more to the local level in terms of local officials recognizing the importance of regulations for management purposes," says Bob Chandler, director of the Division of Community Assistance. "That's because of the development that's occurring across the state—the spillover effect from the urban areas."

Despite the growing interest among local officials, the effort remains uneven. And the state role is strictly advisory. An out-of-state developer recently learned that he could purchase a vast tract in

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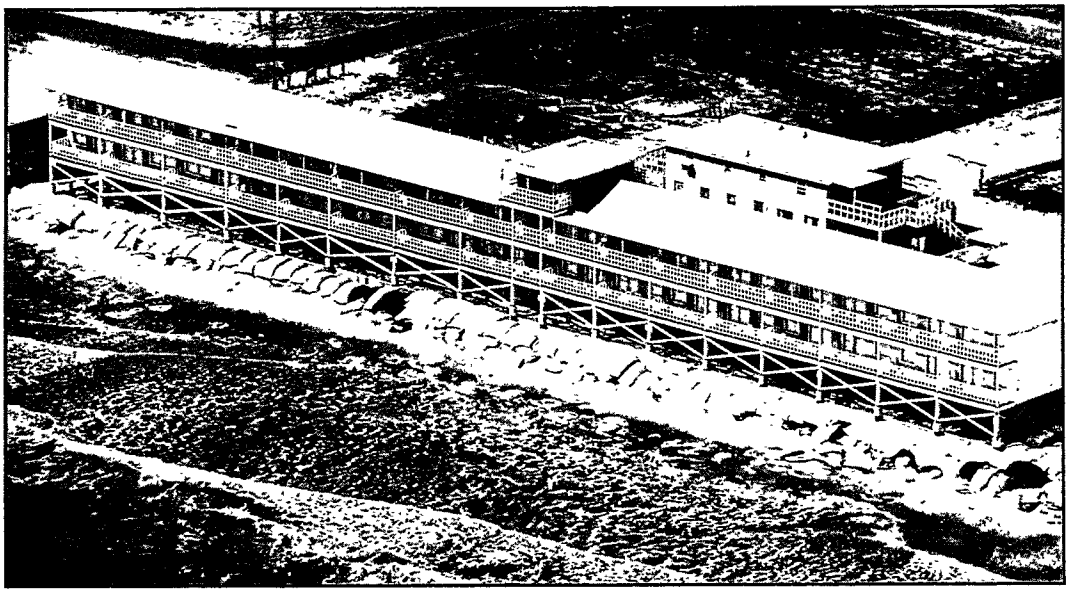


Greensboro News & Record

Even with the Coastal Area Management Act, beach erosion problems plague many beach structures, such as the Sea Vista Motel on Topsail Island.

Moore County, and because there is no statewide or local zoning requirements, could "do pretty much whatever he pleased," says Anne Taylor. "He was shocked. His concern was about over-regulation, but the lack of any regulation is what shocked him."

Planning experts in Florida and Maryland, which have new state laws to manage growth, say North Carolina should take heed. "Nobody's got the growth rates of Florida," says David R. Godschalk, professor of City and Regional Planning at the University of North Carolina at Chapel Hill. "It's off the chart. But that's not to say we don't need to do something here." As a consultant to the Southern Growth Policies Board's recent study, "Guiding Growth in the South: A Decade Later," Godschalk has reviewed growth patterns and legislative tools throughout the South.[14]

Godschalk praises CAMA and the Ridge Law as partial approaches, "but they're going to have to do other things." In North Carolina, a Mountain Area Management Act (MAMA) and a Piedmont Area Planning Act (PAPA) have been proposed as compliments to CAMA at times, but Godschalk says Florida's statewide approach offers more equity and uniformity.

John DeGrove, director of the Joint Center for Environmental and Urban Problems at Florida Atlantic University, says North Carolina's time may not be far off. "Your coastal legislation has worked reasonably well and has been a model," he says. "But what about the rest of the state? Comprehensive, required, statewide planning for localities would be a giant step forward for North Carolina, and the time is now. Take it from us, there is no sense messing around."

