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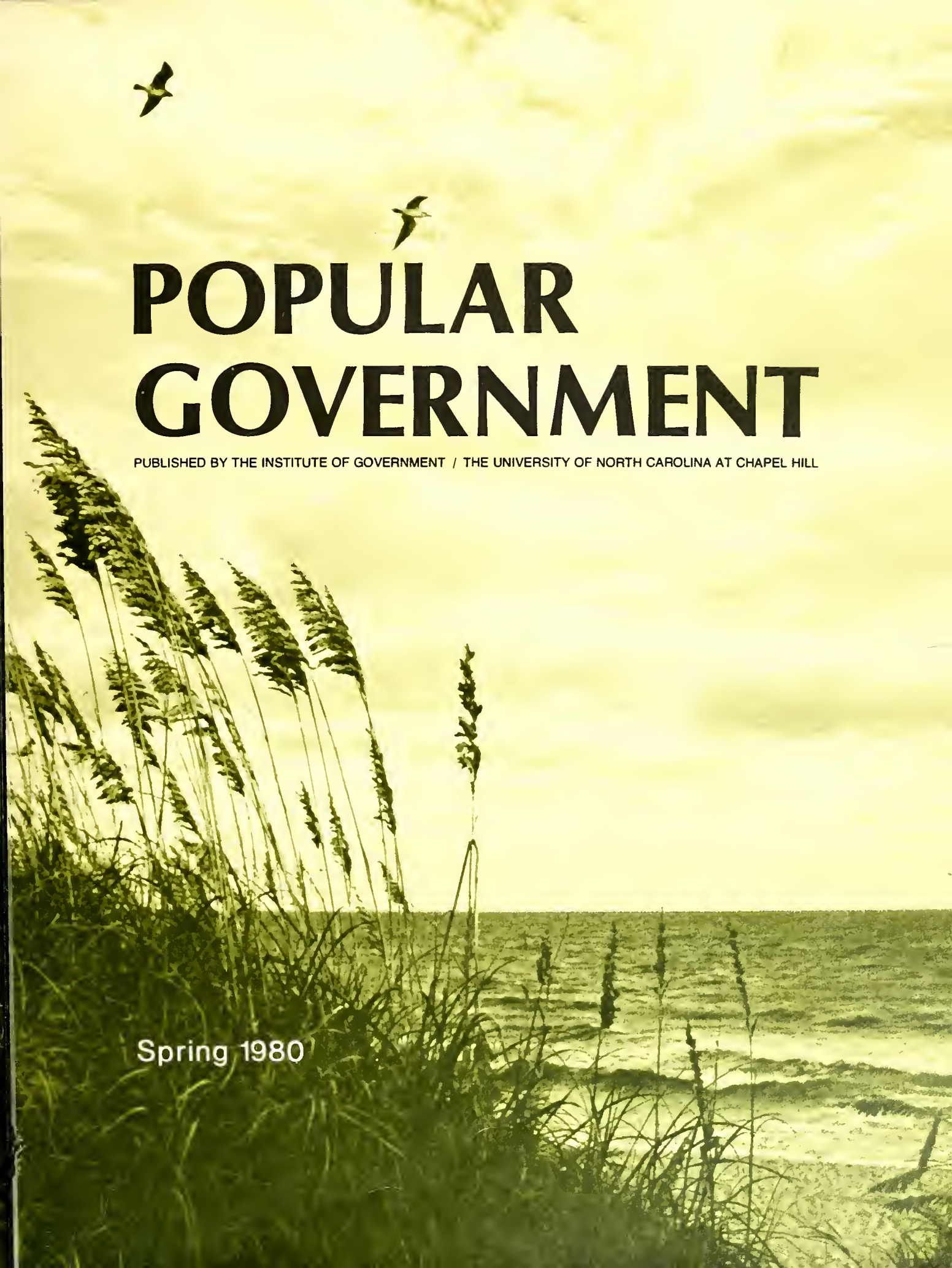

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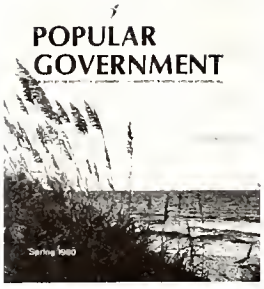

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CONTENTS

Community Development Block Grants: The First Five Years / 1
Kurt Jenne

CDBG in Three North Carolina Jurisdictions
Aurora / 5
Brian Benson
Fayetteville / 8
Richard Herrera
Columbus County / 10
John W. Minton

New Tools for Historic Preservation and Community Appearance / 15
J. Myrick Howard

The 1977 Clear Air Act Amendments / 21
William A. Campbell

North Carolina's Comprehensive Building Regulation System / 26
Philip P. Green, Jr.

Two Who Shaped the State's Building Regulation System / 28

The Coastal Area Management Act / 32
Milton S. Heath, Jr., and Allen C. Moseley

Group Homes for the Mentally Handicapped / 38
H. Rutherford Turnbull, III

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CDBG

Community Development Block Grants: The First Five Years

Kurt Jenne

IN JUNE thirty-nine North Carolina communities will close the books on their fifth year of participation in the Community Development Block Grant (CDBG) program, while 166 more will complete at least their first year's efforts. Community Development Block Grants have dramatically affected the activities of many communities in this state and thousands more throughout the nation. Because of the Housing and Community Development Act of 1974, an unprecedented number of local governments began to tackle the old problems of slums and blight in new ways. Although the law and the program were designed to relieve a chronic problem, the changes at both the state and local levels of government that were required to make the new effort succeed have taxed the ingenuity, imagination, and energy of elected officials, administrators, and staffs. To what end? What were the aims of the new law, and have they been realized? What special problems have the changes brought and what opportunities do they offer?

The origin of CDBG

The federal government started its official campaign against deteriorated neighborhoods with the Housing Act of 1949. In that law Congress limited urban redevelopment activity to land acquisition, slum clearance, and resale of sites to private developers. Over the next twenty years redevelopment was expanded to include urban renewal—conservation, restoration, and rehabilitation—as an alternative to wholesale clearance (1954); open space, beautification, and historic preservation grants (1961); water, sewer, and neighborhood facilities grants (1965); and integrated physical, economic, and social development under a Model Cities program (1966). In 1968 Congress sought to make it easier for communities to apply this smorgasbord of categorical programs through a Neighborhood Development Program (NDP). Until then an urban renewal program could take years to plan and approve, be outdated before it began, and take many years to complete because of its size and the cumbersome procedures required to make adjustments once the project was under way. With an NDP, a community could undertake its program in annual increments and adjust each year according to experience and circumstances.

By 1972 the NDP approach was being used by every new urban renewal project in the country. Nevertheless communities were feeling frustrated over the complexity, rigidity, uncertainty, and unfairness associated with planning and executing any combination of these and other offerings from the federal government. First, each categorical grant program was separately administered and had its own requirements for eligibility, application, award, reporting, and performance evaluation. Often the trip through the paper-paved bureaucratic maze was beyond the ability or the resources of some needy communities, which simply did not apply. Second, each program was rigidly administered according to its own criteria, which assumed that the program could be dropped into place anywhere. Local governments often found that the rules for a grant could not recognize differences between a Winston-Salem and a Wendell. Moreover, even the NDP did not cut through individual grant procedures that hindered well-timed,

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coordinated action tuned to the specific circumstances in a particular neighborhood or community. Finally, the complexity and rigidity made funding too uncertain for advance planning and more responsive to sophisticated grantsmanship than to need.

By 1971 both the Congress and the President were ready to act on these problems. Both agreed that the grant structure and procedures should be simplified, that the grant programs should be more flexible in their local application, and that funding should be more predictable and accessible to communities with need. The President wanted a special revenue-sharing program to do this: Communities would not have to prepare an application, allocation of funds would be based on a formula, and actual use of the funds would be audited periodically. Congress, on the other hand, wanted to protect its long-standing national objectives: It held out for a full application procedure, a 10 per cent local match, stringent adherence to all federal standards in the use of funds, and past performance as an important criterion for continued funding. Three years later, a compromise emerged as Title I of the Housing and Community Development Act of 1974.

This legislation established the Community Development Block Grant program, incorporating into it all of the categorical programs mentioned earlier under the administration of the Department of Housing and Urban Development (HUD). The act specified thirteen general activities that could be funded under CDBG—a list that kept the scope of the program within that defined by its predecessor programs taken as a group. A five-part application was specified that would show (1) long- and (2) short-range plans for use of the grant, (3) how the plans promoted national objectives, (4) specific housing goals, and (5) various certifications. The act required HUD to approve each application within a specified period of time unless the application was "plainly inconsistent" with known facts or "plainly inappropriate" or unless the applicant had violated the act. It further required that annual performance reports be submitted to HUD. No local match was required, but a community had to maintain its previous level of community development effort—that is, not use the grant to reduce its own commitments.

CDBG made all local governments eligible for one of several kinds of funding. Funds are allocated primarily by formula. First, 80 per cent of all funds are distributed to over 280 Standard Metropolitan Statistical Areas (SMSAs) throughout the country. The balance is distributed to the states' nonmetropolitan areas, and the same allocation formula used for SMSAs is applied to each state's nonmetropolitan area. Under the original formula, each metropolitan city (that is, larger than 50,000) and each qualified urban county in an SMSA was "entitled" to a sum based on an index of the unit's population (25%), amount of overcrowded housing (25%), and amount of poverty (50%). A new "dual formula" is now used to determine the metropolitan entitlements (see page 4), but this indexed-formula procedure is still used as its basis. In each state the cities, towns, and counties outside SMSAs then compete for that state's non-SMSA allocation. Those entitlement communities in SMSAs that had operated Model Cities or urban renewal programs moved to their CDBG entitlement levels over a two- to five-year period of "hold-harmless" funding. The hold-harmless concept was meant to assure that in the shift from one program to the other, no community suffered a precipitate drop in funding that might jeopardize projects already under way. Each community's hold-harmless allowance was based on its level of Model Cities and urban renewal grant funding over the five years immediately before the act became effective. If its entitlement under CDBG was more than under previous funding, the community began with the hold-harmless allowance and moved up to its CDBG entitlement in three years. If the hold-harmless amount was more, the community started with that figure but will have moved down to its CDBG entitlement in six years. Likewise, communities outside SMSAs that had conducted urban renewal programs received hold-harmless funding in gradually lower amounts, and after five years they now compete for state area "discretionary" allocations. Other funding provisions included (1) competition among small cities in SMSAs for any funds that remained after entitlement and hold-harmless distributions; and (2) a Secretary's discretionary fund for such uses as emergencies, correction of inequities, and promising innovations.

Results of the block grant approach

The legislation that established CDBG was intended to provide four characteristics in this new program for dealing with slums—simplicity, local flexibility, certainty, and fair distribution of funds. If each of these characteristics were realized, however, federal control over individual grant decisions and the opportunity to insure that national goals will be achieved would be reduced. The act tried to resolve this dilemma. In doing so, how well has it achieved the four results that it sought?

Simplicity. By combining separate grant programs for urban renewal, open space, beautification, historic preservation, basic water and sewer, neighborhood facilities, and other activities allowed under Model Cities and NDP, CDBG has simplified the search for funding sources. Also, under CDBG all eligible activities are subject to the same planning and implementation standards. Even though more is required in the application than was required in 1974, the application remains a straightforward device for planning a broad program and for demonstrating consistency with national objectives. CDBG legislation requires HUD to approve the decisions made by communities in their planning and

program designs by a definite deadline—unless those plans are plainly inconsistent, inappropriate, or illegal. This charge has eliminated much of the notorious red tape of the categorical programs. On the other hand, a recent survey of CDBG indicates that these gains might be offset by the responsibility placed on the communities for environmental reviews and some other tasks that HUD had done previously.[1]

Local flexibility. One interesting feature of CDBG is its compromise between the continued pursuit of national objectives and the ability of local governments to determine and control the specific strategies that they will use to accomplish those objectives. The prescribed list of eligible CDBG activities has assured that funds will continue to be applied to the purposes for which the categorical grants were designed. But their general nature has allowed plenty of room for local governments to be creative in using an activity. In 1977 Congress amended the act to add economic development as an activity eligible for CDBG funding, recognizing that this enterprise could be crucial to the effectiveness of the other CDBG activities. The legislative restrictions on HUD's meddling with local objectives has allowed local governments a remarkable freedom in mixing the fourteen activities within the general guidelines.

The importance of local objectives is also reflected in HUD's methods of judging how well communities have performed with their grant funds. Beyond assuring that the basic procedural rules have been followed, HUD's annual performance-monitoring review uses the local objectives, which a community established at the beginning of the year, as the standard for evaluating that community's performance. This not only allows a community to establish its own criteria for success but also puts a premium on *fulfilling* plans, which has not been a prominent characteristic of local planning practice.

Certainty. A local government must know three critical things in order to plan effectively for a project. It must know *whether* it will have the resources to do the job, *how much* it will have, and *when* it will have them.

The categorical programs failed on every one of those counts. Before CDBG was enacted, a community received a grant when it found and matched a narrow-purpose grant to its project and then competed for it successfully. How much it received depended on the total amount available in a particular category, how many other communities were in line, and how money was distributed—targeted to need or spread around thinly. When it received the funds depended on how long the application and review ritual lasted—usually well beyond the planner's most pessimistic estimates.

In contrast, CDBG provides a single source of funds for a very broad purpose. It guarantees funds to some communities (entitlement), protects those that have programs to complete (hold-harmless), and offers funds to all other communities under conditions of eligibility, merit, and performance that are, on the whole, more straightforward and more uniformly applied than those of the categorical programs. The application process is timed to coincide with local government budget cycles and is short enough to permit reasonably accurate planning and aggressive follow-through on planned projects.

Fairness. Equity has been and will continue to be a controversial aspect of CDBG. To be sure, the structure and the application and evaluation procedures have lessened the grantsman's influence over the allocation of funds. Formulas are used throughout the program—from the initial division of funds between metropolitan and nonmetropolitan areas to the final rating of a small town that competes for a nonentitlement grant (nonentitlement grants were at first called "discretionary" grants but are now called "small cities" grants even though they are available to counties too).

What have the formulas done? First, one of them gives 80 per cent of the money to metropolitan areas, presumably because Congress thought that they needed it the most. This does not mean that the funds have all gone to the central cities. Every SMSA has smaller cities and towns and unincorporated areas in it. Wake, Orange, Randolph, Yadkin, Buncombe, Union, Cumberland, and Brunswick counties are all in SMSAs. Early HUD estimates predicted that central cities, which had received 72 per cent of all urban renewal funds, would receive 42 per cent of all CDBG funds after the hold-harmless period ended.[2] The award of SMSA balances (the amount left from the 80 per cent designated for SMSAs after SMSA entitlements were paid) and the funds earmarked for nonmetropolitan areas (20 per cent of the total appropriation) shifted funds to cities and towns under 50,000, especially to many that had never had an urban renewal program. Another HUD report showed a shift of funds among regions. Under the categorical programs, the Northeast captured about 34 per cent of the funds in the programs and the South received about 27 per cent. It was predicted that when hold-harmless ended, the South would capture 31 per cent of CDBG and the Northeast would receive about 26 per cent.[3]

Disagreement arose about the original distribution formula—the index of population (25%), overcrowded housing (25%), and poverty (50%). Some people contended that the formula was biased against the most

1. Paul R. Dommel et al., *Decentralizing Community Development* (Washington: HUD, 1978), pp. 79-81.

2. Harold Bruce, *An Evaluation of the Community Development Block Grant Formula* (Washington: HUD, 1976).

3. Richard Nathan, et al., *Block Grants for Community Development* (Washington: HUD, 1977).

needy urban areas and the more aged Northeast, mainly because of the incidence of poverty and housing overcrowding in rural areas of the Southeast. The counter argument was that the need for community development was not confined to older urban areas—that indeed some of the worst housing and poverty existed outside those areas and the funds ought to follow need wherever it was, not just in areas where it was *concentrated*. Obviously agreement had to be reached on (1) what exactly defines need for purposes of CDBG, (2) where does the most need exist, and (3) how much should resources be concentrated in the communities with *most* need rather than spread out to help all who have *some* need.

Congress had no conclusive answers to these very tough questions, and it faced strenuous lobbying to change the formulas; therefore in 1977 it modified the formulas. A new formula was adopted that used a mix of lag in population growth (20%), age of housing stock (50%), and poverty (30%). But *both* formulas were to be used in what was called the "dual formula."[4] A community's allocation is now determined by the formula that gives it the largest amount. Thus no entitlement city lost by the new method. The losers under this change may be the nonentitlement communities within SMSAs that have had to compete for SMSA balances that have been proportionately reduced so that this modification could be funded. Whether and how much these communities have actually suffered by the dual formula has not been determined.

Argument continues about these formulas, but Congress seems to be satisfied to maintain a "spreading" strategy until shown a better way with a clear consensus, and the National League of Cities—the most sophisticated CDBG interest group—chose not to push for changes or "fine tuning" this year in order not to complicate the reauthorization process.

