CHAPTER 15.03: IMPLEMENTATION AND ENFORCEMENT PROGRAM FOR MINOR DEVELOPMENT PERMITS

Added 03/18/10

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GENERAL PROVISIONS

15.03.001 STATUTORY AUTHORIZATIONS

Pursuant to North Carolina Legislature G.S. 113A-117-124, the Coastal Area Management Act (CAMA) authorizes a city, county or joint city/county to adopt an Implementation and Enforcement Program to act as the local permit-letting authority for activities related to minor development within areas of environmental concern. This Implementation and Enforcement Plan was adopted as of March 18, 2010, by the Town Council for the Town of River Bend, North Carolina.

15.03.002 PURPOSES

(A) INTENT:

The purposes of the Implementation and Enforcement Plan are to establish:

1. Procedures to be allowed in issuing minor development permits in Areas of Environmental Concern (AEC) within the Town of River Bend's jurisdictional limits, including methods of coordinating with other local permits.

2. Scope and coverage of the program including the geographic extent of jurisdiction of the local management program.

3. Responsibilities and capabilities of permit-letting agencies; including a description of the criteria to be used in choosing the Local Permit Officer (LPO).

4. Methods of identifying and taking into account projects and impacts of regional, state, and national concern where applicable.

5. Procedures to insure that the program is consistent with the adopted Land Use Plan for the entire jurisdiction.

6. Relationships to other governmental action in regards to the adopted Land Use Plan and provide procedures for assuring consistency of action.

15.03.003 GEOGRAPHIC EXTENT OF JURISDICTION

(A) TOWN OF RIVER BEND JURISDICTION

The issuance of Minor Development Permits as required by the Coastal Area Management Act (CAMA) shall be administered and enforced in AECs (or part of AECs), that are located within the jurisdictional boundaries of the Town of River Bend.

15.003.004 DEFINITIONS

(A) DEVELOPMENT: "Development means any activity in a duly designated Area of Environmental Concern involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; lateration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal."

(B) MAJOR DEVELOPMENT: Major Development means any development, which requires permission, licensing, approval, certification, or authority in any form from the N.C. Environmental Management Commission, the N.C. Departments of Human Resources, the N.C. Department of Environment and Natural Resources, the N.C. Department of Administration, the N.C. Mining Commission, the N.C. Pesticides Board, the N.C. Sedimentation Control Commission, or any Federal agency or authority; or development which occupies a land or water area in excess of 20 acres; includes a structure or structures in excess of a ground area of 60,000 square feet on a single parcel; or which contemplates drilling for or excavating natural resources on land or under water.

(C) MINOR DEVELOPMENT: Minor Development means any development other than major development.

(D) ADOPTED LAND USE PLAN: refers to the Town of River Bend's Land Use Plan prepared and adopted by the Town of River Bend and approved by the Coastal Resources Commission (CRC) pursuant to Part 2 of the Coastal Area Management Act (CAMA).

(E) LOCAL PERMIT OFFICER: refers to the locally designated official(s) which will administer and enforce the Minor Development Permit Program in AECs and the policy requirements of the Land Use Plan over the entire planning area of the Town of River Bend.

(F) COASTAL AREA MANAGEMENT ACT (CAMA): The law that relates to the management program for orderly growth in the coastal area of North Carolina as adopted by the General Assembly in 1974.

(G) COASTAL RESOURCES COMMISION (CRC): The Coastal Area Management Act established the Coastal Resources Commission within the Department of Environment and Natural Resources.

(H) AREAS OF ENVIRONMENTAL CONCERN (AEC): refer to areas designated by the CRC, in which development shall require a minor or major development permit.

(I) IMPLEMENTATION AND ENFORCEMENT PLAN: refers to the Local Management Program for the implementation and enforcement of Minor Permit requirements within AECs and the policies of the adopted Land Use Plan within the Town of River Bend.

Administration

15.03.005 DESIGNATED LOCAL PERMIT OFFICER

(A) CREATION OF POSITION: The Town of River Bend shall designate one or more employee(s) to hold the position of LPO.

(B) QUALIFICATIONS: Any designated LPO shall be required to complete an initial training course from the Division of Coastal Management (DCM), within twelve (12) months of appointment. The LPO(s) shall attend all regional work sessions held by the DCM to inform and coordinate the activities of the LPOs in each region. In addition, the LPO shall be knowledgeable of other local, state, or federal permit or regulatory requirements.