In Florida, where growth rates are nearly three times the national average, the negative effects of growth began to outweigh the positive ones. "First, there was the concern over environmental problems, but later, it was just so clear to everyone that the quality of life had vanished," says DeGrove. "Growth didn't pay for itself; we had 460 cities and counties each going their own way." After a series of stop-gap measures since the mid-1960s, the Florida legislature "got serious," says DeGrove, and passed in 1985 the State Comprehensive Plan and the Growth Management Act.[15] This act contains, for example, a triggering mechanism where developments beyond a certain size would require state assessment and approval.

Mel Levin, director of the Community Planning Department at the University of Maryland and president of the American Institute of Certified Planners, believes there are many similarities between Maryland and North Carolina as well. Like North Carolina, "Counties are very strong in this state,"

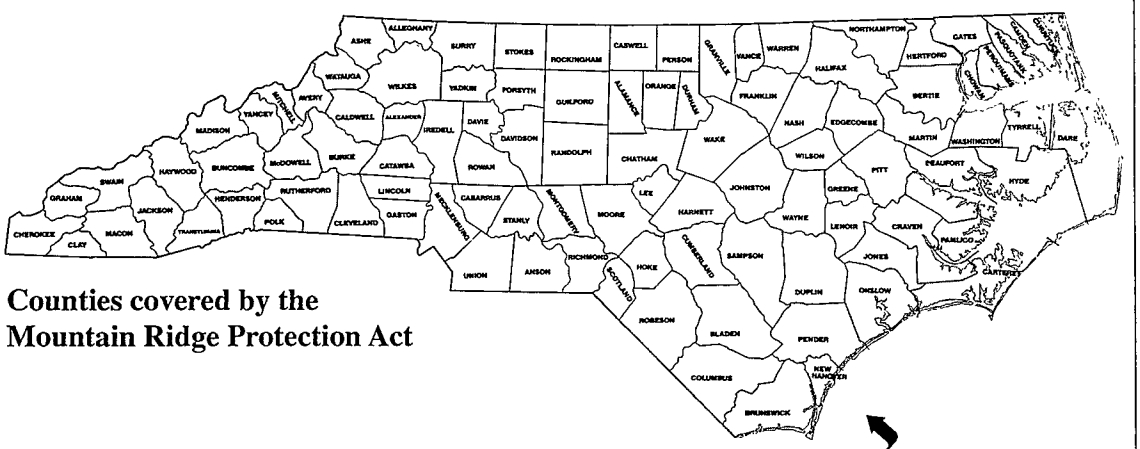
says Levin. Yet such local controls were not enough to protect the ecologically distressed Chesapeake Bay from Baltimore residents. "It was close enough to combine as a recreation-spot and a home-spot" for people working in Baltimore, explains Levin. "The development pressure has been enormous, and the ills of the Bay are the result," he adds.

Maryland has recently passed stringent regulations on coastal shore development. It mandated, for example, low-density development in undeveloped areas adjacent to fragile shellfish waters. (In North Carolina, regulators are trying to affect the density of such developments *indirectly* through water-quality regulations; for more, see section on stormwater regulations on page 61.) "The jury is still out on the impact," says Levin. "The question here is whether the barn door has been slammed after the horse was long gone. What about up river? I would think people in your state might be asking some of the same questions."

Land owners and developers initially resist such regulations, says Levin, "but once they see the benefits, there tends to be genuine enthusiasm for statewide standards. They provide stable rules of the game for everyone, and they are very important in resolving boundary problems that surround a resource, such as this bay area. You have the same resources in North Carolina, the sounds, rivers, and watersheds which are affected by what you do on the land."[16]

Even where statewide standards do exist, additional actions by local officials are often necessary to make these standards work to their best use. The Mining Act of 1971, for example, established a permit program for all mining operators who disturb more than one acre.[17] While North Carolina is not a major mining state, like West Virginia or Louisiana, there are significant numbers of rock quarries, sand pits, and peat mines, all of which fall under this act. The permit system covers land reclamation as well. A permit alone, however, may not be enough to ensure that the potential mining site is used in a way that is compatible with the surrounding area. Local zoning supercedes the mining permit, but not all counties are zoned. "Local officials have a tool available for appropriate ways to develop mineral resources, and they need to use it," explains Charles Gardner, chief of the Land Quality Section, Division of Land Resources in NRCD.