The spreading effect in North Carolina

The spreading effect of CDBG is evident in North Carolina in two respects. First, more communities have had the opportunity to undertake coordinated programs of neighborhood revitalization under CDBG than under the categorical programs. In 1974, twenty-nine cities in the state had active urban renewal (including NDP), concentrated code enforcement, or Model Cities programs. In 1975, the first year of CDBG funding, 73 cities, towns, and counties received block grants under the new program. Last spring HUD approved program requests for 89 communities. Moreover, many more participants entered and left the program between these two points. All told, 178 North Carolina communities have received at least one block grant during the first five years of the program.

Second, funds shifted from the communities that had been involved previously in urban renewal or Model Cities to those that had not. In 1974, the 29 communities that were operating urban renewal and Model Cities programs captured about $52.1 million on an annual basis. In 1975, entitlement and hold-harmless grants to these and ten more communities with previous urban renewal activity totaled $50.3 million. By 1979, with most hold-harmless grants nearing their ends, grants to these communities totaled only $29.2 million. At the same time, in 1975, over $10.8 million of CDBG funds were awarded to 35 communities that had never before operated urban renewal or Model Cities programs, and by 1979 these discretionary grants totaled almost $35.1 million.

Most of the decrease in funding for former participants between 1975 and 1979 was due to the gradual removal of the hold-harmless prop. Funding to North Carolina's eleven entitlement cities, some of which had unusually high amounts of urban renewal and Model Cities funding, declined by a total of $8.5 million between 1975 and 1979. Only Raleigh, Wilmington, Greensboro, and Fayetteville have entitlements that are higher than their original hold-harmless amounts. During that same period, funding for the other 28 hold-harmless communities dropped by $10.4 million—from $15.6 million in 1975 to $5.2 million in 1979.

Some of the losses by communities with previous experience were won back through competition for discretionary funds. Most of the nonentitlement cities that received hold-harmless guarantees started to prepare for loss of funding by winning discretionary (small-cities) grants before their hold-harmless status ran out. Although six of the 28 have not yet started small-cities programs, the other 22 started to mix discretionary grants with their hold-harmless grants as early as the second year. Fifteen of these now have multi-year commitments under the small-cities program to insure continuity after hold-harmless ends.

Adjusting to CDBG

The transition from categorical programs or from no urban renewal programs at all to CDBG has been difficult in some respects. First, there have been problems over *strategy*. Resolving expectations about what could be done under the act with the reality of both the law and HUD's administration of the law has taken time. Second, the CDBG has raised *legal questions* of HUD's administration of the law. Both of these problems arose partly because the selected bodies and the administrations of general-purpose units of local government

(continued on page 12)

4. For a description of the new formula and its effect on some cities in North Carolina, see Jerome R. Adams, Thad L. Beyle, and Patricia J. Dusenbury, "The New 'Dual Formula' for Community Development Funds," *Popular Government* 44 (Spring 1979).

CDBG in Three North Carolina Jurisdictions

Aurora

AURORA, in Beaufort County, North Carolina, is a small rural town of 700 people. A massive phosphate ore deposit that lies beneath the town has played a major role in shaping its destiny. During the early 1960s, Texasgulf, Incorporated, began to strip-mine phosphate ore for use in producing fertilizer at a site seven miles northwest of town. This operation had a significant impact on the townspeople and the surrounding landscape.

In the mid-1970s, another phosphate mining company, North Carolina Phosphate Corporation, announced its intention to open a new operation directly north of Aurora—much closer to town than the Texasgulf operation. Town officials became concerned about its possible effects on the community. They anticipated economic benefits for Aurora and its people, but they were also concerned about the possible disruption of their lifestyles. The mayor and the town board realized that Aurora needed help in dealing effectively with the problems it faced. Because of the concern about the strip-mining operation, the whole community's attention soon focused on issues related to Aurora's future. In 1975, with technical assistance from the North Carolina State University School of Design, town officials and citizens began to assess the community's natural and human environments. They used techniques that ranged from mapping to surveys of citizens' attitudes in an effort to describe several of the town's features. One result was the discovery of a surprising amount of potential for local development. Results of the social assessment were published and distributed to every household in Aurora. The report contained a broad, comprehensive list of goals and objectives.[1] The town adopted this list along with a regional development plan[2] as offical town policy, and the mayor gathered the necessary financial and technical resources to achieve the town's goals and plans.

Aurora was fortunate that the phosphate mining had focused attention, through the regional development plan, on key issues that were related to the town's future—a future in which the town's place and continued existence in the region were secure, in which adequate community facilities and services were provided, and in which existing development and growth potential were realized. Using the regional development plan as a guide, the town wrote a zoning ordinance and exercised its one-mile extraterritorial planning jurisdiction in order to gain control over its surrounding area. Next before taking steps toward future development, the town sought to correct identified problems of inadequate community facilities and services and poor housing conditions: Several neighborhoods lacked paved streets and municipal water and sewer lines; many people in the community lacked adequate health care and other human services.

In 1976 Aurora applied for and received a $420,000 discretionary Community Development Block Grant (CDBG) from the Department of Housing and Urban Development. Small towns often are skeptical of federal grant programs and the strings attached to them—the policy requirements and complex administrative procedures. But Aurora decided that the federal government had just what it needed to begin to solve the specific problems that it had identified. The town pursued CDBG funding because it could be *locally* directed and could finance a *broad* range of projects in areas of identified need. Plans called for the rehabilitation of 22 houses, street improvements (paving and associated drainage work), the installation of municipal water and sewer lines in two low-

1. School of Design, North Carolina State University, *Alternative Growth Patterns, Technical Report Three: Goals for Aurora* (Raleigh: School of Design, NCSU, 1975).

2. School of Design, North Carolina State University, *Aurora Regional Community Development Plan* (Raleigh: School of Design, NCSU, 1976).

income neighborhoods, the purchase of a big old vacant house to be renovated and used as a human services center, and the construction of a primary health care center. The initial block grant allowed the town to begin working on several of the most important goals and objectives that had emerged from the 1975 community assessment.

Setting up the program. Putting together a CDBG program even in a small town is no simple task. This is especially true in a town like Aurora that has no experience in managing federally funded programs. Problems and complications await the naive and uninitiated, often because federal program guidelines and local practices and conditions differ. When Aurora was funded, the town's administrative staff consisted of a town clerk and a part-time secretary. Three people were hired to administer the CDBG program—a director, a rehabilitation specialist, and a secretary. The director, who reported directly to the governing board, was responsible for the overall management of the block-grant program. The rehabilitation specialist prepared cost and work estimates for repairing the 22 houses, and the secretary handled all of the clerical and office management duties. Because these people who were responsible for the day-to-day management of the block-grant program worked in and directly for the town, there was good communication between citizens and those who carried out town programs.

In the fall of 1976 the community development staff set up an office in a Main Street storefront—a location that provided good visibility for the program. A citizen group, formed primarily from the target neighborhoods, advised the CDBG staff and the town board. Because members of this advisory group had lived in the target neighborhoods most if not all of their lives, they had valuable insights into the sensitive task of housing rehabilitation.

Housing rehabilitation. One key to success in a housing rehabilitation program is using good building contractors. In a small town like Aurora, this was difficult because builders who were interested in doing rehab work were scarce. When the program began, the staff sent inquiries to about 40 general contractors in Beaufort and two adjacent counties. Six of them expressed interest, but only one eventually took on rehabilitation work during the program's first year. In general, the contractors preferred new construction and were reluctant to become involved in rehab, especially when it was administered by a government agency. They knew that good cost estimates were difficult to make in rehab work and were afraid of payment delays that might result from government red tape. To minimize these obstacles, the rehab specialist inspected each house in the two target neighborhoods to determine the extent and the cost of the rehab that would be required to meet the town's standards. Contractors could then use the town's formal work write-ups and their own site visits as the bases for their cost estimates. To reduce concern about red tape, a standard contract was prepared that clearly specified the contractor's responsibilities and payment schedules. The rehab specialist monitored the progress and the quality of the repair work. Even when willing contractors must be sought out, a community must demand quality work if it wants a successful rehabilitation program.

Neighborhood revitalization. Providing water and sewer lines and street paving was an integral part of Aurora's effort to revitalize the two target neighborhoods. It was very hard to get into the largest of the two neighborhoods, especially during bad weather, and paving the streets was expected to remedy that problem. Similarly the sewers would remove the public health problems caused by the use

Aurora photographs show areas where CDBG funds were used. From left to right: (1) Some severely deteriorated housing in one target area. Most of these houses were repaired or removed through demolition by the CD program. (2) The housing rehabilitation work ranged from single repair work to extensive modification such as this conversion of a porch to an indoor bathroom. (3) The Aurora Medical Center as it was nearing completion in March 1978.

of septic tanks and privies in poor soil conditions. Adequate public services, which complimented the housing improvements that were being made, went a long way toward stabilizing both neighborhoods and making them more livable.

Health care. Aurora selected a primary health care center as a top-priority need in the 1975 community assessment. For several years the town had been without a full-time doctor, and people had to travel 30 miles or more for medical services. Perhaps no other community development activity received so much community-wide attention and support as did the building of a health care facility. CDBG provided a major portion of the funds for the center, and this allocation was used to entice significant corporate and individual donations. Soon after the 4,500-square-foot Aurora Medical Center, which could accommodate two full-time physicians, was completed in March 1978, the medical staff established outreach programs in health and dental care. This was an important service in a low-income rural area where transportation was often a problem in health care. Support for this part of the community development program was strong because it met an identified need for the *entire* community.

Status of program. In 1978 Aurora received a second block grant that allowed the town to continue working toward its goals. The Aurora CDBG program has expanded its housing rehabilitation work and provided for renovating the house that the town had purchased to serve as a human services center. Office space will be provided there for various state and county human service personnel, which will give Aurora citizens better access to those agencies. A multi-purpose building financed by the block grant is under construction nearby. It will house a pre-school day-care facility and services for elderly and handicapped people. The center will also be supported by funds from the Title XX Amendment to the Social Security Act, the Older Americans Act, and the Comprehensive Employment and Training Act (CETA).

Recently Aurora held a Dedication Day to acknowledge those who have contributed to the town's community development efforts. Mayor Grace Bonner reviewed the town's three basic principles that guided its community development and revitalization efforts. First, many citizens have participated—almost every Aurora household has been involved in some aspect of the program. Second, work has been directed toward those needs that townspeople identified as being most critical. Third, every effort has been made to plan for Aurora in *holistic* terms. Realizing that Aurora's social, natural, and physical elements are interrelated parts of a whole has been important in the success of the program. The problems that Aurora, or any other community, faces cannot all be dealt with and solved at one time. However, issues can be clarified and guidelines can be set to deal with these problems in logical sequence. Then, as resources become available, those responsible for making decisions can refer to the policies that have been set on the basis of these guidelines. Aurora used CDBG to its fullest—by directly supporting some activities and attracting investments from other sources with partial block grant support—within the framework of a sound comprehensive plan for community development.

—Brian Benson

From 1976-78 Brian Benson was Aurora's Director of Planning and Community Development; he is now senior planner with the Orange County Planning Department.

Fayetteville

WHEN THE COMMUNITY Development Block Grant (CDBG) program became a reality in 1975, many communities had to make some adjustments in the way they tried to solve their long-standing blight problems. General-purpose local governments were thrust into very specialized undertakings that they had previously delegated almost entirely to special commissions and agencies. The amount of autonomy granted by the new program—local flexibility in using funds, more direct control over programs, and local accountability for results—may at first have diverted some of these governments from developing the cooperation and coordination needed to make best use of the opportunity. This was true in Fayetteville, North Carolina, until everyone involved with its CDBG activities stopped to take a look at what was happening to the program and to the community.

In Fayetteville, the redevelopment commission, an independent agency of the city council, conducted specialized urban renewal programs from 1968 until the advent of CDBG. The commission's sole responsibility was the urban renewal program. The program went well, and the commission members and staff became skilled in timely, effective program execution. Activities that could be undertaken with categorical federal funds were narrowly prescribed, however, and the city council viewed CDBG as an opportunity to break away from such tight program restrictions. Consequently, in 1975 the city council made itself directly responsible for the new CDBG program and brought the redevelopment commission's director and staff under its supervision. Under this arrangement the redevelopment commission was relegated to officially closing out the Fayetteville urban renewal program, and it had no role in the new CDBG program.

This situation caused three problems in designing and executing the city's CDBG program in its early years. First, the city council viewed the CDBG program as a general-purpose funding source and funded projects that would bring some relief to a broad range of accumulated needs all over the city. For example, it funded scattered housing rehabilitation at $1,000 per unit and many small street-construction projects throughout the city. While the projects all qualified as eligible activities, they did not capitalize on the city's opportunities under the new law to use a cohesive strategy for solving Fayetteville's complex blight problems or to continue the redevelopment commission's work.

Second, the many administrative decisions that the Department of Housing and Urban Development (HUD) and state statutes required to be acted on by the authorized redevelopment agency began to clutter the council's agenda. Previously, actions related to such things as appraisal contracts and estimates of just compensation had been dealt with by the redevelopment commission, which could give them its undivided attention. Now the council had to deal with them directly, and it found itself immersed in more and more detail, disagreeing among its members on even small items and putting off more and more decisions.

Finally, confusion developed over the specific execution of the community development activities. On the one hand, the lack of a focused strategy meant that one more worthy activity that had not been considered originally could always be included in the program. Some council members even carried requests from constituents for additional activities, changes in activities, or quarrels over implementation techniques directly to the community development staff. On the other hand, the city departments that supported the community development staff's activities with such services as financial management, design, and construction contracting did not know how important these tasks were in relation to their normal workload assigned by the city manager. For example, the city had a standing policy of "first-in, first-out" on street construction. When the CDBG streets were assigned to the engineering department they were put at the end of the line, which resulted in more than a year's delay in keeping those CDBG street-paving promises. Furthermore, the community development staff lacked direction.

When the director resigned in the summer of 1977, the position stood vacant for more than six months.

Under these circumstances Fayetteville found itself hardly moving on its CDBG program. In late 1976, HUD sent word to the city that its program performance was "slow and negligible." In April 1977, it noted that at the then-current drawdown rate Fayetteville would take nearly five years to complete programs planned for the first two years. By December 1977—2½ years into the CDBG program—Fayetteville had drawn down only a little over 10 per cent of its entitlement; HUD noted that this was one of the lowest rates in the state. A number of local officials felt that it was only a matter of time before HUD would take some kind of drastic action to encourage the city to get its foundering program under way.

The previous month (November 1977) four new persons had been elected to Fayetteville's six-member city council. HUD's increasingly ominous tone and renewed pleas from members of the redevelopment commission prompted serious and lengthy discussion among the new council, the commission, and the city administration to find a way to speed implementation of the CDBG program. Accordingly, between December 1977 and February 1978, the new city council directed several changes that provided the basis for improving Fayetteville's CDBG performance. The council integrated the community development staff into the city administration at the departmental level, and the city manager appointed a community development director. Since the redevelopment commission was about to close out the urban renewal program, the city council reconstituted it as its community development advisory board and gave it the authority for planning and implementing the city's CDBG program. This new board did have an advisory role, but its powers were in fact much broader—virtually all of the powers the board had held as an independent redevelopment agency.

The new community development department would provide the staff resources to plan and execute the program.[1] One of the city's most important actions was the creation of a task force to coordinate CDBG activities undertaken by various city departments. The assistant city manager chaired the task force, which included the director of community development, the director of finance, the superintendent of inspections, the director of human relations, the city engineer, and the manager of the public works commission. The task force met weekly to establish, monitor, and adjust performance objectives for each department that participated in CDBG activities. This technique enabled the administration to unstick many of the stalled activities and to begin movement toward a normal schedule of task accomplishment. This was fortunate because in the spring of 1978 HUD set a hard task for the city: accomplish enough work on the program to draw down $1 million between July 1 and October 30 or forfeit a calculated amount of the city's entitlement the following year. Thanks mainly to the task force, the city accomplished its $1 million drawdown fifteen days before the deadline and lost none of its entitlement funding for the following year.

By July 1979 HUD had approved a fifth-year entitlement program that reflected a focused strategy for revitalization in a number of areas. In 1975 the city had decided on specific kinds of projects—such as street paving—and applied portions of the available funds in various neighborhoods, often without regard to how these projects could be used in conjunction with other activities—such as housing rehabilitation—to achieve an overall effect in specific target areas. In 1979 the city planned various mixes of rehabilitation, acquisition, demolition, relocation, street and sidewalk construction, and provision of neighborhood recreation facilities to suit the various target areas. Also, by July 1979 the city had drawn down 80 per cent of its $5.7 million entitlement that had been authorized for its use to that point.

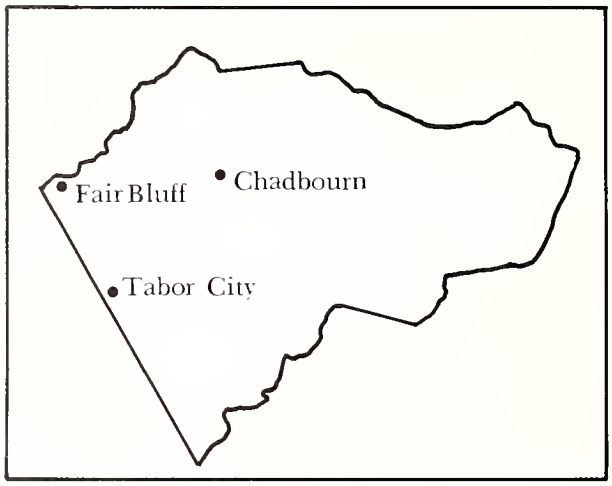
The turnabout in the Fayetteville CDBG program resulted from the creation of clear lines of authority and responsibility for planning and program execution, the diligent coordination of all activities affecting program execution, and the maintenance of strict accountability through clear objectives and regular monitoring of progress through completion.