(C) APPOINTMENTS: The Town of River Bend shall notify the Commission of the name(s) of all designated LPO(s). In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, the Town of River Bend shall immediately notify the DCM and CRC in writing when the LPO resigns or is for any reason unable to perform his or her duties. This notice shall indicate the method or methods by which the locality will continue to process permits in a thorough and timely fashion. Such methods can include, but are not limited to, the following:

1. The appointment of a temporary LPO until such time as a permanent replacement is selected.

2. The appointment of one or more LPO(s).

3. Evidence that an agreement exists between the locality and another appropriate agency for the assumption of the permit program.

4. A formal request that the Secretary/DCM assume all permit functions for the locality.

15.03.006 DUTIES OF THE LOCAL PERMIT OFFICER

(A) GENERAL ENFORCEMENT: The LPO shall administer and enforce in duly designated AECs; the Minor Development Permit process as herein established, as well as all applicable local ordinances, and all other guidelines and standards established by the CRC and the Town of River Bend pursuant to CAMA. In addition the LPO shall:

1. Be familiar with existing state and federal permits required in this jurisdiction so as to provide aid to potential developers in determining when a major development permit rather than a minor development permit is required, and to aid the developers in applying to the CRC when a major development permit is required, and in general, aid applicants in regard to the other state or federal permit requirements.

2. Assist in identifying and assessing projects of greater than local concern and bring them to the attention of the CRC. (Such projects of regional, state, or national concern are almost certain to require some other state permit and, therefore, require a major development permit from the Commission. Therefore, they will usually be brought to the attention of the Commission through the major development permit application.)

3. Be responsible for implementing procedures agreed on by the Town Council to which this Plan applies for the purpose of coordinating the CAMA Minor Development Permits with other locally required permits. Such locally required permits could include, but are not limited to, building permits, floodplain permits, and certifications of compliance with zoning and subdivision regulations.

4. Be responsible for implementing enforcement procedures, actions, or standards, that the Town Council may wish to enforce in regards to the adopted Land Use Plan or revision thereof.

5. Assist in coordinating permit-letting activities with other local jurisdictions as necessary.

(B) RECORDS: The LPO shall maintain a log of all permit applications and their dispositions. The log shall be available, upon request, to the Town Council for the Town of River Bend, to the CRC and to the Secretary of the North Carolina Department of Environment and Natural Resources (NCDENR). Correct and comprehensive records of all transactions related to minor development permit requests (applications, grants, denials, other dispositions) shall be maintained by the LPO, and such records shall be kept so long as any part of the structure or entity to which it relates remains in existence; or, in the case of denials or other instances, for a period of ten (10) years. Within five (5) working days from the date of receipt and acceptance of any application and/or permit decision, the LPO must submit copies of same to the Division Field Representative/District Office of the Division of Coastal Management (DCM). The LPO shall submit to their respective District DCM Office a quarterly report of all CAMA permitting and enforcement activity.

(C) LOCATION: The LPO shall be located in the River Bend Town Hall located at 45 Shoreline Drive, River Bend, NC 28562, and can be reached at (252) 638-3870. The Commission shall be notified immediately of any change in the location of the LPO.

Minor Development Permits

15.03.007 MINOR DEVELOPMENT PERMIT REQUIRED

(A) DESIGNATION OF AEC REQUIRING MINOR DEVELOPMENT PERMITS: The following permit-letting requirements and information in regards to AECs shall be available for review and inspection in the Town of River Bend Zoning and Floodplain Management Department:

1. Description of all AECs within the Town of River Bend Zoning and Floodplain Management Jurisdiction that is sufficiently clear to provide notice to all property owners within those AECs that a permit must be secured before any development may proceed on that property.

2. A copy of the standards for development adopted by the CRC for each type of AEC found in the jurisdiction and the statutory grounds on which a permit application may be denied or conditioned.

3. The statutory definition of development, as provided in CAMA [G.S. 113A-103(5a)].

4. A copy of the approved permit application form for both major and minor development in the AECs.

5. The name and officer(s) address of the LPO(s).

6. A copy of the Implementation and Enforcement plan.

15.03.008 MINOR PERMIT PROCESS

(A) APPLICATION: An application for a permit for minor development shall consist of a completed application using the applicable form adopted and approved by DCM and a check or money order made payable to the Town of River Bend in the amount of $100.00, or as amended in 15A NCAC 07J .0204(b)(6)(B). Monies so collected shall only be used in the administration of the permit program, specifically including the cost of required public notices and hearings.

(B) APPLICATION REVIEW PERIOD: Disposition of the application by the LPO shall take place within twenty-five (25) days of receipt of a complete application, unless the LPO gives written notice by registered mail of an additional twenty-five (25) day extension as necessary for proper evaluation of the application.