In the absence of a statewide system of minimum standards, one way to address growth issues is through a state performance standard for developers which would supercede the requirements of local ordinances. Developers could be required to certify that they have adhered to a basic checklist of standards, such as road construction, drainage, and erosion control, as well as any applicable local building and zoning ordinances. Such an instrument could be required and enforced through local building permits or procedures for house sales and closings.



Counties covered by the Mountain Ridge Protection Act

Counties covered by the Coastal Area Management Act

Watershed Protection Districts

Creeks, streams, and rivers do not respect political boundaries. In a rural state with abundant water supplies, drinking-water-supply watersheds rarely overlapped political districts. But now all that has changed. Suburban sprawl, population growth, and pressures on water supplies have forced planners and some local government officials to join environmentalists in calling for some form of state-mandated and monitored watershed protection.

The most obvious need for such a district—and perhaps the most difficult situation in which to begin—is the Falls of the Neuse watershed area, covering parts of Durham, Wake, and other counties. A dramatic 5,300-acre "new town" development, called Treyburn, is planned in northern Durham county, in the Falls watershed. Under the Florida comprehensive growth management law, a development the size of Treyburn would require state approval. In North Carolina, state officials have only minimal and indirect ways of addressing the watershed protection issue.

During the Hunt administration (1977-85), NRCD established the Falls-Jordan Steering Committee to function in an advisory capacity on such questions. This committee has essentially quit operating. "We felt we had gotten as far as we could with this kind of voluntary approach," says NRCD Assistant Secretary Pugh. "We shifted gears and decided to use our water supply classification system as a way to move towards a more comprehensive approach to protecting the watersheds."

During Gov. James G. Martin's administration, NRCD began offering a higher water supply classification to those local governments that institute watershed protection programs using state guidelines. If the local government adopts certain land-use controls, NRCD says it will adopt a tougher standard in issuing the permits required for wastewater dischargers in the area. In addition, NRCD has continued to advise local governments in regulating watershed developments and has offered local planning departments technical assistance on engineering and other questions. But still, all of this is voluntary.

"We have made a lot of progress," says George Chapman, director of planning for the city of Raleigh, "but if there's a conflict between a local development objective and the water supply protection issue, there needs to be a way to resolve that conflict. Currently, there's no way to do that. Each local government can decide for itself. There have to be some minimum standards and the state is the proper body to establish them."

During the 1987 legislative session, Raleigh Mayor Avery Upchurch asked Wake County legislators to push a proposal for mandatory regional land management in nutrient sensitive watersheds, such as the Falls of the Neuse. "It was torpedoed by Durham officials," says Upchurch. "They feared such regulations would stifle growth in their jurisdiction. Common sense dictates to me that we must put in standards that are adhered to by all. The marketplace can change, and public officials change office every two to four years. We can't have these resources protected by chance."

While the 1987 bill didn't pass, it did prompt a Legislative Study Committee on Watershed Protection.[18] The nutrient sensitive watershed protection statute, says Upchurch, "is a front-runner for a program that eventually will be implemented statewide." In watershed protection districts, special guidelines and rules could be established for commercial and subdivision developments, wastewater discharges, soil erosion, sedimentation, and other issues, says Upchurch. The N.C. Division of Environmental Management is the likely agency to administer this, he adds.