—Richard Herrera

1. The community development staff was concurrently operating a CDBG program for Cumberland County under contract. The Cumberland County Board of Commissioners, through the Cumberland County Redevelopment Commission, had the same kind of contractual arrangement with the Fayetteville Redevelopment Commission to plan and execute an NDP in 1973. After CDBG began, Cumberland continued this arrangement with the community development staff in order to plan and execute the county's hold-harmless program.

Richard Herrera has worked for the Fayetteville Redevelopment Commission since 1971 and is executive director of both the Fayetteville and Cumberland County redevelopment commissions.

Columbus County



BOTH CITIES AND COUNTIES are eligible for Community Development Block Grant (CDBG) funds—a feature that offers many opportunities for cooperation among local jurisdictions to solve common problems. This article describes briefly the creation and operation of a community development agency that was established jointly by four local governments in Columbus County, North Carolina. The undertaking helped to overcome problems of town-county tensions and developed a successful community development program. It taught some lessons that might help other jurisdictions that are considering interlocal cooperation for community development or any other purpose.

Columbus County is a predominantly rural unit in southeastern North Carolina. It has an area of 945 square miles and in 1970 had a population of 46,937, which included eight small municipalities ranging in size from 230 (Brunswick) to 5,780 (Whiteville). In 1970 the county's median income was $5,846, and an estimated 39 per cent of its existing housing stock was rated substandard. However, neither Columbus County nor any of its municipalities had sought or received funding under any of the categorical grant programs that were folded into CDBG—not an unusual situation for a rural area during the time of urban-oriented urban renewal programs. But the continued absence of funding applications after CDBG was enacted in 1974 reflected a feeling among Columbus County public officials that federally supported housing was not an appropriate activity for the county to undertake. Nevertheless, by 1976 the county had started a modest program of federal Section 8 rental subsidies and the Columbus County Community Action Agency was conducting a program to weatherproof houses.

At the same time the Cape Fear Council of Governments (COG) promoted discussion of housing problems among its member jurisdictions. As a result, the COG prepared CDBG applications for several of its constituent units, and in 1977 Columbus County and the towns of Chadbourn, Fair Bluff, and Tabor City received block grants of $425,000, $437,000, $276,700 and $495,000, respectively (a total of $1,634,000). All of the work programs were designed to accomplish the same thing: to provide better housing for a number of low-income citizens and to make some improvements in facilities related to that housing. In all, the four programs sought to rehabilitate 146 homes, demolish 55 houses that were beyond repair, relocate 51 families who lived in those houses, improve over eight miles of roads and drainage, and replace more than a mile of undersized water lines.

When HUD officials expressed concern about the four local units' management capacities to undertake such programs, the COG proposed a cooperative arrangement that ultimately became the Columbus County Shared Community Development Management Office. This arrangement was a yet-untried approach in North Carolina, although it had been authorized by the General Statutes since 1971 (G.S. Ch. 160A, Art. 20, Pt. I). The North Carolina Attorney General issued an opinion that the new agency was a legitimate "joint agency" under G.S. 160A-462 and a "public authority" according to G.S. 159-7(b) (10). The Shared Office allowed the four participating jurisdictions to take advantage of economies of scale by sharing administrative costs and specialized staff expertise that none of them could have supported for its program alone.

The Shared Office functioned as a "public consultant" to its client jurisdictions and was accountable to their four top elected officials. All participating local governments expected the new agency to provide the technical skills necessary to start the block-grant activities quickly, to execute them effectively, and to maintain all of the financial and reporting records required by HUD. But a problem arose early when one town, in helping to set up the Shared Office, created some suspicion that it might try to work the program to its own advantage. As a result, the cooperating jurisdictions decided that there would be no "lead agent" among them. Instead, the Shared Office was made accountable directly to the four presiding officials, who sat as

equals on a Community Development Board that met regularly once a month. The direct accountability not only assured the participants of equity but also provided a clear source of authority for the staff in cases of conflict. The participating local governments had little experience in cooperation. Each was concerned that the CD program should respond to its needs; each was concerned that its goals should be met and the HUD requirements be satisfied, with no one jurisdiction getting more or less attention than the others. To help maintain equity, a detailed timekeeping system for all Shared Office employees was developed. Periodic billings and adjustments were made to ensure that each unit received what it paid for. Direct costs were charged to each grant and indirect costs that were unassignable were charged to the grants proportionately to the allocation of direct costs for that period.

One drawback to having the Shared Office operate through the Community Development board with a fair degree of autonomy was that local officials who were not on the board seemed to be less interested in the program than they might otherwise have been. Their interest seemed to wax and wane with the number of citizen complaints or inquiries that they received or with their varying degrees of concern about the specific local interests being served by the Shared Office staff. Even so, Shared Office operations were conducted in an atmosphere relatively free of direct daily political pressures. Actually, the CD office seemed to establish an identity with the people it served that was independent of any single participating local government. Much of the initial skepticism among the program's clients toward the block-grant program dissipated as the Shared Office clarified what would be done and how it would be done and then kept its word within a relatively short time—offered services quickly became delivered services.

Some other observations from the experience in Columbus County might be useful to those who are considering similar action:

1. Local elected officials' satisfaction with the program seemed to increase with the time and interest each official invested. Each governing body delegated its presiding officer to sit on the Community Development Board. The supportiveness of each cooperating jurisdiction seemed to vary in direct proportion to the involvement of its presiding officer in the program and with his willingness to share his insights and concerns routinely with his fellow governing board members.

2. HUD strongly supported the shared-management concept. Federal officials saw it as a way to put a program into effect quickly and professionally. They favored the Community Development Board, which permitted centralized policy formulation and tended to control the extent to which the multiplicity of local officials from the four units injected themselves into routine or daily block-grant program operations. Still, being sensitive to the danger of establishing an agency free from popular control, HUD officials strongly supported the establishment of open communication with local officials whether they sat on the board or not. It was apparent that the Shared Office's accountability to the Community Development Board and the board's accountability to the constituent jurisdictions gave the Shared Office itself greater influence in dealing with federal officials and agencies.

3. Each cooperating jurisdiction decided for itself what legal and engineering services it would provide to the CD office, and some of these support services were delayed. An earlier commitment of support services would have enabled the Shared Office to coordinate their use better than it did.

4. Finally, greater communication among the cooperating units and the staff should have been established early in the program. Time invested in public meetings, newsletters, and neighborhood visits by the staff and local elected officials early in the program probably would have built a sounder foundation for the program than the equivalent time spent once the program was under way. Communications were especially poor with the various human service agencies in the county during the Shared Office's first few months. A greater commitment by the staff to local interagency contact could have reduced some confusion and skepticism about the block-grant programs and allayed other agencies' concerns about how their programs would be affected by the new efforts.

The creation and operation of the Columbus County Shared Community Development Management Office was a major step taken by four relatively small local governments to provide community development services in rural North Carolina. The successful use of the Shared Office by the cooperating jurisdictions should encourage other governmental units that wish to undertake similar cooperative efforts.

—John W. Minton

John W. Minton was executive director of the Columbus County Shared Community Development Management Office in 1977-78. Since August 1978 he has been the Carolina Beach town manager.

(continued from page 4)

(counties, cities, and towns) became involved in a whole range of activities that had previously been restricted to special semiautonomous bodies like redevelopment authorities. In doing so they brought new and broader perspectives to many activities that had been dealt with fairly narrowly in the past. Finally, this entry of general government, with all of its broad powers and functions, into the management of a newly consolidated program caused *program management* problems as staffs and administrations struggled to make the most of a complex yet potentially powerful set of tools for community development.

Strategy problems. One purpose of CDBG is to allow local flexibility in formulating programs. However, communities have had trouble in at least three areas. First, many communities, especially those that had run Model Cities programs, wanted to fund *services* with the block grants. HUD stood very hard by what it believed was the congressional intent: that CDBG would reverse the focus of Model Cities and concentrate on physical activities. The single-minded rigor with which HUD has applied the act's four criteria[5] for service eligibility has made it difficult to finance even counseling and referral services directly related to rehabilitation activities with CDBG funds.

Second, HUD quickly reversed the very popular feature that made it possible to use CDBG anywhere in the city; it required geographical *targeting*. Many communities were happy to be rid of the yoke of NDP or project boundaries—to be able to exercise more judgment and deal more comfortably with rival neighborhoods that all demanded funds. But while CDBG had a spreading effect at the national and state level, HUD apparently felt that for CDBG to show visible impact, targeting in the communities was necessary. The 1978 regulations introduced the concept of "Neighborhood Strategy Areas" (NSAs), which concentrate activities in a small area. Congress would not make NSAs mandatory, but HUD has been so aggressive in promoting the kind of targeting on which NSAs are based that a community applying for funds would be foolish to ignore it.

A third strategy problem has been *effective use of housing subsidy programs* in CDBG. HUD's Section 312 low-interest rehabilitation loans for use in designated CDBG areas can be a critical part of a rehabilitation program. Currently the terms of these loans are 3 per cent for 20 years. They are flexible, simple, and easy to use. But Congress never has included them in CDBG (as was originally intended), and their funding is highly uncertain from one year to the next. Another housing program that might boost the impact of CDBG is the Section 8 housing assistance payment for existing housing. Under Section 8, an eligible tenant is matched up with a locally certified house or apartment and HUD pays the difference between 25 per cent of the tenant's adjusted gross income and the HUD-determined fair market rent for the community. Many communities hoped that Section 8 existing-housing subsidies would put them in a stronger position to get owners of investment property with low-income tenants to undertake rehabilitation along with the homeowners in a neighborhood. Local agencies often have to back off from strict code enforcement in rental housing because tenants' rents would be increased beyond their means if units were fixed up. Many communities had hoped to be able to use Section 8 in such instances to make up the difference for the tenants or to find them other suitable homes. But so far most communities have not been able to orchestrate CDBG and Section 8 well enough to make them have a significant effect on rental property.

Legal problems. More than a dozen states had to pass special legislation to allow general-purpose local governments to take on activities that were previously restricted to special authorities. As local governments in North Carolina prepared their first applications, city and county attorneys raised serious questions about their ability to sign the required legal certifications assuring that proper authority existed to execute the program. At least one issue was clear: Cities and counties were not authorized to make grants or loans to individuals. This limitation alone would cripple many programs.

To remedy this, the General Assembly that year authorized cities (G.S. 160A-456) and counties (G.S. 153A-376) to engage in federal community development programs and activities. In 1977 it strengthened these provisions by authorizing those governments to assist in acquiring and disposing of blighted property by proper methods (not including condemnation) but without using the blighted-area designations required by redevelopment law (G.S. 153A-377 and G.S. 160A-457). Nevertheless there are still complaints that suggest that the provisions in G.S. Chapter 160A, Article 12, and G.S. 160A-514 dealing with the *sale and disposition of property* do not allow enough flexibility to execute effective rehabilitation and economic development programs.

Another inconvenience is the lack of general law regarding *open-housing* legislation—local ordinances that specifically bar unlawful discrimination in the sale or rental of housing. HUD considers the existence of such an ordinance essential to a good-faith effort to provide equal opportunity in housing. Equality of housing opportunity in turn is an important factor that HUD uses to judge past performance and determine future funding. Consequently, many communities that

5. Section 105(a)(8) of the act set out the following criteria: (a) The service must serve areas where other CDBG activities are concentrated; (b) the service must be necessary or appropriate to support the other activities; (c) support for the service must have been denied by any other federal agency that might be able to help; and (d) the service must improve the community's public service and facilities.

had not had an open-housing law needed authorization from the General Assembly to enact such legislation. This problem has been eased somewhat by HUD's New Horizons program, which allows an aggressive CDBG-financed public campaign to promote fair housing opportunity as an alternative to an open-housing law.

Problems in program management. Effective performance in CDBG has concerned community development directors, managers, councils, and HUD. Three common aspects of this problem are slow performance of annual work programs, underachievement of housing goals, and—especially in small jurisdictions—difficulty in maintaining experienced and expert staffs.

HUD uses expenditure of funds as a rough measure of a program's progress at any given time. Nationally, expenditure of block grant funds ("drawdowns") has totaled less than 50 per cent of the discretionary (small-cities) funds awarded over the life of the program, and the average completion time for annual programs is running about twice the 18 months originally expected. North Carolina has done better. As of last July, 61 per cent of the discretionary funds awarded in the first four years of CDBG had been drawn down. Eight of the 1977-78 projects had used all of their funds, and their average progress at the end of two years was about 78 per cent. The average drawdown for 1978-79 small-cities grants after one year was 29 per cent. HUD officials would say that slow performance results when managers and elected officials do not stay on top of the programs as well as they should. Local officials would point out that even CDBG requires new and elaborate procedures and paperwork. Both views are probably partly correct. Although CDBG seems to receive more attention than the urban renewal programs did, many local officials still are not convinced of its full potential for problem-solving. On the other hand, the advantages that some communities had gained through experience in the program has been offset by HUD's action in tightening and complicating many of the regulations.

HUD has also complained that communities are not meeting their own objectives in their housing assistance plans (HAPs). The HAP consists of a survey of housing conditions, an estimate of the housing needs of low-income households (including those expected to immigrate), and a plan for meeting those needs. In 1975 these complex documents were not taken seriously either by the applicants or by HUD, which realized the difficulty involved in making the estimates. However, flagrant abuse of this situation by some communities that were opposed to the act's equal opportunity and fair-share housing objectives resulted in a lawsuit in which HUD was rebuked by the courts.[6] Since then HUD has insisted that HAPs be thoroughly prepared and effectively executed. Its concern over the HAP as a measure of performance suggests that communities would do well to consider the HAP very carefully as they put together their CDBG applications. What a community decides at that time will be important a year later when its performance is evaluated. HUD now uses both the amount of previous grants spent and the achievement of HAP objectives each year to establish a "threshold" level of performance. If a community falls below this level, it will have difficulty in staying eligible for further funding.

Each of these issues suggests the value to a community of *finding and keeping a skilled staff.* Many of the small jurisdictions that make up most of North Carolina's CDBG recipients have had difficulty in recruiting and then holding good staff. The program's exciting features are also its headaches. The challenge of administering a CDBG attracts talented and ambitious planners and administrators. They must be adept at using the HUD regulations in the context of state statutes and local ordinances. The small-city CDBG administrator must understand the intricacies of housing construction and rehabilitation, inspections, public works projects, and the human needs of the people who will be directly affected by CDBG projects. Because the administrator is often responsible for tasks performed by other departments over which he (or she) exercises no supervisory control, he must be a shrewd politician within both the organization and the neighborhood in order to get things done. CDBG—by design and its urban renewal heritage—involves a great deal of conflict in its planning and execution, and the CDBG administrator is right in the middle of that conflict. If the manager or the council seems to lack interest, support, or appreciation of this fact, the administrator will probably search for greener pastures. When a CDBG administrator moves, the community often loses not only experience and continuity from its program staff but also some of the best developing general management talent in its administration.

Making the most of CDBG

It is a real accomplishment for a community, especially one with no previous experience, to develop a well-run, effective CDBG program. Through CDBG, the many and varied resources of general-purpose local government can be brought to bear on the physical aspects of blight. To stop with CDBG, however, is to miss opportunities. There are separate programs that can be very effective when employed along with a block grant, including:

— *The Neighborhood Reinvestment Corporation,* which endorses local three-way partnerships among government, residents, and lenders to stop neighborhood deterioration. Wilmington formed a Neighborhood Housing Services Corporation in 1977, and Durham has one pending.

6. City of Hartford et al. v. Carla A. Hills et al., 408 F. Supp. 889 (D. Conn. 1976).

— *Separate Housing Programs* such as Section 312 loans, Section 8 rental subsidies, and various kinds of mortgage subsidies that can increase the productivity of a CDBG housing plan. Funding sources include the federal government and the North Carolina Housing Finance Agency.
— *Urban Development Action Grants*, which match private-sector commitments to revitalize a community's economic base. Only four of more than 250 eligible North Carolina communities are now using UDAGs. These grants are complex and difficult to package and execute (particularly under the current conditions of high interest rates and uncertainty in the money market), but they are generally regarded as worth pursuing.

To foster the effective use of CDBG and other programs that communities might tie into the basic block grant, HUD has funded several technical assistance projects. One of these is part of the community assistance program operated by the North Carolina Department of Natural Resources and Community Development. Its technical assistance project has been aimed at helping smaller communities plan and execute successful block grant programs. Many councils of government have given valuable help to communities, and HUD also contracts with consultant firms to provide technical aid to selected communities. In 1979 Rowland, Wilmington, Asheville, Franklinton, Hot Springs, Spring Lake, Mecklenburg County and Harnett County, received help under these contracts.

Summary

The CDBG program is rooted in a strong, long federal commitment to the arrest of slums and urban blight. It emerged from a feeling that the complexity, rigidity, and uncertainty of the categorical programs were hindering effective action against the problems that older programs were designed to solve. The new law struck a delicate balance between making it easier for local governments to use federal assistance for community development and holding them accountable for achieving important national objectives.