(C) GENERAL PROCEDURE FOR PROCESSING AN APPLICATION: The LPO shall return incomplete, insufficient, or unauthorized application within a reasonable time. The twenty-five (25) day period for consideration of the applicant shall begin to run upon receipt of a complete application. The time period will continue to run in the case of an incomplete or insufficient application until the LPO returns it, with reasons for the rejection in writing, to the

applicant for correction of the deficiencies. The time period will begin to run again when a correct application is returned to the LPO. Any application received requesting a permit for an activity that constitutes major development shall be returned by the LPO with appropriate instructions for submitting the Major Permit application to the DCM. The LPO shall determine from the application what other permits are required for the development. The LPO shall inform the applicant of these other permit requirements and aid him/her in properly applying for such permits. The LPO shall ordinarily make final decisions concerning the Minor Development Permit only after he/she has determined that any other required local permits will be issued, the applicant is consistent with the applicable criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the CRC. When an evaluation results in none of the above findings, an unconditional approval shall be granted by the LPO. Otherwise, the LPO shall deny or conditionally approve a properly completed minor development permit application.

(D) PROPER PROCEDURAL REQUIREMENTS FOR DISPOSITION: The procedures and requirements of processing applications shall be conducted in a manner consistent with the expeditious and reasonable evaluation, as well as rational disposition of Minor Development Permits, as set forth and required by CAMA. The following general procedures shall be followed in reference to application disposition:

1. Unconditional approval: A Minor Development Permit shall be granted only if consideration of the applicants results in no inappropriate findings, as set forth in § 15.03.008 (C) above.

2. Denial: Where the LPO denies a Minor Development Permit or an application is returned to the applicant for reasons as set forth in § 15.03.008 (C) above, statutory grounds upon which the denial is based or the reasons the LPO returns an application shall be set forth in writing.

3. Conditional Approval: The approval of a Minor Development Permit may be conditioned upon the applicant's amending his/her proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the findings enumerated in § 15.03.008 (C) above. Conditional approval shall be granted upon the acceptance by the applicant of certain reasonable conditions as set out by the LPO for public interest protection with respect to appropriate findings listed in G.S. 113A-120. The applicant must sign the conditional grant of approval as an acceptance of the permit conditions before the permit shall become effective. Statutory grounds upon which a conditional approval is granted shall be set out in writing.

4. Passive approval: Failure to approve, conditionally approve, or deny a properly completed and filed application, or for the LPO to not give notice of an extension beyond the initial twenty-five (25) day disposition period shall result in passive approval. A passive approval shall have the full force and effect of an unconditional approval.

(E) PROPERTY OWNER REQUIREMENTS: The property owner shall display a properly granted Minor Development Permit in full view on the site of the development. This requirement shall apply to every permit no matter how it is granted. It is therefore necessary that the property owner acquire a permit received by passive approval for the purposes of posting on the site before proceeding with development.

(F) RECORD KEEPING REQUIREMENTS: Permit applications shall be numbered serially using a five-digit numbering system. The first two digits will indicate the year in which the application is made, and the last three digits will run serially in the order in which the application are received. These numbers shall include the letter prefix RB to designate the Town of River Bend. (For example, RB-09-001 for the first permit, RB-09-002 for the second permit, and so on.) Along with the applications, the LPO shall maintain a record of all evidence and all matters relevant to each Minor Development Application. Such relevant information shall include, but not be limited to, applications, correspondence, public notices, responses to public notices, and a copy of the final disposition. In cases involving denial or conditional approval, the LPO shall send a copy of an conditional approval or denial disposition record to the applicant, either in person or by registered mail. One copy shall be maintained by the LPO.

Appeals, Injunctive Relief, and Penalties

SECTION 15.03.009 APPEALS

(A) APPEALS TO THE COASTAL RESOURCES COMMISSION: Any person directly affected by the local decision of the LPO including the Secretary of the NCDENR may, within twenty (20) days of the LPO's disposition, request an appeal hearing by filing a Petition with the Office of the Administrative Hearings. The hearing shall be a quasi-judicial hearing conducted by an administrative law judge in accordance with the requirements of the CAMA and any other state laws applicable to such procedures. Final decision in the appeal will be made by the CRC based on evidence presented in the hearing.

(B) APPEAL TO SUPERIOR COURT: Any person directly affected by any final decision or order of the CRC may appeal to the Superior Court.

(C) APPEAL PENDING: No action for which a Minor Development Permit is required shall be taken while appeal of the LPO's disposition of that permit request is pending.