Watershed protection districts, perhaps more than any other land-use regulation, show the close connection between land-use controls and water quality. After researching the issue for the Water Resources Research Institute, Raymond J. Burby recommends that the state adopt mandatory standards to protect watershed areas in the future and at the same time assume primary leadership for "water supply planning, reservoir site preservation, control of point sources of pollution, and control of nonpoint sources of pollution."[19]

Statewide Enabling Legislation for Development Impact Fees

While statewide standards can impose some uniform order on the growth spurts around the state, some types of local actions still need to be authorized by legislative action. One of these is state enabling legislation for development impact fees assessed by local governments. Such fees, a widely accepted growth financing strategy, require developers to pay up front for the impact that their projects will have on local capital expenditures and services. Currently, each N.C. municipality or county has to ask for special legislation allowing such fees in its jurisdiction.

Raleigh passed the first such ordinance in North Carolina, after getting special authorization from the

General Assembly. The Raleigh ordinance, which uses the softer terminology of "facility fees," assesses developers on a unit basis for road and open space (greenway) costs. The objective is a five-year fund of $2.2 million for thoroughfare construction and $1.2 million for parks and greenways. For each single-family home, a developer is assessed $292 when the building permit is issued. The impact-fee schedule covers everything from hotel/motels ($307 per room) to golf courses (assessed per parking space) to hospitals (charged on square foot basis).[20]

Jim Duncan, an independent land development consultant in Austin, Texas, and an expert on impact fees, strongly recommends them in growth states like North Carolina, and enabling legislation if necessary. "It's a hassle for each community to have to go to the legislature," he says.

Initially, developers fear impact fees, explains Duncan. But such fees represent "certainty, predictability, equity, and accountability," he says. "Essentially, they let the developer off the hook for a fee and put every developer in the same boat. Texas was the first state to pass comprehensive impact fee legislation, and homebuilders drafted it." These fees are an ideal "local option, growth management tool" for states like North Carolina where growth occurs in spurts, says Duncan.

Restricted Zoning Districts to Protect Unique Land Resources or Features

Local governments currently have the authority to adopt measures to protect cultural, historical, and natural features of the land, but often they do not. Sometimes no comprehensive assessment of such features has been made. At other times, local jurisdictions may fear that a restrictive zoning regulation may not be enforceable across governmental boundaries or even in court. When a regulation has the effect of keeping a property from being used for its highest and best use in economic terms, the impact of that regulation is sometimes described as a "taking" of some value from the land.

In 1987, two U.S. Supreme Court decisions addressed the taking issue, *Nollan v. California Coastal Commission* and *First English Evangelical Lutheran Church of Glendale v. Los Angeles County.*[21] "The news media gave the impression that in both cases, the rulings were in favor of private property rights and against public regulatory action limiting the use of property," explains N.C. Special Deputy Attorney General Daniel F. McLawhorn. "But that was an incorrect impression. The issues in both cases were much more narrow than that."

The "taking" issue has been debated in North Carolina, specifically under the Coastal Area Management Act. "Marshland was regarded as worthless unless converted. That's where its economic value lay," says McLawhorn. "But the new CAMA program forbade altering those properties."

The "taking" issue arose in the 1987 legislative session when Rep. George Miller (D-Durham) introduced a bill (HB 1238) called "Cash Compensation for Downzoning." The bill took the view that a regulation—in this case downzoning—"took" some land without compensation by reducing the potential value of the property (i.e., by preventing it from being subdivided). The bill did not pass.

Ironically, the bill illustrates an effort to put the state back into the business of land-use regulation, but protecting the income of property owners instead of the land itself. "Vesting property rights in the current zoning structure is foreign to the public health and safety concept," says McLawhorn. "We must restrict the ability of people to use their property if we're going to protect the greater public good—the environment as a whole."

Bill Holman adds, "It's one of the most dangerous bills I've seen in my eight years as a lobbyist." Holman believes, instead, that restrictive ordinances should be expanded. "There is a critical need for a statute establishing the identification, listing, and

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They paved paradise and put up a parking lot; with a pink hotel, a boutique and a swinging hot spot. Don't it always seem to go — that you don't know what you've got till it's gone? They paved paradise and put up a parking lot.