CDBG substantially achieved the goals of simplicity, flexibility, and certainty. Whether the goal of fairness has been achieved is less certain, and there seems to be little prospect of developing either the measurements or the objectivity necessary to resolve that question. In North Carolina, big cities with previous urban renewal experience may have lost through CDBG—although one wonders whether urban renewal and NDP programs would have continued indefinitely in these cities, as their CDBG entitlement grants will. On the other hand, small towns gained as they undertook comprehensive work programs in record numbers—some for only a year, others on a regular basis.

While CDBG simplified the grant process, the change created new problems. HUD was quick to show that local flexibility was not the absolute freedom that many local officials had come to expect. Struggles over the eligibility of services, the geographical concentration of activities, and the use of other programs served to define the boundaries of local autonomy. North Carolina and other states have had to modify existing legislation to accommodate the direct responsibility of general-purpose local governments for the previously specialized functions associated with community development. To take advantage of the opportunities that local governments gained as they assumed this responsibility requires realistic goal-setting and planning, effective management of a complex set of activities, and talented administrators.

CDBG in itself is a powerful means of structuring activities for community development. It also holds great promise, yet unrealized, as a focal point for developing and coordinating other resources in the public and private sectors to achieve a community's improvement or revitalization goals. □

New Tools for Historic Preservation and Community Appearance

J. Myrick Howard

AN ATTRACTIVE and established community is a healthy one. A community whose citizens are concerned about the history and appearance of the place where they live and work reflects a sense of pride, self-respect, and stability. Outsiders recognize and admire these qualities, and local people know that they have a good way of life. Understanding and maintaining this ambience will have many advantages to communities, their residents, and their governments.

Government officials and citizens who are interested in conserving the history and beauty of their communities now have a panoply of tools available to them in the state's planning legislation, and many cities and counties are using these tools effectively. This article will describe the preservation activities that are being undertaken in North Carolina and the devices that are being used for conserving beauty and for improving community appearance.

The inventory

The first step in preserving a community's structures and areas of historical and architectural interest is to find out what is there. An inventory of the entire town or county will provide the data and perspective necessary for governmental officials and concerned citizens to determine which strategies will be most useful for preserving the local heritage.

Unless the local planning department or preservation society has staff members or volunteers who are architectural historians and have the requisite time, a professional should be hired to make the inventory. This project may take only a few months, depending on the size of the area and the required level of detail.

The author is executive director of the Historic Preservation Fund of North Carolina, Inc.

One of the most useful products that may emerge from the inventory is a publication containing an essay on the history and architecture of the area; photos and descriptions of the buildings, sites, and structures; and recommendations for planning tools to be used to protect the historic resources. Distributed to the citizens, such a publication increases the community awareness of its heritage.

Many North Carolina local governments are now having inventories conducted with help from the North Carolina Division of Archives and History, Department of Cultural Resources.[1] Archives and History splits the cost with the local government and provides the guidelines, the local government hires the consultant, and both get copies of the final reports and other documents.

Providing incentives

Under some circumstances very lucrative financial incentives exist for preserving historic structures, and the local government or preservation society can provide other incentives to encourage preservation or to enhance the community appearance.

National Register of Historic Places. Financial incentives are the most persuasive kind. There are excellent tax breaks for rehabilitating *income-producing* properties listed in the National Register of Historic Places. Under the Tax Reform Act of 1976, if a property is listed in the National Register and used for income-producing purposes (i.e., not an owner-occupied residence), its owner may choose from two methods of rapid depreciation when he or she substan-

1. For information about grants to help pay for inventories of historical resources, contact: Grants Administrator, Division of Archives and History, 109 East Jones Street, Raleigh, North Carolina 27611. Telephone 919 733-4763.

tially rehabilitates a structure. Under either method, the rehabilitation work must be certified by the United States Department of the Interior.

The first method results in a very rapid write-off of the *costs* of rehabilitating a building, but it does not provide accelerated depreciation for *purchase price* or tax basis (the purchase price less any depreciation already taken). Under this alternative, the rehabilitation costs are amortized over a sixty-month period. This means that after the rehabilitation has been completed, the owner can deduct from his federal income taxes one-fifth of the rehab costs each tax year for five years. The building's purchase price or basis is deducted separately in the straight-line method of depreciation. This first alternative is preferable when a building requires much work and it either was inexpensive to buy or has been owned by its present owner for a number of years.

The second option for the person who has rehabilitated a National Register structure is to take the same form of declining-balance accelerated depreciation that is available for new construction. This option allows a rapid write-off for both the tax basis of the structure and its rehabilitation costs. If the owner of a rehabilitated historic property chooses to take accelerated depreciation, in the first year he may receive an additional 10 per cent investment tax credit (10 per cent of the rehabilitation expenses) under the Revenue Act of 1978; however, the building must have been in use for at least twenty years before the rehabilitation, and it must be used for commercial purposes only. (The investment tax credit is not available for residential rental properties.

What does it mean to be listed in the National Register of Historic Places? The National Register is a Department of Interior listing of districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, and culture. North Carolina properties are nominated to the Register by the Division of Archives and History.

Listing in the National Register does not affect how the property is used (except for tax consequences).[2] Many property owners consider the listing to be an honor and proudly display the certificate indicating that their property is on the Register. However, even though a property is listed in the National Register, its owner may destroy or alter it without consulting anyone.

Besides tax incentives and the honor for the property, a National Register listing allows the private owner of a listed property to be considered for a federal grant. This program of grants-in-aid for historic property is administered by Archives and History, but realistically, the availability of such grants is very limited.

2. There are disincentives for tearing down a National Register property. The costs of tearing down the building are not deductible, and any building built back on the site must be depreciated in a straight-line manner.

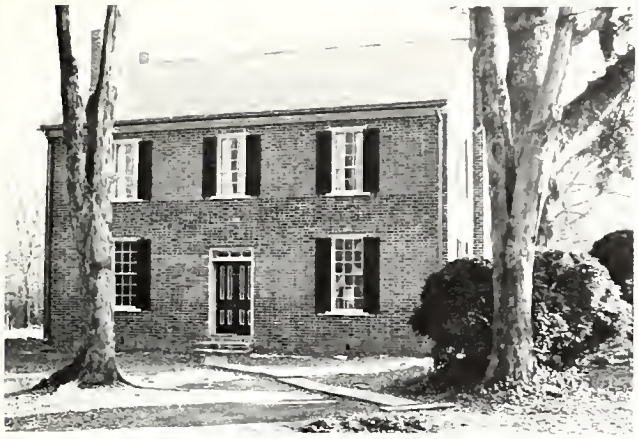
The Jesse Clement House (c. 1828) in Mocksville was a dilapidated eyesore before it was restored through private investment to its present condition as shown on the opposite page.

Having properties listed in the National Register may be a priority for some local governments in North Carolina: The various incentives for rehabilitation encourage private investment in areas that might otherwise have to be financed through public programs for revitalization. Many local government officials are also realizing that the restoration of local historic areas helps to attract industrial development and to develop a tourist industry.

Local government officials should know that the National Register listing also protects historic properties by requiring that the Advisory Council on Historic Preservation comment on the effect of federally assisted projects on these properties and that the North Carolina Historical Commission do the same for state-assisted projects. Environmental review procedures that accompany National Register listing should encourage local planners to consider any properties listed or eligible for listing in the National Register when they begin planning for projects that may have a detrimental impact on historic properties. The local government is responsible for complying with the environmental review procedures when it spends Community Development funds; otherwise, the state or federal agency involved with the project is responsible. These environmental review responsibilities highlight the need for having a complete inventory of the area's resources.

Local financial incentives. Local governments, foundations, and corporations can also provide financial incentives for citizens who wish to rehabilitate historic structures or enhance their community's appearance.

The Town of Tarboro is using its Community Development funds to provide low-interest loans for housing and downtown revitalization. The town's historic district is also part of the Community Development target area. Low- and moderate-income residents can get loans and/or grants from the town to rehabilitate dwellings; the local historic district commission



A North Carolina couple restored the Clement property for a retirement home. The early nineteenth-century brick house was in the condition shown at the left before restoration.

reviews the design of proposed work within the area zoned as a historic district. (Local historic districts are discussed later in this article.) Downtown merchants can also get low-interest loans, but the town requires that alterations be reviewed for their architectural appropriateness as a condition for receiving the loan.[3]

NCNB Community Development Corporation, a nonprofit corporation established by NCNB Corporation, provides low-interest financing for persons who rehabilitate or construct buildings within Charlotte's Fourth Ward. Since Charlotte has designated this area a historic district, the local historic district commission has control over the design of buildings being built, rehabilitated, or moved within the area. At the same time that North Carolina National Bank has provided incentives for people to move downtown, the city has committed itself to large expenditures for improved lighting, sidewalks, and other capital improvements. Although some historic buildings remain, the area will have mostly new construction of a compatible contemporary design.

Local officials and interested citizens should explore the possibilities of partnerships between the local government and local lending institutions in order to provide incentives for revitalizing historic areas. Providing incentives for private investors to fix up older areas can be much cheaper and more effective than waiting until these areas deteriorate so far that large infusions of public moneys are necessary.

Local awards programs. Several North Carolina communities have active awards programs to encourage the improvement of the visual environment. These programs provide incentives to corporations and individuals who are concerned about their community or about public relations.

In Smithfield a local nonprofit corporation called Keep Johnston County Beautiful gives cash awards each year in each of five categories relating to community appearance. Peoples National Bank of Smithfield provides the money for the awards, and the awards banquet is attended by many interested citizens and community leaders. The program has spawned several successful beautification projects.

Regulatory devices

Throughout the United States the preservation of a community's cultural resources and the enhancement of community appearance is increasingly being viewed as an issue that affects the health, safety, and general welfare of citizens; citizens are seeking governmental assistance for protecting local buildings from destruction and for cleaning up communities. As a result many of the tools available for preservation are regulatory devices that are justified as coming under the state's police power.

This new awareness by citizens of how useful the preservation movement can be in protecting their interests has meant that despite a general trend toward less governmental regulation, more and more local governments in North Carolina are setting up local historic district, historic properties, and community appearance commissions at their citizens' request.

Last year Attorney General Rufus Edmisten established the Attorney General's Select Committee on Local Historic Preservation Legislation to review the state's enabling legislation in regard to historic preservation. This committee, made up of local planners and concerned preservationists, proposed a number of changes to state law that the 1979 General Assembly enacted. Most of the changes were designed to give local governments greater flexibility in using historic district and historic properties commissions, so that these tools can be adapted to the needs of the respective communities and used with less state supervision. These amended laws should be very useful to local governments that are concerned about historic preservation and community appearance.

Local historic districts. North Carolina law allows towns and counties to designate areas within their zoning jurisdictions as historic districts.[4] Within these

3. See Ruth Ballard, "Tarboro Steps into the Future: Making the Most of Grant Money," *Popular Government* 43 (Winter 1978), 14-28.

4. N.C. GEN. STAT. §§ 160A-395 through -399. For more information about historic districts, see *A Manual for North Carolina Historic District Commissions* (1979), which was prepared for Keep North Carolina Beautiful, Inc., by Robert M. Leary & Associates, Ltd., Raleigh. The constitutionality of historic district regulation was recently upheld by the North Carolina Supreme Court in A-S-P Associates v. City of Raleigh, 298 N.C. 207 (1979). In the Court's opinion, historic district regulation is a valid exercise of the police power. The Court did not endorse the concept that the police power may be broad enough to include reasonable regulation of property for aesthetic reasons alone; however, that issue was not directly presented to the Court.

areas the exterior appearance of a building or other man-made appurtenant structure can be changed only if the owner first obtains a certificate of appropriateness from the local historic district commission. The commission's members are appointed by the local government, and under state law a majority of them must have a special interest or background in history or architecture.

The certificate of appropriateness is required in order to assure that important buildings are not altered in a way that would diminish their historical or architectural significance. This requirement also affects buildings that are to be constructed within the district: New buildings, even though they may be of contemporary design, should be compatible with existing buildings in design considerations like scale, building materials, setback, and height. All buildings within the district are regulated so that a suitable environment is maintained for the structures of significance.

A historic district ordinance, which is actually a part of the local zoning laws, also requires that owners of structures within the historic district provide the commission with 180 days' notice of demolition. This delay period gives the commission and other interested people time to seek ways to preserve the structure.

Local historic districts have been established in more than twenty North Carolina cities and towns. Most of them have been set up with support from an overwhelming majority of the district's property owners, who feel that the district will protect their property from inappropriate intrusions in their neighborhood.

A historic district cannot solve all of the problems in an old residential or commercial area but, used creatively with other programs, it can encourage private investment in deteriorating areas. In most North Carolina historic districts, market property values have risen strongly because people are more willing to invest within a protected area.

If a historic district is listed in the National Register, federal tax incentives are available for property owners within the district. If a local historic district is not listed in the National Register, the local government may have the local ordinance and the district certified by the Department of the Interior in order for the federal tax incentives to be used.

Historic properties commissions. North Carolina cities and counties may also set up historic properties commissions.[5] Whereas historic district commissions deal with areas that have a concentration of historic resources, properties commissions deal with the community's individual landmarks. The properties commission prepares a report on each property for which it recommends designation as historic, although the local governing body makes the actual designation.

The City of Fayetteville, the Fayetteville Chamber of Commerce, and local citizens worked together to find a preservation solution for the Belden-Horne House.

Once a property has been designated as historic, it is subject to many of the same regulations that apply to properties within a local historic district. For instance, the owner of a designated historic property must obtain a certificate of appropriateness before he may alter its exterior appearance; if he wishes to demolish the property, he must give 180 days' notice to the properties commission.

When the commission receives a notice of intended demolition from the owner of a designated historic property, the local governing body may choose to exercise the power of eminent domain to acquire the building for preservation.[6] In exercising this power, the local government must pay the owner the fair market value for the property.

Historic properties commissions themselves also are empowered to acquire designated properties—although not by eminent domain. They may restore and operate properties; but more important, they may dispose of properties by public or private sale, lease, or other means. All dispositions are subject to restrictive covenants. This power means that a historic properties commission may act as a local revolving fund; it can buy properties that have been designated and sell them with preservation restrictions in the deed.

Owners of historic properties are allowed a 50 per cent reduction on their property taxes.[7] This reduction is technically a deferral: The property owner will have to pay three years of back taxes plus interest if the historic property designation is revoked for reasons other than destruction by natural causes. In other words, if the owner of a historic property inappropriately alters or destroys the property, he is heavily penalized if he

5. N.C. Gen. Stat. §§ 160A-399.1 through -399.13. For more information about historic properties, see *A Manual for North Carolina Historic Properties Commissions* (1980), which was prepared for Keep North Carolina Beautiful, Inc., by Robert M. Leary & Associates, Ltd.

6. N.C. Gen. Stat. § 160A-241(7).

7. N.C. Gen. Stat. § 105-278.

was receiving a property tax break on the basis of the property's historic nature when the alteration or destruction took place.

A number of cities and counties have established historic properties commissions. Raleigh, Charlotte, and many smaller towns have active programs. The loss of tax revenue through the designation of historic properties is a political issue in most communities where the establishment of a historic properties commission is proposed. However, those cities and counties that are designating historic properties find that they do not lose much revenue. First of all, many community landmarks are not on the tax rolls anyway—such buildings as courthouses, churches, schools, civic buildings, and museums. Second, the property tax deferral is an incentive for rehabilitating historic buildings, and if a deteriorating building is rehabilitated, it will probably bring a larger amount of property taxes after the work is done—even with the 50 per cent reduction—because of its increased value.

Community appearance commissions. North Carolina law also authorizes local governments to create community appearance commissions.[8] Although appearance commissions are principally advisory bodies, they may be given a role in important community decisions. For example, the sign ordinances in several North Carolina towns were drafted by appearance commissions and then submitted to the respective local governing bodies for adoption. Community appearance commissions may be given responsibilities for the design or landscaping of public buildings, and they may be allowed to participate in decisions about special-use permits and landscaping requirements for parking lots.

Zoning. Zoning is a governmental regulatory measure that can greatly affect whether historic buildings are preserved and whether the community is attractive. Those who are interested in historic preservation and community appearance should examine the local zoning codes carefully.

Many North Carolina towns and counties are zoned to allow commercial development over large areas of their jurisdiction. Commercial development in an older residential area threatens not only individual structures with eventual demolition but also entire neighborhoods unless the zoning provides some protection for the existing building stock. Some towns have adopted a zoning classification that permits existing structures to be used adaptively for commercial purposes in buffer zones between residential and commercial areas. This classification helps protect the visual character of the area if it is enforced properly. Planners should be careful, however, not to *overzone* for commercial uses and threaten the stability of established residential areas.

Zoning provisions can also significantly affect the visual environment through dimensional and density requirements within older neighborhoods. In older areas, buildings are usually closer together and closer to the street than in new developments. Imposing the same setback and side-yard requirements in an older neighborhood as in new suburban areas can lead to unfortunate results—if new buildings are required to be sited inappropriately in old areas, they can become visual intrusions. Allowing older houses to be converted to multifamily units can also lead to their demolition: Without controls on the subdividing of existing units, older areas become victims of absentee landlords and falling property values.