15.03.010 INJUNCTIVE RELIEF AND PENALTIES

(A) INJUNCTIVE RELIEF: Upon violation of the provisions adopted by the Town of River Bend pursuant to CAMA relating to the issuance of Minor Development Permits, the LPO may, either before or after the institution of proceedings for the collection of any penalty imposed by CAMA for such violation, institute a civil action in the General Court of Justice in the name of the Town upon the relation of the LPO for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of

the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by CAMA for any violation of the same.

(B) PENALTIES: Any person adjudged guilty of knowingly and willfully undertaking any development requiring a minor development permit without acquiring such a permit, or of conduct exceeding the authority of a permit, or of failure to observe the agreed modifications of a conditioned grant, or of violation of any other applicable regulations adopted by the Town of River Bend or the Commission pursuant to CAMA shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than One Hundred and no/100ths Dollars ($100.00) or shall be imprisoned for not more than sixty (60) days, or both. In addition, if any person continues or further commits any of the above violations after written notice from the LPO, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(C) NOTICE: The LPO shall notify the Secretary of any civil action undertaken by or against such officer under CAMA.

Amendments of the Implementation and Enforcement Plan and Complaint Procedure

15.03.011 AMENDMENT TO THE IMPLEMENTATION AND ENFORCEMENT PROGRAM

(A) NOTICE OF PUBLIC HEARING: Amendments to this Implementation and Enforcement Plan shall be in accordance with the notice and public hearing requirements set forth in CAMA and the CRC's "Criteria for Local Implementation and Enforcement Plans" pertaining to the adoption of the original plan. In addition the following shall be required:

1. Prior to the Plan being amended, a public hearing shall be held by the Town Council concerning the proposed amendment. It shall be open to comment from any interested persons, agencies, or groups.

2. Notice of such public hearing shall go out at least fifteen (15) days prior to the date of the hearing; shall state the time, place and subject matter of the hearing and shall indicate the nature of the proposed action; shall state that copies of the proposed amendment are available for public inspection at the River Bend Town Hall; and shall appear at least once no less than fifteen (15) days prior to the hearing in at least one newspaper of general circulation in the affected area.

3. A complete record of the public hearing and comments shall be compiled and maintained. The record of the public hearing, written comment, and any documentation filed with the LPO as to the proposed amendment must:

    a. Consist of a written account from the minutes or transcribed from an electronic recording, and all written documents.

b. Remain open for fifteen (15) days after the hearing.

c. Be available to the Commission upon request.

(B) PROCEDURE TO AMEND: Requests for amendment of this plan shall be referred to the Planning Board. If the amendment is recommended by the majority of the Board, that recommendation shall then be conveyed to the Town Council for final approval.

(C) REQUEST TO WAIVE FORMAL AMENDMENT REQUIREMENTS: Whenever a proposed amendment is deemed by the Planning Board and the Town Council to be of little interest to the Public, a petition may be sent to the CRC for a waiver of the formal hearing and notice requirements. Such a petition shall include the proposed amendment and state why the Planning Board and the Town Council concluded that the rights or convenience of the public is not substantially affected by it.

(D) COMMISSION APPROVAL: Upon local acceptance of any amendment requiring notice and hearing, the amendment shall be submitted to the Commission for approval. Upon CRC's approval, the amendment shall be adopted as part of the ordinance(s) implementing this plan.

15.03.012 PROCEDURES FOR RESPONDING TO COMPLAINTS THAT THIS PLAN IS NOT PROPERLY ENFORCED AND ADMINISTERED

(A) CITIZEN COMPLAINTS: Upon receiving complaints from local citizens that the Implementation and Enforcement Plan is not being properly administered and enforced, the Town Council will request an investigation of the situation and respond to the alleged deficiencies. If the person making the complaint is not satisfied, then he/she will be advised that he/she may take their complaint either in writing or in person to the CRC.

(B) RESPONSE TO THE CRC: Upon notification from the CRC concerning deficiencies in administration and enforcement of this plan, the Town Council will request an investigation of the alleged problem and prepare a response for the CRC. If the allegation of deficiencies is found to be valid, the Town Council will, within thirty (30) days of the original notifications from the CRC, inform the CRC of its willingness and ability to correct the deficiency and prevent similar problems in the future. If the Town Council finds the CRC's allegations of deficiencies invalid, they will so inform the CRC. If the CRC disagrees with that finding, the Town Council may request a hearing before the CRC or in some other manner attempt to reach a mutually acceptable agreement with the CRC within a ninety (90) day period after receipt of the CRC's original notification of the ninety (90) day period, then the authority to issue permits for minor development pursuant to this plan shall be automatically relinquished until such a time as the CRC is convinced that the Program will be properly enforced.