—from "Big Yellow Taxi" by Joni Mitchell

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Charlie Buchanan, Winston-Salem Journal

Vacation homes are being developed along the New River, a national Wild and Scenic River.

protection of Areas of Environmental Concern throughout the state, not just in CAMA's 20 coastal counties," says Bill Holman. The Area of Environmental Concern, or AEC designation, is one of the central mechanisms in CAMA for regulating coastal development. "Development would be tightly regulated or in some cases prohibited in such AECs," says Holman. "Among areas prime for inclusion are lands bordering the Blue Ridge Parkway, as well as other federal and state parks; wetlands, including inland bottomlands; and lands bordering scenic rivers such as the New River."

In 1976, a 26.5 mile stretch of the New River's South Fork was designated as a national Wild and Scenic River after a fierce and successful nationwide effort to save the river from being dammed for a massive 42,000-acre reservoir project for a power company. But the 1976 action said nothing about the lands that border the stretch of river, running through Ashe and Alleghany counties, near the community of Jefferson. In a recent report from Jefferson, *The News and Observer* of Raleigh said that real estate agents were turning 400-acre farms into subdivisions with waterfront lots as narrow as 100 feet across. "We have to face reality," Paul T. Reeves, a real estate agent, told the reporter. "That land's going to be developed. If people didn't like it, we wouldn't be able to sell it."[22]

Such development on the New River and at other scenic sites is occurring, says Holman, because the state has not sought protective conservation easements nor funded land purchases for bank-site activities such as camping and picnicking under existing state legislation, called the "Natural and Scenic Rivers System."[23] A new statewide AEC designation would be particularly useful as an interim measure in protecting potential park lands or scenic riverway banks which ought to be purchased for the state park system but have not because of scarce state funds.[24]

While the state parks system may need new funds, so is there a need for a general system of acquiring special types of endangered lands—gamelands, beach access, river access, and natural areas. Currently, the state has no systematic way of deciding how to purchase such endangered lands. Such actions often depend upon the initiatives of individual legislators. "Environmentalists are grate-

ful for legislators who think that buying natural areas in their districts merits their attention, but lots of areas fall through the cracks," says Holman. In addition to needing a way of establishing priorities for acquisition, the state needs the cash. In recent years, South Carolina, Florida, and Tennessee, among other states, have increased land transfer taxes; the new funds have to be used for acquiring parklands, gamelands, and other such purposes.

Improved Land-Use Information and Analysis

The Division of Land Resources includes a section called the Land Resources Information Service. The people operating that service are the first to identify the limits of its information. "There is no land use inventory for the state of North Carolina," says Karen Siderelis, chief of the section. "We've been trying to convince the state to do that for years." Her section, created in 1974 as part of the Land Policy Act, was to develop comprehensive data, information, and analysis on land use trends. However, it has been forced to focus only on selected areas of the state which are of interest to some agency or individual willing to foot the bill.

The state pays for only three full-time positions. The section sustains its 15-person staff and $500,000 budget because "there is a need, and people are willing to pay for this service," says Tom Tribble, who directs the section's computerized Geographic Information System. There is a steady flow of contracts from local governments, federal government agencies, and private developers. The section does not have basic land information for even a fraction of the state's 100 counties.

"The basic problem is we have to input the information each time, whether it's land use, soil type, property boundaries or watershed boundaries, before we can produce the output somebody's after," Tribble explains. Currently, he says, getting the data for each project is about 85 to 90 percent of the cost of each job because there is no central data source.

"It would take about $3 million and two years to input the basic information, plus the cost of doing periodic updates," Siderelis estimates.

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"...Cause there's nothing
like the feeling
of knowing that I'm seeing
those Appalachian mountains
'neath the Carolina sky..."