Zoning and subdivision regulations can also improve the quality of new development. By requiring strict review of development plans and adding landscaping requirements for new development and parking lots, the local government can encourage developers to put more thought into the appearance of new projects.

A review of the town or county's zoning provisions is a tedious job, but it can strongly affect both the type and location of new development and the future of older, established areas.

Setting a good example

Local governments cannot expect private citizens to preserve buildings and to be concerned about community appearance if they do not set good examples with government properties. In many North Carolina towns a look at government-owned property provides a clue to the community. Some counties are allowing landmark courthouses to deteriorate seriously, and some town

8. N.C. GEN. STAT. §§ 160A-451 through -455. *A Manual for North Carolina Community Appearance Commissions* is scheduled to be printed in early 1980. It was prepared by Robert M. Leary & Associates, Ltd., for Keep North Carolina Beautiful, Inc.

Federal income tax incentives for rehabilitating properties listed in the National Register of Historic Places helped to save downtown Asheville's oldest building, Ravenscroft, from demolition. An Asheville doctor is rehabilitating this structure, which was built in the 1840s, for his offices.

The Capehart-Crocker House in Raleigh was saved from demolition by a joint effort of the State of North Carolina and a private organization, The Historic Preservation Fund of North Carolina, Inc. Shown here being moved to a new site, this Queen Anne-style brick house will be used for offices.

halls have an unkempt appearance. In these communities many privately owned properties look the same way.

Towns and counties should set good examples by properly maintaining their buildings, even if it costs a little more at the present time. Routine maintenance now is much cheaper than substantial rehabilitation or new construction later.

When older buildings have outlived their usefulness local governments should think about adapting them for other uses before demolishing them. Some North Carolina local governments have won praise for the adaptive use of structures. Rocky Mount converted a railroad water tank into an arts center and saved money in the process. The cities of Tarboro, Fayetteville, and Wilmington and the State of North Carolina have all adapted historic houses for office use. Old schools have been converted into fine condominiums, libraries, community centers, offices, and judicial centers. In most cases, the local governments' adaptive use of older buildings has saved the taxpayers money and at the same time preserved community landmarks.

Conclusion

North Carolina is a beautiful state. In order to maintain and enhance the quality of life that North Carolinians enjoy, we must seriously consider what the state will look like in another decade. If North Carolina continues to grow at its present rapid pace, in ten years it may no longer be such a beautiful place. Our heritage could be destroyed by then—the state characterized by endless suburbs, commercial strips, and faceless buildings.

If local government officials and concerned citizens provide community leadership in the field of historic preservation and community appearance, the next decade could be one of graceful growth, combining the best of the past with the best of the future. And that is what we all want. □

The 1977 Clean Air Act Amendments: Their Potential Impact on Economic Growth

William A. Campbell

SINCE 1970 the federal Clean Air Act has been the governing statutory framework for efforts to abate air pollution in this country, and the United States Environmental Protection Agency (EPA) has been the dominant agency in this area. State governments have been in the position of responding to the requirements of the Clean Air Act and its implementing regulations promulgated by the EPA. Several unforeseen difficulties developed in administering the 1970 act, and in 1977 the act was amended to deal with these problems. These amendments are of considerable importance to local governments, especially where economic growth and land-use policy are concerned.

The 1970 Clean Air Act

Before 1970 air pollution control had generally been viewed as the responsibility of municipal and county governments. State government had little involvement, and the federal role for the most part was confined to research and financial assistance to local and state governments. This control mechanism could not stop the deterioration of air quality, especially from automobile emissions and from major stationary sources—primarily coal- and oil-burning electric-power generating plants.

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With the enactment of the Clean Air Act in 1970,[1] Congress radically changed this regulatory structure by giving the federal government the dominant role in air quality control and greatly strengthening the position of state governments. From then on the federal government would set uniform, national air quality standards and would have certain direct enforcement powers. It would be up to the states to develop plans and enforcement tools to achieve and maintain those federal standards. The regulatory scheme for stationary sources of air pollutants works as follows: First, EPA lists major air pollutants and prepares air quality criteria documents for those pollutants.[2] The criteria documents review and summarize the latest scientific knowledge concerning the effects of these pollutants on the public health and welfare.[3]

Second, on the basis of the criteria documents, EPA establishes primary and secondary ambient air quality standards (the allowable concentrations of each pollutant in the outside air) for each listed pollutant.[4] The primary standards are those designed to protect the public health.[5] The secondary standards are those designed to protect the public welfare, which includes such concerns as protection of materials and plants and maintaining adequate visibility.[6] Criteria documents have been prepared and standards have been set for sulfur dioxide, carbon monoxide, particulates, hydrocarbons, ozone (formerly designated as photochemical oxidants), oxides of nitrogen, and lead.[7]

Third, once EPA has established ambient air quality standards for a pollutant or group of pollutants, the states have nine months in which to prepare and submit to EPA implementation plans that demonstrate how the state is going to achieve and maintain those standards.[8] Each state has the difficult task of establishing emission standards, or limitations, for each stationary source that emits the particular pollutant and of employing whatever other control measures may be necessary to meet the national air quality standards.[9] The act requires monitoring and reporting by the sources.[10] EPA may approve, reject, or modify the implementation plan, and in some cases it may write the plan for the state.[11] For EPA to approve a state implementation plan, the state must be able to achieve

1. P.L. 91-604, Dec. 31, 1970, codified as 42 U.S.C. §§ 7401 et seq.
2. 42 U.S.C. § 7408.
3. *Id.*
4. *Id.* at § 7409.
5. *Id.* at § 7409(b)(1).
6. *Id.* at § 7409(b)(2).
7. *See* 40 C.F.R. Part 50 and 43 FED. REG. 46246 (Oct. 5, 1978). EPA was required by court action to set the standard for lead.
8. 42 U.S.C. § 7410.
9. *Id.* at § 7410(a)(2)(B).
10. *Id.* at § 7410(a)(2)(C).
11. *Id.* at §§ 7410(a)(2) and (c)(1).

the primary standards within three years after the plan is approved and the secondary standards within a reasonable time thereafter.[12]

In addition to the regulatory scheme described above for controlling existing sources of pollution, EPA is required to establish standards of performance for certain categories of stationary sources that are constructed or modified after EPA's performance standard regulations become applicable to that category of sources (new source performance standards).[13] The standards of performance may be either emission standards or work practice standards, and EPA develops and applies these standards directly.[14] The standards must reflect the application of the best technological system of continuous emission reduction that has been adequately demonstrated, taking into account the cost of achieving the reduction.[15] With all of the other things it had to do, EPA was somewhat slow in developing performance standards for the full range of new stationary sources, and in the 1977 amendments Congress imposed specific deadlines on preparing the standards.[16]

EPA also has direct standard-setting authority with regard to hazardous pollutants. A hazardous pollutant is defined as one "to which no ambient air quality standard is applicable and which . . . causes, or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness."[17] To date, standards have been set for asbestos, mercury, beryllium, vinyl chloride, benzene, and radionuclides.[18]

With regard to emissions from mobile sources of air pollution—that is, motor vehicles—the Clean Air Act sets specific emission standards in the statute itself; EPA does not determine these standards by regulation.[19] The 1977 amendments substantially revised these emission standards and extended the deadline for attaining them.[20] Standards are set for motor vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen that become gradually more stringent until 1981, when the maximum limitation must be achieved.[21] EPA may extend these deadlines under certain limited conditions.[22]

As EPA and the states implemented the Clean Air Act, two unforeseen difficulties developed for which the statute either gave inadequate guidance or was completely silent: The first difficulty arose from the fact that EPA had postponed the effective date for automobiles to comply with the emission standards because the automobile manufacturers protested that they could not meet the deadlines set in the 1970 act. This postponement meant that many regions could not meet the ambient air quality standards on schedule even if all goals stated in their implementation plans for stationary sources were met. In an effort to remedy this situation, EPA attempted to require some states to impose rather drastic transportation plans—for example, in Southern California and around Washington, D.C., where it was obvious that the national standards were not going to be met on time. EPA's efforts to require states to impose these plans were nullified by court action.[23]

Moreover, shortages of oil and natural gas developed about three years after the implementation of the Clean Air Act began. These shortages caused many sources that used those fuels to convert to coal—in fact, they were being encouraged to do so. Many states found that they could not meet the deadlines for implementing their plans because of this conversion.

Consequently, EPA had to work out some sort of procedure to govern the construction and modification of stationary sources located in places where the national air quality standards had not been met by the dates specified in the state implementation plans for those areas. That is, it had to devise a policy for nonattainment areas—with no guidance in the statute.

Second, the Sierra Club brought suit[24] to require EPA to protect areas where the air was already cleaner than the national ambient air quality standards. In other words, EPA had to devise a regulatory program to prevent the significant deterioration of air quality in those areas—again, with absolutely no guidance from the statute concerning how this was to be done.

In short, the entire matter of air quality control on a national scale turned out to be both more expensive and more complicated than Congress had foreseen.

The 1977 Clean Air Act amendments

In 1977 Congress amended[25] the 1970 act to deal with the difficulties discussed above and to make other substantial

12. *Id.* at § 7410(a)(2)(A).
13. *Id.* at § 7411.
14. *Id.* at § 7411(a) and (b).
15. *Id.* at § 7411(a)(1).
16. *Id.* at § 7411(f).
17. *Id.* at § 7412(a)(1).
18. *See* 40 C.F.R. Part 61, 42 FED. REG. 29332 (June 8, 1977), and 44 FED. REG. 76738 (Dec. 27, 1979).
19. *See* 42 U.S.C. §§ 7521(a)(1) and (b)(1).
20. *Id.*
21. *Id.*
22. *Id.* at § 7521(b)(5) and (6).
23. *See* Brown v. EPA, 521 F.2d 827 (9th Cir. 1975), *vacated as moot*, 431 U.S. 99 (1977).
24. This suit led to a series of cases holding that the Clean Air Act of 1970 required EPA to implement a policy for preventing significant deterioration in areas where the air was cleaner than the national standards. The decision was first made by a federal district court in *Sierra Club v. Ruckelshaus*, 344 F. Supp. 253 (1972), which was affirmed by the Court of Appeals without an opinion, 4 E.R.C. 1815 (D.C. Cir. 1972), which was then affirmed by the Supreme Court by an equally divided vote, 412 U.S. 541 (1973). These decisions are referred to collectively as *Sierra Club I*. For an article persuasively contending that they were wrongly decided, see Stewart, *The Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decisionmaking: Lessons from the Clean Air Act*, 62 IOWA L. REV. 713, 741 (1977). In an effort to implement this PSD policy, EPA promulgated regulations that were attacked and upheld in *Sierra Club II*, 540 F.2d 1114 (D.C. Cir. 1976). In part to bring an end to what appeared to be interminable litigation and in part to provide a statutory framework for EPA's program, Congress addressed the nondeterioration issue in the 1977 amendments.
25. P.L. 95-95, Aug. 7, 1977.

changes in the national air quality control program. These amendments were not mere patchwork repairs; they constitute a significant rewriting of the legislation. (The amended act is more than three times as long as the 1970 act.) The two changes of greatest significance to local governments are discussed here: the policy for preventing significant deterioration[26] and the policy for nonattainment areas.[27] These two changes will have a substantial impact on economic growth by directly controlling where certain industries that are sources of air pollution may be located and where and under what conditions existing sources may be expanded.

Prevention of significant deterioration (PSD) policy. The technique chosen for implementing the policy for preventing the significant deterioration of air quality is to divide all land areas into three classes, each with a maximum allowable increase of pollutants, and then require pre-construction review and permits for certain sources that wish to locate or expand so that the allowable increments for the designated area will not be exceeded.[28] The statute itself establishes the increments for sulfur dioxide and particulates for each of the three classes of land areas;[29] EPA is to set standards for other pollutants by regulation.[30]

For a locality to fall into one of the three classes of PSD areas, its air quality must be better than that required by the national standards. The base-line date for determining the maximum allowable increments in these areas is usually the date when a construction permit was first applied for, taking into account any sources that began construction before January 6, 1975, but had not begun operation by the date of the baseline determination.[31] All PSD land areas are at first classified as Class I or Class II.[32] In Class I areas very little deterioration is allowed.[33] Certain national parks and wilderness areas are classified as Class I, and for national parks this classification may not be changed.[34] In Class II areas, some deterioration is permitted, but not much.[35] In Class III areas, deterioration is permitted to a level approaching that of the national air quality standards.[36] A state may redesignate its Class II areas up to Class I or, except for certain federal natural areas and parks, down to Class III.[37] The redesignation process is not simple: First, the governor must approve the redesignation after consulting with the appropriate state legislative committees.[38] Second, the affected local governments must approve the redesignation.[39] And third, a public hearing must be held on the proposed redesignation.[40] EPA may disapprove a redesignation only for failure to follow the statutorily required procedures or when the redesignation adversely affects certain federal Class I and II areas.[41]

Before a major emitting facility (a facility that is within one of 28 specified categories of sources with the capacity to emit 100 tons per year of any pollutant, or any other source with the capacity to emit 250 tons per year of any pollutant)[42] can be constructed or modified in a PSD area, a permit must be obtained for it.[43] The 28 categories include certain electric generating plants that burn fossil fuels, petroleum refineries, kraft pulp mills, and certain municipal incinerators. Before the state can issue the permit, four conditions must be met: (1) The proposed facility's effects on air quality must be thoroughly examined. (2) A public hearing must be held on the permit. (3) It must be demonstrated that (a) the proposed facility will not more than once a year cause or contribute to air pollution over any maximum allowable increase, and (b) the air quality standards for the area will not be violated as a result of the facility's construction.[44] (4) It must be demonstrated that the proposed facility will use the best available control technology.[45]

The reverse side of the PSD area policy is the nonattainment area policy. A nonattainment area is an area in which any listed air pollutant exceeds the air quality standards.[46] States are required to develop special plans for nonattainment areas, which must provide for the pre-construction review and permitting of new or modified major stationary sources (defined as "any stationary facility... of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant...").[47] These plans must be designed to achieve the primary ambient air quality standards by December 31, 1982.[48]

For a permit to be issued to construct or modify a major new stationary source in a nonattainment area, the following conditions must be met: (1) The source must attain the "lowest achievable emission rate"—essentially the lowest demonstrated emission rate for that type of source in the nation; (2) if the owner or operator has other sources in the state, these sources must also comply with all applicable emission limitations and standards or be on a compliance schedule; and (3) by the time the new or modified source begins operation, the emissions from other sources in the area must have been reduced so that no overall increase in emissions will occur above the level that existed when the permit was applied for.[49]

If a state demonstrates to EPA that the primary standards for carbon monoxide and ozone—both transportation-related pollutants—cannot be met in a nonattainment area by 1982, it will be given until December 31, 1987, to meet those standards. But for that area the state

NONATTAINMENT

26. 42 U.S.C. §§ 7470 et seq.
27. *Id.* §§ 7501 et seq.
28. *See id.* §§ 7472 and 7473.
29. *See id.* § 7473(b).
30. *Id.* § 7476.
31. *Id.* § 7479(4).
32. *Id.* § 7472.
33. *Id.* § 7473(b)(1).
34. *Id.* § 7472(a).
35. *Id.* § 7473(b)(2).
36. *Id.* § 7473(b)(3).
37. *Id.* § 7474(a).
38. *Id.* § 7474(a)(2)(A).
39. *Id.*
40. *Id.* § 7474(b)(1)(A).
41. *Id.* § 7474(b)(2).
42. *Id.* § 7479(1).
43. *See id.* § 7475(a).
44. *Id.*
45. *Id.*
46. *Id.* § 7501(2).
47. *Id.* § 7502(b).
48. *Id.* § 7502(a).
49. *See id.* § 7503.

must implement a vehicle emission-control inspection and maintenance program and probably transportation control measures as well.[50] States with plans approved for nonattainment areas may adopt and enforce the California motor vehicle emission standards, which are more stringent than the national standards established in Part II of the Clean Air Act,[51] but must do so two years before the model year to which the standards are to apply.[52]

As an enforcement device, the act stipulates that EPA may not make any grants under the Clean Air Act and the United States Department of Transportation may not make any grants to nonattainment areas that need transportation control measures but have not submitted nor made efforts to submit an adequate plan.[53]

Alabama Power Company v. Costle

The provisions of the 1977 amendments that pertain to the prevention of significant deterioration and to nonattainment areas are of great importance to all the states, including North Carolina, because these provisions will have considerable influence on what types of new industry can locate in what areas. In fact, these provisions may determine that in some areas there can be no new industry without substantial curtailment of emissions by existing sources. Almost as important as the statutory provisions themselves are EPA's implementing regulations that will guide the states as they prepare implementation plans to achieve the statutory policies.

EPA promulgated its regulations for preventing significant deterioration on June 19, 1978. The regulations were challenged in the Court of Appeals for the District of Columbia by a coalition of power companies and other industries, on the one hand, and by a coalition of environmental protection organizations on the other. In its decision in the case, *Alabama Power Co. v. Costle*,[54] the court upheld the EPA regulations on some points and invalidated them on others. Some of the issues considered and dealt with in the case follow.