—from "Carolina Sky"
by Mike Cross

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"They're Not Making Any More of It"

A 1987 report on the state of the environment, issued by NRCD, does not contain a section on land use, though it does speak to parts of the puzzle in various sections.[25] NRCD does have a Division of Land Resources, but its functions do not address assessing, monitoring, or regulating the complex array of land-use issues discussed here. Moreover, the Environmental Management Commission, viewed as the state's premier environmental regulatory body, concentrates almost exclusively on water and air quality issues. Land-use regulatory matters are spread about among the Mining Commission, the Coastal Resources Commission, the Soil and Water Conservation Commission, and the Sedimentation Control Commission (see table on page 36).

"You know, it's true what the farmers say about the land," says Barry Jacobs, chairman of the Orange County Planning Board. "'They're not making any more of it.' What we have to realize is that there are limits even in a largely rural state like this one, with its lingering sense of unlimited frontier. The ability to do whatever you want on the land is ending as the pressures of growth increase."

In the 1980s, the pendulum of land-use regulations has swung to the local government side. Viewed against the flurry of *state-level tools* added to land-use regulations in the early 1970s, political leaders can ponder whether the pendulum needs to swing back toward the center. Some valuable legacies have survived from the early 1970s, including CAMA and the skeleton of a Land Policy Act. But the momentum has shifted to local-control advocates.

Meanwhile, the scale of balance between development and the environment seems to be weighted on the development side. The prosperity and preservation equation poses special problems in the rural coastal and mountain counties where jobs are scarce and unemployment is high. In those areas particularly, the attitude of NIMBY ("Not In My Backyard") takes on a double meaning—referring to keeping *dangers to the environment away* but also to keeping *environmental regulations away* for fear of losing valuable development, and hence

jobs.

To balance the scale, the pendulum may have to swing back toward more state-level regulations of the land. Five ways that this might be done are: 1) statewide land-use standards; 2) watershed protection districts; 3) statewide enabling legislation for development impact fees; 4) restricted zoning districts to protect unique land resources or features; and 5) improved land-use information and analysis.

"People are starting to ask those basic questions about what makes this place where we live so unique," says Jacobs. "What is it that keeps me here or attracted me here? They like North Carolina. And they want this to still feel like home. But the truth is we're losing it."

FOOTNOTES

[1]N.C.G.S. 113A, Article 14.

[2]The act gave counties three options: 1) come under the provisions of the state law, 2) adopt a local ordinance, or 3) hold a county referendum to let local voters decide whether or not to come under the act at all. Despite the third option, which in effect could have voided the act, only Cherokee County chose to hold a referendum; the voters there chose overwhelmingly to come under the act. For a good summary of the choices, written at the time when they were being made, see "Message from Mountaintops," editorial from the *Winston-Salem Journal* reprinted in *The News and Observer of Raleigh,* Jan. 1, 1984, p. 5D.

[3]N.C.G.S. 113A, Article 7.

[4]For the pertinent regulations, see 33 C.F.R. 320 et seq. and guidelines published by the Environmental Protection Agency at 40 C.F.R. Part 230. For more on this complex legal issue, see Derb S. Carter Jr., "Developments in Federal Wetlands Regulation," *1987 Environmental Law Update,* North Carolina Bar Foundation, Continuing Legal Education Program, 1987, pp. DSC1-DSC8.

[5]On three successive Sundays in May 1987, the *Greensboro News & Record* featured an excellent series of articles on land use issues, divided by coastal, Piedmont, and mountains. See May 17, 1987 (coastal), May 24 (Piedmont), and May 31 (mountains) issues, p. 1A ff.

[6]N.C.G.S. 113A, Article 9.

[7]N.C.G.S. 113A, Article 4.

[8]*The Future of North Carolina—Goals and Recommendations for the Year 2000,* Report of the Commission on the Future of North Carolina, 1983, p. 195.

[9]The data on cropland and forestland acreage was gathered by the Soil Conservation Service, U.S. Department of Agriculture, through its Conservation Needs Inventory (1967 data) and National Resource Inventory (1977 data). Similar data was reported in 1982, but comparisons are not possible because of substantial changes in definitions. For more, see "Land Use and Soil Loss: A 1982 Update" by Linda K. Lee, *Journal of Soil and Water Conservation,* Vol. 9, No. 4, 1984, pp. 226-228. The projection data to the year 2000 comes from *Report of the Forsyth County Agricultural Land Preservation Study Committee,* Forsyth County Soil and Water Conservation District, Dec. 20, 1983.