Definition of "potential to emit." As stated above, only major emitting facilities are subject to the pre-construction review and permit provisions in PSD areas. The statutory definition of this category of sources includes sources from among 28 specified categories that "emit, or have the potential to emit" 100 tons per year, plus any other source with the "potential to emit" 250 tons per year of any pollutant. EPA interpreted the phrase "potential to emit" to mean a source's total, uncontrolled emissions—that is, its projected total emissions when operating at full capacity without considering any reductions by abatement equipment.[55] The court held that this interpretation was in error; the phrase "potential to emit" must take into account any air pollution control equipment incorporated into the facility's design and assume that it will be functioning properly.[56] This ruling means that a considerably smaller number of facilities will be encompassed by the term "major emitting facility."

Coverage of fugitive emissions. EPA's regulations included sources of fugitive emissions (primarily emissions from mining operations) if they otherwise met the definition of "major emitting facilities" and the 100-ton capacity threshold.[57] The industrial challengers to the regulations contended that EPA was in error in making this inclusion, maintaining that only point sources of emissions—those from stacks and chimneys—should be included. The court upheld EPA's regulation, thereby including mining operations in the pre-construction review and permit process for PSD areas.[58]

The "bubble" concept. The industrial petitioners contended that each single facility should be free, within its own confines, to make changes without a permit or authorization from EPA or the state if there was no overall increase or change in the facility's emissions.[59] This is the "bubble" concept—viewing each facility, which may have several different emission sources within it, as a single entity. The court endorsed the "bubble" concept but stated that EPA had some freedom to restrict the application of the concept by adopting a narrow definition of the term "stationary source."[60]

Regulation of pollutants other than sulfur dioxide and particulate matter. In the statute, increments are specified for only two pollutants—sulfur dioxide and particulates. In its regulations, EPA extended the PSD pre-construction review and permit process to other pollutants: those for which air-quality standards have been set and those covered by new source-performance and hazardous-pollutant standards.[61] The court held that EPA had properly included these other pollutants,[62] which makes the review and permit process more complex and difficult for sources that wish to locate in a PSD area.

Revisions in North Carolina's implementation plan

North Carolina has completed the revisions to its implementation plan that are necessary to bring the state into compliance with the PSD and nonattainment area provisions of the 1977 amendments.[63] Two nonattainment areas in North Carolina have been identified. The Spruce Pine area is nonattainment for particulate matter,[64]

50. *Id.* §§ 7502(b)(11)(B) and (C).
51. *Id.* § 7507.
52. *Id.*
53. *See id.* § 7506(a).
54. 10 ELR 20001 (D.C. Cir. 1979).
55. *Id.* 20402.
56. *Id.*
57. *Id.* 20403.
58. *Id.* 20404.
59. *Id.* 20405.
60. *Id.*
61. *Id.* 20407.
62. *Id.*
63. Conversation with Mr. Paul Wilms, Head of Air Planning and Environmental Standards Branch, Environmental Planning Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, November 16, 1979.
64. *Id.*

primarily from mining operations, and Mecklenburg County is nonattainment for carbon monoxide and ozone.[65] State officials believe that the Spruce Pine area can meet the 1982 compliance deadline but Mecklenburg County will need an extension until 1987.[66] To obtain this extension, however, the county must adopt an automobile-exhaust emission inspection and maintenance program.[67] A legislative study commission has been designated to study the inspection and maintenance question for Mecklenburg and recommend the form such a program should take.[68] The commission was to report to the General Assembly by February 1, 1980.[69]

As for the PSD provisions, several areas in the state—federal parks and wilderness areas—have been designated Class I;[70] the rest of the state is designated Class II.[71] EPA has conditionally approved the North Carolina prevention of significant deterioration plan, but some changes will probably be necessary in the aftermath of *Alabama Power Co.* □

65. *Id.*
66. *Id.*
67. *See* 42 U.S.C. §§ 7502(b)(11)(B) and (C).
68. *See* N.C. Sess. Laws 1979, Res. 72.
69. *Id.*
70. Conversation with Mr. Paul Wilms, *supra* note 63.
71. *Id.*

North Carolina has pioneered in providing for uniform statewide administration and enforcement of building codes.

North Carolina's Comprehensive Building Regulation System

Philip P. Green, Jr.

LONG RECOGNIZED as a pioneer in the field of building regulation, North Carolina is now coming to have the most comprehensive program in this field of any state. Its many innovations encompass its building codes, its machinery for their enforcement, and its qualification programs for enforcement officials. While these have been widely publicized outside the state, many of our officials are unaware of the significant progress that they represent.

A thumbnail history

To provide a setting against which to examine the state's current programs, let us take a quick look at some high points in their development.

The earliest building regulations in North Carolina antedated the Revolutionary War and were found in the charters and ordinances of individual cities. Edenton's charter of 1740,[1] for example, prohibited wooden chimneys, and virtually all colonial and early post-revolutionary charters regulated one or more aspects of building construction. This pattern continued through the nineteenth century, as the General Assembly authorized particular cities to deal with fire hazards and later with unsanitary and unhealthful conditions in and around buildings.

A significant change occurred in 1905. Whereas most other states have continued up to the present to rely on local governments to regulate building, North Carolina enacted a state building law 75 years ago that governed construction in all towns over 1,000 population.[2] Further, this law mandated that every such town have a building inspector to enforce the law (in the absence of any other inspector, the statute designated the fire chief as building inspector and made it a misdemeanor for a town board not to appoint a fire chief). And finally, the 1905 law directed the State Commissioner of Insurance to oversee local building inspectors. Although elaborated by the State Building Code and some local regulations in later years, this law remained in the General Statutes until 1969, and its approach is reflected in today's system. Its major importance lies in the fact that the state recognized for the first time the desirability of having uniform building regulations in all municipalities throughout the state, so that architects, engineers, contractors, and others in the construction industry could move freely from one town to another without having to learn a series of entirely different building codes designed to assure monopolies for local residents. Many states have not yet reached this point.

The next major step forward occurred in 1933, when the General Assembly created the State Building Code Council.[3] This legislation implied recognition that construction technology and materials were changing so rapidly that a legislature, composed of laymen and meeting only once a biennium, could not possibly write, amend, and administer building regulations with understanding and timeliness. The Council was to be composed largely of professional personnel from the construction industry. It was to be responsible for writing a code, amending it to reflect the changes that were occurring, and hearing appeals from local inspectors as to its proper interpretation. The Council published the first State Building Code in 1936, and the General Assembly ratified and adopted the Code in 1941.

In 1957, as a result of recommendations by the Commission on Reorganization of State Government, the statute creating the Building Code Council was largely rewritten to eliminate some legal weaknesses; increase the representation on the Council; make

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1. Laws, 1740, Ch. 1.

2. N.C. Pub. Laws 1905, Ch. 506.

3. N.C. Pub. Laws 1933, Ch. 392.

clear the relationship between local governments, state departments with enforcement responsibilities (primarily the departments of Insurance and Labor), and the Council; and broaden the coverage of the State Building Code to include virtually all buildings throughout the state other than certain agricultural ones.[4] Only a minority of states elsewhere, even when they have created arrangements akin to our Building Code Council and State Building Code, have afforded them both the geographical and subject-matter coverage of the North Carolina system.

Two important steps were taken in 1969. The first was passage of acts that provided in detail for the creation, responsibilities, and procedures of city and county inspection departments.[5] This was particularly significant with respect to the counties. In contrast to our cities, North Carolina counties had no authority to appoint inspectors of any type until 1937, when they were empowered to have electrical inspectors. Some (but not all) counties were later given power to have one or more additional kinds of inspectors, but the 1969 act took a giant leap and placed all counties essentially on a par with cities with respect to all types of building inspection. Since enforcement of the State Building Code is dependent in the first instance on local inspectors, this act filled a major gap in protecting the state's citizens against hazards from inferior construction.

The second 1969 action was truly innovative. For years mobile homes (or "trailers") were the one type of residential construction that was totally unregulated. This was true because they were manufactured in factories rather than on-site, so that local inspectors had no opportunity to check construction details, and they frequently were manufactured out of state, where they were believed to be beyond the reach of local legislators. In this situation, it was not surprising that people were shocked and fires were started by faulty electrical installations, floors sagged and sometimes separated from walls, doors were out of plumb, and numerous other problems appeared. Some local inspectors sought to get at such problems by requiring removal of panel sections and other mobile home sections before the structure was placed on a lot, so that details of construction could be checked. Mobile home manufacturers and sellers regarded such requirements to be harassment, and they secured legislation in several states under which a manufacturer would simply affix a sticker to his product certifying that it was properly built, and the mobile home was thereby exempt from any local inspection. Such a bill was introduced in the 1969 General Assembly.

North Carolina officials adamantly opposed this legislation, for obvious reasons. Instead they proposed, and the General Assembly adopted, a system under which the Commissioner of Insurance would adopt regulations for mobile homes (based on standards set by a national organization) and would license recognized testing agencies (a) to approve plans for a manufacturer's products as being in compliance with the regulations, (b) to check the homes as they were manufactured in the factory, and (c) to affix the testing agency's stickers of approval on the homes that were in compliance.[6] This system won almost immediate acceptance and was widely adopted by other states until the federal government pre-empted the field with a generally similar system in 1974.

The final date worthy of mention is 1977. In that year the General Assembly noted that while there was a uniform State Building Code in effect throughout the state, many local governments were not enforcing the Code. Further, the officials who enforced the Code differed widely in their understanding and interpretations. To remedy these situations, the legislature directed *all* local governments to provide for enforcement of the Code within their jurisdiction by dates (1981 through 1985) based on their populations. And it created the North Carolina Code Officials Qualification Board to set up a certification system for local inspectors and to develop uniform educational programs through which those inspectors could qualify for various types of certificates.[7]

Against this historical background, let us turn now to a closer look at the existing North Carolina building regulation system.

Adoption and amendment of the Code

The leading actor in the adoption of the State Building Code is the Building Code Council. The Council consists of 12 members appointed by the Governor, mostly from the construction industry but also including a local building inspector, a state-employed engineer, and a representative of the general public. It has the basic responsibilities of (a) preparing and adopting a State Building Code, (b) amending that Code from time to time, (c) approving any local variations from the Code's provisions, (d) hearing appeals from decisions of state enforcement agencies under the Code, (e) recommending to the General Assembly desirable changes in statutes relating to construction, and (f) recommending to state agencies improvements in their administrative practices involved in enforcement of building laws.

The Division of Engineering and Building Codes of the North Carolina Department of Insurance is the principal source of staff assistance for the Council. It also draws on the talents of many other professionals through advisory committees.

The first State Building Code was completed and published in 1936, but almost immediately the Council undertook responsibility for amending that Code. This activity took three forms: (1) Over the years the Council made comprehensive revisions of the Code in 1953, in 1958, in 1967, and in 1978. (2) In almost every quarter the Council has considered and adopted one or more amendments to specific sections of the Code. (3) A unique provision of the statutes allows the Council, in hearing appeals, to permit variations from the Code when it finds that "materials or methods of construction proposed to be used are as good as those required by the Code," provided that it immediately initiates procedures for amending the Code to accord with this decision.

With this steady flow of amendments, the Code has steadily grown in length and complexity. The 1936 Code consisted of a single volume of less than 100 pages. The 1978 Code consists of five

4. N.C. GEN. STAT. Ch. 143, Art. 9; N.C. Sess. Laws 1957, Ch. 1138.

5. N.C. Sess. Laws 1969, Ch. 1065, 1066; now codified as N.C. GEN. STAT. Ch. 153A, Art. 18, Part 4, and N.C. GEN. STAT. Ch. 160A, Art. 19, Part 5.

6. N.C. GEN. STAT. Ch. 143, Art. 9A; N.C. Sess. Laws 1969, Ch. 961.

7. N.C. GEN. STAT. Ch. 143, Art. 9B; N.C. Sess. Laws 1977, Ch. 531.

Two Who Shaped the State's Building Regulation System

Two figures stand out in the history of North Carolina's building-regulation system: Sherwood Brockwell and Kern Church. While many others have made significant contributions, the system stands today as a result of the dedicated work of these two public servants.

Although Brockwell and Church differed in their primary interests, their careers have basic similarities. Both men held the positions of Deputy Commissioner of the State Department of Insurance, head of the Division of Engineering of that department, State Fire Marshal, and secretary of the State Building Code Council. Both graduated from North Carolina State University. Both have received national recognition.

Sherwood Brockwell was born in Wake County in 1887 and died in 1953. His consuming interest throughout his lifetime was fire protection. As a boy of nine he began to assist Raleigh's volunteer Rescue Steam Fire Engine Company, which made him a special member in 1902, a regular member in 1903, and foreman in 1908. In 1909 he was designated assistant chief and in 1912 chief of the Raleigh Fire Department—the youngest chief of a paid fire department in the United States. His vigor and innovativeness in training and leading that department so impressed Col. James D. Young, the State Insurance Commissioner, that Colonel Young appointed him State Fire Marshal and Deputy Insurance Commissioner in 1914. He held those positions until his death.

The breadth and innovativeness of Brockwell's activities in fire protection are shown by his creation of the nation's first state-operated training program for fire personnel; his persuasion of the General Assembly to mandate regular fire drills in the schools in 1919; and his role in 1915 in organizing the North Carolina Women's Bureau of Fire Prevention to educate women as to hazards in their homes.

His interest in building regulations stemmed directly from his concern for fire protection. In 1921 he introduced the idea of separating furnace and fuel storage areas from classroom areas in school buildings, which was later endorsed and promoted by the National Fire Protection Association and the National Board of Fire Underwriters. In 1925 he persuaded Governor McLean to issue directives that all permanent buildings erected by the state be of fire-resistive construction.

But his major contribution was the State Building Code. In 1931, in collaboration with Professor W. G. Geile of North Carolina State College, he organized the Building Code Council, which was given official stature by the General Assembly in 1933. The Council wrote and published the State Building Code in 1936 and pushed that Code through ratifying legislation in 1941. He served as secretary and principal staff of the Council until his death.

volumes—General Construction, Plumbing, Heating, Electrical, and the North Carolina Uniform Residential Building Code; the first volume alone contains almost 700 pages. Basically the Code's various volumes are modeled rather closely after nationally recognized codes. But the Council has given careful consideration to the applicability of each code's provisions to North Carolina's climate, geography, and other circumstances and has made appropriate changes where indicated.

As noted earlier, the State Building Code applies throughout the state without any necessity for adoption by local governments (their only responsibility is to create inspection departments to enforce it). The 1933 law that originally created the Building Code Council authorized any local government to adopt its own code, provided only that that code be more stringent than the State Building Code. The 1957 statute modified this provision to require Council approval of all local modifications. In furtherance of uniformity throughout the state, the Council has adopted and adhered to a strong policy that it will not approve a complete building code for a local government but will approve limited modifications of the state Code.

The Code now applies to construction of all types of *new* buildings, structures, and their systems and facilities except (a) "farm buildings located outside the building-regulation jurisdiction of any municipality," (b)

Brockwell was widely recognized for his achievements. He was an honorary member of the American Institute of Architects—the award of which he was most proud. He served as secretary and as president of the Fire Marshals' Association of North America, as president of the Southeastern Fire Chiefs' Association, as secretary for many years of the North Carolina Fire Chiefs' Association, as a member of the International Association of Fire Chiefs' Educational Committee, and as a member of the Building Code and Exits committees of the National Fire Protection Association.

Kern Church was born in North Wilkesboro in 1926. He went directly to the Department of Insurance after his graduation in Engineering from North Carolina State in 1949 and has been there ever since. From 1949 until 1965 he served as a building code engineer, reviewing plans and specifications of a wide variety of public and private buildings throughout the state and assisting local inspectors on technical matters. In 1965 he was promoted to his present position as Deputy Insurance Commissioner and head of the Engineering and Building Codes Division, which has grown under his leadership to include 17 engineers, architects, and technical inspectors plus another four support personnel.

Whereas Sherwood Brockwell brought the State Building Code into being, Kern Church has presided over its development into a comprehensive set of building regulations. And his agency has taken on an ever increasing range of responsibilities. To list only a few: It must review and approve plans and specifications for all public buildings and many others erected in the state. It hears appeals from interpretations of the State Building Code by local inspectors. It offers advice and consultation to those inspectors and members of the construction industry concerning the Code. It is the focal point in state government for cooperative efforts involving building regulation. It has special responsibility for overseeing the enforcement of mobile home regulations, requirements for accessibility to the physically handicapped, and requirements for efficient energy utilization.

The Division serves as a technical staff for the Building Code Council, which means that it aids in research and drafting when the Council is considering amendments or revisions of the Code. It also is charged with furnishing staff assistance to the North Carolina Code Officials Qualifications Board (of which Church is secretary). Its staff instructs in a wide variety of courses for various types of inspectors. And it has sponsored the creation of several professional organizations for local inspectors, providing continuing staff assistance to each of them.

In short, the Division of Engineering and Building Codes stands today at the center of North Carolina's comprehensive building-regulation system, and Kern Church himself has played a central role in all of these developments.

He too has achieved national recognition. For 13 years he has been a member of the Board of Directors of the National Conference of States on Building Codes and Standards, and he was national chairman of that organization in 1972-73. For 14 years he has been a member of the Research and Revision Committee of the Southern Building Code Congress. For 17 years he has been a member of the Safety to Life Committee of the National Fire Protection Association. For 25 years he has been secretary of the North Carolina Building Inspectors' Association. And he has been made an honorary member of the North Carolina Chapter of the American Institute of Architects.—PPG

equipment and facilities for handling, storage, etc. of liquefied petroleum gas or liquid fertilizers, and (c) equipment and facilities, other than buildings, of public utilities. As a result of legislative ratification in 1941 and 1957, the Code applies also to safety features of most *existing* buildings, but the Court of Appeals held in *Carolinas-Virginias Assoc. v. Ingram*[8] that special fire protection requirements for existing high-rise buildings exceeded the Council's statutory authority.

The foresight of the General Assembly in creating a quasi-legislative agency that can react readily to changes in construction techniques and needs is illustrated by the fact that North Carolina has in the recent past been in the forefront of states that have mandated new insulation and energy conservation measures in construction, smoke detection devices in all new buildings, a wide range of facilities for the handicapped, and extensive fire-protection facilities in new high-rise buildings.

Organization for enforcement

The basic pattern for enforcement prescribed by the statutes is as follows.[9]

(1) Local governments have responsibility for most of the enforcement

8. 39 N.C. App. 688 (1979), *rev. denied*, 297 N.C. 299 (1979).

9. N.C. GEN. STAT. §143-139; *id.* §§143-140, -141; *id.* § 153A-352; *id.* § 160A-412.

functions: issuing or denying permits, making necessary inspections, issuing or denying certificates of compliance for completed work, issuing orders to correct violations, bringing judicial actions against actual or threatened violations, keeping records, etc.;

(2) The Insurance Commissioner has general responsibility for supervising local enforcement officials, and appeals from their decisions are taken to him with respect to enforcement of most sections of the State Building Code;

(3) The Bureau of Boiler Inspection of the Department of Labor has general responsibility for supervising local inspectors and hearing appeals with respect to the Code's requirements pertaining to boilers;

(4) The Department of Labor has general responsibility for supervising local inspectors and hearing appeals with respect to the Code's requirements for elevators, escalators, merry-go-rounds, etc.; and

(5) Appeals may be taken from the Department of Insurance or Department of Labor either directly to superior court or first to the Building Code Council and thence to the courts. (No appeal has ever been taken from the Building Code Council to the courts.)

The General Assembly has given local governments extreme latitude concerning how they may organize to handle their enforcement responsibilities.

First, a local government may elect to do nothing at all. In this event, once the scheduled date for action has passed, the Commissioner of Insurance may assume responsibility for enforcing the Code within that unit, either using his department's personnel or through contractual arrangements with another local government.[10]

Second, every city and county is authorized to create its own inspection department, with a full range of enforcement powers.[11]

Third, any two or more local governments may create a joint inspection department.[12]

Fourth, any local government may hire, on a part-time basis, one or more inspectors from another local government, with the approval of that unit's governing board.[13]

Fifth, any local government may contract with another local government for the second unit to furnish inspection services to the first.[14]

Sixth, a municipality may request the county of which it is a part to provide inspection services throughout the municipality's jurisdiction, without any contract between the two.[15]

Seventh, a municipality may enforce the Code over a defined area beyond its boundaries.[16]

Almost all of the above arrangements now exist somewhere within the state. As a result of the certification program described in the section that follows, it is anticipated that a great many more intergovernmental arrangements will be made in order to provide properly qualified inspectors within every local government. For example, a small town might have its own inspector, who is qualified to handle one- and two-family dwellings. But it might have to share an electrical or plumbing or mechanical inspector with another town. And a number of towns might rely on the county inspection department or a nearby big-city department to provide more highly qualified inspectors certified to inspect the occasional very large or complicated buildings that are constructed within their jurisdiction.

Qualification of Code officials

The statutes enacted in 1977 provide that no person may engage in enforcement of the State Building Code as a state or local official after July 1, 1979, without a certificate from the North Carolina Code Officials Qualification Board.[17] This Board consists of twenty members drawn from local government, the construction industry, the ranks of local inspectors, and the academic community. It is responsible for (a) establishing standards for code enforcement officials; (b) creating and administering a system for certifying that officials meet those standards; (c) developing, in cooperation with the state's various educational institutions, programs for training such officials (both pre-service and in-service); (d) certifying the qualifications of instructors in such programs; and (e) administering disciplinary proceedings, if necessary, when inspectors are charged with various abuses.

The Division of Engineering and Building Codes of the North Carolina Department of Insurance also provides staff assistance to this Board, and it has created a number of advisory committees as well.

The Board's first priority after its creation was development of regulations governing the issuance of certificates. This function was accomplished by the July 1979 deadline, and all known code officials in the state at that time were given their initial certificates.

The statutes call for three general types of certificates: (a) a *limited* certificate, allowing an inspector to continue to hold the position he occupies on a given date but not to move to another position; (b) a *probationary* certificate, allowing a newly appointed or newly promoted inspector to hold a position for a specified period while qualifying for an appropriate standard certificate; and (c) a *standard* certificate, allowing him to hold a position as a particular type of inspector with a given level of competency for any state or local governmental unit.

The original limited certificates were reserved for officials who held a position on June 13, 1977, when the basic law was enacted. However, through a 1979 amendment this type of certificate will also be offered to any inspector who holds a position on the date when his unit is mandated to have an inspection department. In either case, the official must within two years complete short courses specified by the Board in order to retain his certificate.

Under the initial statute, probationary certificates had only a one-year life. Because of delays in establishing training programs, the 1979 General Assembly allowed the Board to extend this period by regulation to as much as three years. Currently the Board's regulations require the holder of a probationary certificate to qualify for a standard certificate within two years.

The standard certificates are expected

10. N.C. Gen. Stat. § 153A-351(b); *id.* § 160A-411.

11. N.C. Gen. Stat. § 153A-351; *id.* § 160A-411.

12. N.C. Gen. Stat. § 153A-353; *id.* § 160A-113, -462 ff.

13. N.C. Gen. Stat. § 153A-353; *id.* § 160A-413.

14. N.C. Gen. Stat. § 160A-461.

15. N.C. Gen. Stat. § 160A-360(d), (g).

16. N.C. Gen. Stat. § 160A-360(a).

17. N.C. Gen. Stat. § 143-151.13(a).

to become the basic type of certificates in force throughout the state, although none have been issued to date. Under the Board's regulations, standards have been set for positions in six fields: Code Administrator, Building Inspector, Plumbing Inspector, Mechanical Inspector, Electrical Inspector, and Energy Inspector. Three levels of competency have been set for each of these types of officials. Level I is basically for officials competent to deal with one- and two-family residences and small buildings of other types. Level III is for officials qualified to deal with buildings and installations of any size. And Level II falls between these two extremes.

For each level and type of position, the Board's regulations prescribe a range of alternative education and experience requirements. A written examination will normally be required from all applicants, together with completion of short courses specified by the Board and the equivalent of a high school education. (Some categories are exempted from the examination—persons who have already passed examinations as county electrical inspectors and persons who hold licenses as architects, engineers, etc. But even these people will be required to complete certain short courses.)

Financing and preparing the many educational programs that will be required has proved to be a major task for the Board. However, it is currently offering at various community colleges and technical institutes around the state short courses for officials who hold limited certificates. A team of professors and others at North Carolina State University is now preparing in-service courses to be offered applicants for standard certificates. It is contemplated that these courses will begin in the summer of 1980 and that correspondence courses of the same types will be prepared next. Finally, it is planned that longer educational programs will be developed as pre-service offerings for high school graduates who wish to continue their preparation in the community college system.

These programs will have two major consequences for local governments. First, such governments undoubtedly will want to re-examine their personnel classifications and pay plans in light of the certification system. No one should be hired who does not meet the Board's minimum requirements for certification and cannot be expected to meet those requirements within two years after hiring. Funds must be provided for the various training programs that will be required. And ultimately the local governments must expect to pay more for more highly qualified inspectors.

Second, the certification system will affect how local inspection departments are organized. A great many intergovernmental arrangements, as described earlier in this article, may be necessary. The administration and operation of a local department will turn on the types of inspectors it has and their levels of proficiency. It may be difficult, for example, to have "cross-trained" inspectors who can make many types of inspections; it is unrealistic to expect that many inspectors will have level III certificates in all six specialized areas.

Nevertheless, the new system should ultimately result in much improved and more uniform enforcement of the State Building Code throughout the state. □

A PROGRESS REPORT

The Coastal Area Management Act

Milton S. Heath, Jr., and Allen C. Moseley

THE NORTH CAROLINA Coastal Area Management Act (CAMA) was enacted by the 1974 General Assembly after prolonged and spirited debates extending over two legislative sessions.[1] CAMA laid down a blueprint for developing land-use plans concerning the entire 20-county coastal area, identifying critical areas in need of protection, and installing a permit system to guide land development within these critical areas. It also held out promise of strengthening local land-use planning in the region, of simplifying permits, and of beginning an ongoing process of land-use management that would be reviewed comprehensively at least once every five years. On the negative side, CAMA aroused fears among some critics that it would bring heavy-handed state intrusion into the affairs of landowners in the coastal area.

This article is a progress report on the first five years of CAMA's administration and a brief review of the broader setting of coastal land management in the nation as a whole. Its general conclusions are that:

1. The Coastal Resources Commission has kept abreast of a demanding administrative schedule and has maintained a balanced, middle-ground philosophy of coastal land management—neither delighting its friends nor distressing its foes.
2. The CAMA experiment in local-state cooperation has been an effective vehicle for intergovernmental coordination. In particular, the political wisdom of CAMA's provisions for local involvement in various phases of the program has been vindicated.
3. CAMA's objective of strengthening local land-use planning programs has been achieved with substantial help from federal subsidies.

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1. *See, generally,* Heath, *A Legislative History of the North Carolina Coastal Area Management Act,* 53 N.C.L. Rev. 345 (1974).

4. CAMA has passed its first major legal test in court, has withstood early political attacks, and has even begun to pick up legislative support for needed amendments.
5. Although it has not been possible to consolidate all federal and state coastal permits into one, the number of required permits has been reduced and the application process for remaining permits has been streamlined.
6. CAMA has not been accepted as a model for land-use management in other regions of the state or as a model for statewide land policy.

COASTAL LAND MANAGEMENT IN NORTH CAROLINA

The record of the Coastal Resources Commission

CAMA's administration was entrusted to the Coastal Resources Commission (CRC), a 15-member governing body selected by the Governor mainly from a large pool of nominees presented by county and city governments of the area.[2] The CRC is assisted by a large advisory board, the Coastal Resources Advisory Council (CRAC), which also consists mainly of persons named by the area's local governments, and it is staffed by the Department of Natural Resources and Community Development.[3]

The strong local flavor of the CRC and CRAC represented compromises that were essential to secure enactment of CAMA in 1974. CAMA's first five years of administration suggest that these compromises were also important to the survival of the program once it was launched. Time and again the knowledge of local conditions and the practical experience of CRC and CRAC members have been of immeasurable value in supplementing staff expertise. And many observers have noted how membership on CRC or CRAC has converted former opponents and critics of CAMA into valued supporters.

CAMA laid down a tight schedule for CRC to complete planning guidelines, designate critical areas known as "areas of environmental concern" (AECs), hold public hearings in each of the 20 coastal area counties, approve each local land-classification plan and fully implement a permit system for land development within AECs. Even with extensions allowed by a 1975 amendment to CAMA, the total process had to be completed by March 1978.[4] The CRC and CRAC, aided by their staff and with determined and persistent efforts, met all deadlines.

Now moving into its sixth year, the CRC anticipates reviewing a second round of local land-use plans in 1980 and 1981. These plans will be evaluated under revised planning guidelines and AEC guidelines, both adopted in 1979.[5] This time around there will be greater emphasis on local policies covering critical areas, management of productive resource areas, community development, and economic development.

The new AEC guidelines include important new standards for a variety of shoreline, channel, and harbor projects; new construction standards for development in ocean hazard areas that conform to federal flood-insurance regulations; strict limitations on bulkheading along the oceanfront; and a requirement for a minimum 30-inch separation of septic tank drain lines above seasonal high ground-water levels where setback requirements along estuarine shorelines cannot be met. (The septic tank provision has been suspended for restudy in light of objections from sanitarians and developers.)

Local planning activities

In the years before CAMA was enacted, local land-use planning activity was scattered and often lacked continuity in the coastal counties—as in much of the relatively undeveloped areas of the state. Some of the larger cities and counties—such as Wilmington/New Hanover—had strong established programs, and important initiatives were under way in some smaller counties such as Currituck, but these efforts were not typical of the region. A number of cities and counties lacked regular planning boards, land-use plans, and implementing regulations.

One major objective of CAMA was to strengthen the local planning programs of the coastal area. It appears that substantial and tangible progress has been made in this direction under CAMA.

A land classification plan, approved by the Coastal Resources Commission, has been adopted for each of the 20 counties in the coastal area and for 32 cities and towns.[6] Each of these local governments has a functioning planning board.

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2. N.C. Gen. Stat. § 113A-104.
3. N.C. Gen. Stat. §§ 113A-104, -105.
4. N.C. Gen. Stat. § 113A-125; 1975 N.C. Sess. Laws Ch. 452.
5. The New AEC and Land Use Planning Guidelines are summarized in the April-May 1979 edition of the *News of the North Carolina Coastal Management Program* 2, no. 8 (N.C. Department of Natural Resources and Community Development).
6. Carteret County's plan was adopted for the county by the Coastal Resources Commission. All of the other units adopted their own plans.

Planning staffs have been added or expanded in a number of places. Among the 12 counties in the coastal area with planning staffs, seven staffs are new since CAMA, and four staffs started with CAMA funds. Among the 11 municipalities with planning staffs, nine staffs are new since CAMA, and three staffs started with CAMA funds.

Nineteen of the 20 counties and 25 municipalities have elected to issue CAMA minor development permits and assume other CAMA implementation and enforcement responsibilities of local governments.[7] No hard data are available concerning the impact of CAMA on purely local land-use control functions, such as zoning, subdivision regulations, and building inspection, but most observers agree that these activities have been stimulated by CAMA.

It is too early to tell how many of the new local land-use planning programs in the coastal area could survive if the federal and state incentives that accompanied CAMA were withdrawn. Certainly major credit for CAMA's successes in stimulating local planning must be shared with the 80 per cent federal grants-in-aid for coastal management programs. But this much is clear: The counties, cities, and towns of the coastal area have grasped firmly the planning opportunities offered by CAMA, and the CAMA objective of strengthening local planning programs is very much on target. Notably, this has been accomplished with a minimum of local-state friction or disagreement. Only once did the CRC find it necessary to exercise its statutory option of adopting a land-classification plan for a county that did not adopt its own plan.[8] The success of CAMA's local planning aspect has helped earn for North Carolina a national reputation for productive state-local collaboration in coastal management.

CAMA Amendments, 1975-79: including permit coordination

In 1975, a "stretch-out" of the CAMA compliance schedule was enacted to allow local and state agencies extra time to comply with various deadlines in the act. The extensions ranged from an additional six months for completion of county plans to an additional 17 months for completion of the act's new permit system. The expiration date of the act itself was extended from June 30, 1981, to June 30, 1983.[9]

The 1975 legislature also saw an effort to extend the concepts of CAMA to western North Carolina by means of a mountain area management bill.[10] Strong opposition to the bill surfaced early and (together with funding problems) discouraged its sponsors from pushing the bill. The mountain management proposal has not been revived since 1975 and shows no current signs of life.

In 1977, a more modest proposal for statewide application of only the land classification elements of CAMA failed for lack of strong support and adequate financing.[11] Opposition of organized rural interests was instrumental in blunting the prospects of this proposal, which was a product of three years' deliberations by the Land Policy Council. Two other proposals relating to CAMA that also failed in 1977 were a bill to repeal CAMA[12] and a bill embodying CRC proposals to update CAMA in light of the first three years of administrative experience.[13]

In 1979, for the first time since CAMA's enactment, some important bills were passed to coordinate and simplify state administration of CAMA. Four new laws honor CAMA's early promise of permit simplification:

(1) Chapter 253 made the CRC rather than the Marine Fisheries Commission the agency responsible for issuing dredge and fill permits and coastal wetlands orders, thereby bringing these regulatory responsibilities under the same administration as the CAMA permits. This law also made it possible for the CRC to delegate to the Department of NRCD its authority to issue CAMA permits, subject to appeal to the CRC, thus eliminating the need for full Commission hearings on all permits.

(2) Chapter 141 repealed the sand dune protection law (G.S. Ch. 104B), thereby eliminating a permit that overlapped CAMA permits for developments affecting dune areas.

(3) Chapter 299 terminated CRC review of two pesticide permits that are issued by the Pesticide Board.

(4) Chapter 414 relieved riparian owners of land along navigable waters from the red tape of obtaining an easement-to-fill from the Department of Administration in order to reclaim lands that were lost by natural causes, substituting a much simpler written permission procedure.

In other progress on permit reform, five application forms covering federal and state permits have been merged into one form. And a first step was recently taken toward eliminating federal-state permit duplication when the Army Corps of Engineers proposed to delegate to the CRC the administration of its Section 404 "general permits" in ocean beach areas.

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7. Gates County has asked the Coastal Resources Commission to issue its permits. (There has not yet been any permitting activity in Gates.)