[10]*Wetlands Trends and Factors Influencing Wetland Use in North and South Carolina,* U.S. Office of Technology Assessment, July 1983 (2.5 million to 695,000 figures); Margie B. Stockton and Curtis J. Richardson, "Wetland Development Trends in Coastal North Carolina from 1970 to 1984," *Environmental Management,* Vol. 11, No. 4 (in press).

[11]Robert B. Smythe, "The North Carolina Sediment and Erosion Control Program: An Analysis by Carolina Resource Consultants for Trout Unlimited and the North Carolina Wildlife Federation," May 1987.

[12]Begun in 1983, the Agricultural Preservation Plan allows the county to purchase development rights from willing farmers as a means of preserving prime agricultural land. The rights are held in trust, and farming continues on the land. Between 1969 and 1978, farmland in Forsyth County decreased by nearly one-third.

[13]"Status of North Carolina Local Planning and Management, 1987," a summary chart prepared by Division of Community Assistance, Department of Natural Resources and Community Development, October 1987.

[14]See "Guiding Growth in the South: A Decade Later," Growth and Environmental Management series, Southern Growth Policies Board, Spring/Summer, 1987; this 39-page report summarizes growth policies in 12 southern states, with a state-by-state table of growth management priorities.

[15]Laws of Florida, Chapter 85-57.

[16]For a discussion of how local and statewide standards used in California and Oregon might apply to North Carolina, see Todd Oppenheimer, "Solutions to Sprawl," *The Independent,* Oct. 22-Nov. 4, 1987, pp. 6ff.

[17]N.C.G.S. 74-46 through 74-68. For a good summary of the mining act and land reclamation issues, see Charles H. Gardner and James D. Simons, "Mining and Reclamation of Land in North Carolina," *Popular Government,* Winter 1984, pp. 12ff.

[18]Chapter 873 of the 1987 Session Laws (HB 1, Sec. 2.1(47D), which refers to the original bill addressing the watershed protection issue, HB 1203.

[19]Raymond J. Burby, "Future Drinking Water: State and Local Policies for Protecting Future Drinking Water Reservoir Sites and Watersheds in North Carolina," Water Resources Research Institute, University of North Carolina, December 1985, p. xv.

[20]City of Raleigh Facility Fee Ordinance and Facility Fee Schedule, Aug. 4, 1987. Ordinance No. 1987-29TC294. That ordinance makes a number of changes to Part 10 of the Raleigh City Code.

[21]*Nollan v. California Coastal Commission,* 107 S.Ct. 3141 (1987) and *First English Evangelical Lutheran Church of Glendale v. Los Angeles County,* 107 S.Ct. 2378 (1987).

[22]Martha Quillin, "Developers Home in on Scenic New River," *The News and Observer* of Raleigh, Oct. 4, 1987, pp. 1Aff.

[23]N.C.G.S. 113A, Article 3.

[24]For good background on state parks, see "Picking state parks up off the bottom" by Bill Krueger, *The News and Observer* of Raleigh, Oct. 4, 1987, pp. 10ff.

[25]*North Carolina—State of the Environment Report,* 1987, N.C. Department of Natural Resources and Community Development, April 1987. The table of contents reflects the diffuse nature of land-use issues; the separate chapters cover water resources, hazardous and radioactive waste management, natural resource management and environmental protection, coastal and marine resources, air resources, forest resources, agricultural lands, mineral resources, parks, natural areas, and wildlife. This is the first such report required by statute (N.C.G.S. 143B-278.1). NRCD has previously published two such overview reports: *North Carolina's Environment, 1981 Report* (1981); and *Planning for Environmental Quality—Phase II,* which includes a section called "North Carolina Environmental Indicators" (1973).