8. The exception is Carteret County. Some progress has been made toward restoring local initiative in Carteret; this county has requested a grant in order to develop its own implementation and enforcement program.

9. 1975 N.C. Sess. Laws, Ch. 454.

10. 1975 N.C. Gen. Assem., S 467, H 569.

11. 1977 N.C. Gen. Assem., S 565, H 980.

12. 1977 N.C. Gen. Assem., S 339, H 662.

13. 1977 N.C. Gen. Assem., H 1117.

Court decisions

Litigation under CAMA. In 1978 CAMA met and passed its first and only judicial test to date. Affirming a superior court ruling, the North Carolina Supreme Court upheld the constitutionality of CAMA against the claims of several coastal landowners in *Adams v. Department of Natural and Economic Resources.*[14] The Court resolved three major issues in favor of CAMA and dismissed two other challenges on procedural grounds.

Plaintiffs' first claim was that CAMA is a local act prohibited by Article II of the State Constitution because the legislation arbitrarily distinguishes between the coast and the remainder of the state. The Court, however, found that CAMA does not constitute local legislation prohibited under the Constitution, since it is reasonably adapted to the special needs of the coastal region and does not exclude from its coverage areas that clearly should have been covered.[15]

The Court next rejected plaintiff's argument that CAMA delegated legislative authority to the Coastal Resources Commission to adopt guidelines for the coastal area without providing sufficient guidance to govern the exercise of that authority. It held that the goals, policies, and criteria outlined in the statute provide CRC with adequate legislative parameters. Furthermore, the Court said, the authority vested in the agencies is subject to procedural safeguards, including the requirement that administrative guidelines be reviewed by the public, the legislature, the Attorney General, and the Administrative Rules Committee.[16] "We thus join the growing trend of authority," the Court observed, "which recognizes that the presence or absence of procedural safeguards is relevant to the broader question of whether a delegation of authority is accompanied by adequate guiding standards."[17]

The Court also summarily rejected plaintiffs' contention that the state planning guidelines adopted by the CRC exceeded the authority granted by the act.[18]

Finally, the Court rejected as premature, and therefore nonjusticiable, plaintiffs' claims that CAMA authorized unconstitutional warrantless searches and regulatory takings.[19] The reasoning concerning each of these points was similar: that plaintiffs had not been subjected to actual searches nor actually been denied a development permit, nor even had occasion to seek a permit, a variance, or an exemption. The Court also pointed out that CAMA does provide that an applicant who is appealing a denial of a development permit may also litigate the question whether denial of the permit constitutes a taking without just compensation. [G.S. 113A-123(b)]. If such a denial "deprives the owner of the practical uses" of the property, the state must buy the property from the owner for its reasonable value or modify its orders or regulations so as eliminate the objectionable provisions. The questions of what is a "practical use" and when is a property owner deprived of *all* practical uses of his land are likely to arise in future CAMA litigation. Indeed, in January 1980 five variance petitions from Onslow and Dare counties that raised the takings issue were denied by the Commission; these denials may be appealed.[20]

Litigation in other states. Decisions outside of North Carolina show that the courts of other jurisdictions are confronting similar issues under their coastal management laws. Though it is too early to identify clear decisional directions, these decisions show the beginnings of trends on takings questions and on other issues that are likely to confront the courts in North Carolina and other coastal states.

In *Tom's River Affiliates v. Department of Environmental Protection* (1976), New Jersey's highest court reached conclusions consistent with North Carolina's on the equal protection and delegation issues that were decided in *Adams.*[21] In that case the New Jersey court also decided on the merits that denial of a development permit did not constitute a regulatory taking if reasonable development alternatives were available to the landowner. A similar result was reached by the Washington State Supreme Court in *Department of Ecology v. Pacesetter Construction Company*, sustaining an injunction against construction of a shoreline-front house in violation of setback and height limitations established under the Washington Shoreline Management Act.[22] In reaching this decision, the Washington Court applied a balancing test to reject an argument that the regulations amounted to a "taking."

In *Crosskey Waterways v. Askew* Florida invalidated its Environmental and Water Mangement Act for failure to provide adequate standards for the exercise of delegated powers.[23] It is difficult to say whether this decision is consistent with the North Carolina and New Jersey positions on the delegation issue. The Florida statutory standards arguably were less precise than North Carolina's but not very different from New Jersey's.

In the first of what may be many decisions on federal consistency issues, a federal district court in California rejected an oil industry challenge to federal approval of

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11. 295 N.C. 683, 279 S.E.2d 402 (1978).
15. 295 N.C. 683, 696.
16. *Id.* at 696-702.
17. *Id.* at 698.
18. *Id.* at 705-6.
19. *Id.* at 702-5.
20. Petitions of Ben Wood (Kittyhawk, CRC #93) and Allen Clayman (Seahaven Beach, CRC #94). These variance petitions were presented after minor permits for developing eroded, substandard lots were denied by local permit officers.
21. 355 A.2d 679 (N.J. 1976).
22. 571 P.2d 196 (Wash. 1977).
23. 351 So. 2d 1062 (Fla. 1977).

California's coastal management plan in *American Petroleum Institute v. Knecht*.[24] The API had claimed that California's plan did not adequately accommodate the national interest in energy-facility siting.

THE NATIONAL SETTING

The Coastal Zone Management Act of 1972

In October 1972 Congress passed the Coastal Zone Management Act (CZMA) of 1972. This act encourages coastal states (including the Great Lakes states) to regulate coastal land and water use by authorizing grants to states and requiring that federal actions in coastal areas be consistent with approved state programs.[25] First it authorized "grants-in-aid to coastal states to develop coastal zone management programs. It also authorizes grants to help coastal states implement these management programs once approved. . . ."[26] The grants program is up for congressional reauthorization in 1980.

Unlike many federal environmental laws, this act does not accompany grants-in-aid with the threat of federal regulatory action if states fail to act. Rather, it is a pure incentive measure that seeks simply to encourage competent and effective state programs.[27] It allows states the flexibility to choose among several administrative patterns in qualifying for federal grants, either singly or in combination:

(a) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(b) Direct state land and water use planning and regulations; or

(c) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances. . . , with power to approve or disapprove after public notice and an opportunity for hearings.[28]

North Carolina, after considering a direct state control program in 1973,[29] enacted a mixed state-local program that emphasized maximum local involvement and qualified for federal approval under the combination option of the federal law.[30]

An important incentive to the states, in addition to the grants-in-aid, is the consistency provisions of Section 306 of the federal act.[31] Section 306(c) requires that "each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practical, consistent with approved state management programs."[32] It also requires that "any federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practical, consistent with approved state management programs."[33] Realistically, one can hardly expect the federal bureaucracy automatically to adapt all of its programs in the coastal zone to approved state management plans, and this is reflected in the qualifying phrase of Section 307 that federal activities be consistent with state plans "to the maximum extent practical." Nonetheless, the promise of the federal consistency clause to bring some order out of the welter of overlapping permits and to give states some meaningful say concerning federal projects was one key selling point for state coastal management legislation.

1976 amendments: offshore oil

Because the 1972 act predated the "energy crisis," it did not reflect the national policy of energy self-sufficiency in the United States, which depends in large part on expanded oil production from the nation's outer continental shelf (OCS). Congress believed that federal plans for expanded OCS oil and gas production could be disrupted unless coastal states and coastal communities were assured of a way to cope with the impact of pipelines and refineries along their shores, as well as the secondary impact of having to provide the public services and facilities needed as a result of the consequent population increase.[34] For this reason, a number of amendments were passed in 1976 to encourage expanded oil and natural gas production on the OCS by providing financial assistance to meet state and local needs resulting from energy activity in the coastal zone.[35]

One amendment created the Coastal Energy Impact Program, which provides for loans and grants to the states for communities adversely affected by energy development.[36] It greatly expands the 1972 act, which offered the states federal funds only for development and implementation of programs, by providing the cost of expanded public facilities and services as well. Thus,

24. 356 F. Supp. 889 (C.D. Calif. 1978).
25. P.L. 92-583, 16 U.S.C. §§ 1451 *et seq.*
26. U.S. Code Cong. & Ad. News (1972), p. 4776.
27. *Id.*
28. 16 U.S.C. § 1455(e).
29. 1973 N.C. Gen. Assem., 1st Sess. S 614; H 949.
30. Heath, *op. cit supra* note 1, at 351; 53 N.C.L. Rev. 345, 351 (1974).
31. 16 U.S.C. § 1456.
32. 16 U.S.C. § 1456(c)(i).
33. 16 U.S.C. § 1456(c)(ii).
34. H.R. Rep. No. 24-1298, 94th Cong. 2d Sess. 23 (1976).
35. 16 U.S.C. §§ 1451 *et seq.*
36. Section 308 of the act as now amended, 16 U.S.C. § 1457.

the expanded funding mechanism offers financial incentives to the coastal states to facilitate OCS oil and gas production off their shores.

Another feature of the 1976 amendments relates the OCS provisions to the consistency provisions in Section 307 of the act.[37] The new language provides that once a state's management program has been approved, no federal license or permit may be granted in that state for any activity leased under the Outer Continental Shelf Lands Act unless the state concurs in the applicant's certification that all activities comply with the state's management program.[38] However, consistency with state programs can be set aside under the act when there is an overriding national interest.

The amendments also clarify the original procedure under the act for resolving federal-state disagreements by directing the Secretary of Commerce to conduct public hearings in the concerned local area. They also authorize coastal states to form interstate compacts for coordinated coastal zone management and require that states plan for the protection of public beaches as a condition of federal approval.

Program results[39]

A federal Office of Coastal Zone Management was established as part of the National Oceanic and Atmospheric Administration in 1973, and it awarded its first grants to states to develop coastal management programs in 1974. Funding under Section 306 of the act authorizes federal grants to states; the grants cover up to 80 per cent of the operating cost of their approved management programs.[40] In the past three years a third of the eligible coastal states and territories have received federal approval for the implementation of their management programs (including North Carolina, which was the first southern state to receive full federal approval of its programs).

Since the first program development grant was awarded in 1974, all 35 eligible coastal states and territories have received federal funding to help develop state coastal management programs that will meet the CZMA requirements for approval. Between 1974 and September 30, 1978, $64.5 million was granted for this purpose. During this period of basic program planning and development, the nature of the work undertaken by states has varied considerably. In some states, legislative authorization was necessary before coastal management planning activities could begin. In other states, management programs already existed, and the national program merely implemented state work that was already under way. Despite this lack of uniformity, one can say with certainty that the first major phase of the national program—program development in coastal states—had been completed when Section 305 funding under CZMA expired at the end of September 1979.[41] Accordingly, the second and most important phase of coastal management—putting state programs into operation—is now under way.

Efforts undertaken during the program development stage have tended to focus primarily on laying the institutional basis for carrying out the program once approved. This tells us very little about the quality of coastal management in the states. But one can look at state program responses to federal guidelines for some indication about the measure of CZMA's success in its early development.

Thirty-one of the 35 eligible states and territories either have new wetlands statutes and regulations or have improved implementation of existing ones. Most of these states have comprehensive statutes that require a permit for any development that would alter a tidal wetland. In eight states, new wetlands legislation was enacted in direct response to the act's requirements. Most states' wetlands statutes include, as a consideration before a permit is issued, the effect of a proposed alteration on habitat value. Beyond this, 20 states include special protection measures in their programs that deal with endangered flora or fauna.

Twenty-six states are dealing with the need to protect their beaches and primary dunes. Ten states already require, and two are proposing to require, a permit before any construction can begin on a beach. Two states incorporate existing acts that control sand-dune mining, and two states (including North Carolina) use a form of critical-area designation to protect their beaches and dunes.

Twenty states address the potential for loss of life and property from inappropriate development in erosion-prone areas, and four other states are developing such programs. Of these states, 11 go beyond the Federal Flood Insurance Administration's minimum requirements to control development in floodplains or storm-surge areas through setback requirements, stipulations on permissible uses, and mandatory construction techniques.

One particularly important aspect of coastal development management is what states are doing with respect to energy facilities siting. Sixteen states have measures regulating offshore sand and gravel mining and or oil extraction, and three states are proposing such measures. Twelve states have expedited permit-processing

(continued on page 44)

37. 16 U.S.C. § 1456.

38. 16 U.S.C. § 1456(c)(4).

39. The information contained in this section is derived from a report by the U.S. Office of Coastal Zone Management, *The First Five Years of Coastal Zone Management, an Initial Assessment*, (Washington: GPO, 1979).

40. 16 U.S.C. § 1455(a).

41. 16 U.S.C. § 1454(i).

An Issue for the State and Local Governments

Group Homes for the Mentally Handicapped

H. Rutherford Turnbull, III

THE CURRENT TREND toward treating and housing mentally handicapped adults and children in communities rather than in large psychiatric hospitals or mental retardation centers is raising challenging issues that concern both the state and local governments. This article will discuss some of these considerations and suggest ways that accommodations can be made to the interests of handicapped people, the state, and the localities.

For the purposes of this article, a group home (sometimes called a "community living facility" or "family care home") is one that houses unrelated mentally handicapped people (mentally ill, mentally retarded, epileptic, autistic, or cerebral-palsied people) and functions in the same way as the house of a "normal" family. It has "parents" (houseparents), and its residents and parents share home-related activities and responsibilities.

Like "normal" homes, its essential purpose is to provide a residence for a small number of people (usually not more than eight) who, like nonhandicapped people, attend schools, work, or receive treatment in the community while living in the group home. A group home is not a clinic where treatment is the principal or essential service provided to mentally handicapped people. On the other hand, treatment regimens sometimes are incorporated into the daily routine of handicapped people wherever they may live—with their families, in institutions, or in group homes; it is therefore not unusual for a group home's resident, like a handicapped person who lives with his biological family, to have a daily treatment regimen that is carried out in his residence, the group home. But the treatment usually is incidental to the group home's real purpose, which is to provide community-based, noninstitutional residences.

It is important to define "mentally handicapped" persons in the context of this article because there are important distinctions concerning mentally handicapped people that the general public unfortunately does not make—nor does it have any reason to do so. Yet failing to make distinctions can contribute to the myths and fears that underlie opposition to group homes.

Mental retardation often is confused with mental illness, whereas in fact the two are quite different. Mental retardation is characterized by subnormal intelligence and inability to adapt to various situations in the way that nonretarded people do. Mental illness, on the other hand, reduces a person's capacity to exercise self-control, judgment, and discretion in his business and social relations to such an extent that he should have treatment, care, supervision, guidance, or control. A person can be both mentally ill and mentally retarded. Also, autistic, epileptic, and cerebral-palsied people can have ordinary or even extraordinary intelligence; likewise, they can be mentally retarded or mentally ill, or both.

Most group homes in North Carolina house mentally retarded or mentally ill people separately; some of them house epileptic or cerebral-palsied people who are neither mentally retarded nor mentally ill. But no group homes house mentally disabled people who have been found to be dangerous to others. Such people usually are confined to state psychiatric hospitals; they also do not meet group homes' admission standards. Moreover, group homes for mentally ill or mentally retarded people do not serve drug or alcohol addicts. Nor do they function as nursing homes for aged or physically handicapped people or as residences for juvenile or adult offenders. And, as pointed out earlier, treatment and habilitation for mentally disabled people in group homes is incidental to the homes' primary purpose of providing community residences.

These distinctions are important because they may allow state and local governments to treat group homes for mentally ill and mentally retarded citizens differently from group homes for involuntarily committed mentally ill or

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The author is an Institute of Government faculty member whose fields include mental health law. This article is taken from a longer work that is fully footnoted. That publication is available for $2.00 plus 3 per cent sales tax (4 per cent in Orange County). Please address your order to the Publications Department, Institute of Government, P.O. Box 990, Chapel Hill, N.C. 27514.

mentally retarded people, alcohol or drug addicts, or convicts, and differently from institutions for the aged or physically infirm.

Group homes—an intergovernmental challenge

By now it is conventional wisdom that the location of group homes is a matter that concerns only local governments. Like much other conventional wisdom about mentally handicapped people, this view is false. The location of group homes is a matter that affects the state government as well as counties and cities.

Local governments do have an interest in the siting of group homes. First, they zone residences of all types for reasons of public health, safety, morals, or general welfare. In addition, through zoning local governments may promote a certain style of living by controlling population density, automobile traffic, noise, air quality, structural density, amount of open space, and aesthetics. A particular lifestyle may indeed—but need not—be compromised by the presence of a group home; inevitably, certain people in the community may fear such a result.

Furthermore, communities that accept group homes are tied symbiotically to communities that do not accept them. The accepting communities become magnets for group homes; the rejecting communities thereby can avoid these homes. Statewide, the effect is to create clusters of group homes.

As group homes tend to concentrate in certain cities or counties, those localities begin to experience an unusual effect—they become "institutionally impacted." At least five counties are already institutionally impacted because they are the sites of the state's psychiatric hospitals and mental retardation centers—Burke, Granville, Lenoir, Wake, and Wayne. The effect soon will be felt also in Wilson County because of the transfer of patients from Dorothea Dix Hospital (Wake County) and Murdoch Center (Granville County) to a treatment facility in Wilson. But these counties and others can become further institutionally impacted if they become the magnet counties for group homes.

While being an institutionally impacted county or city is not altogether deplorable (institutions and community-based residences and service agencies do employ many people and create other economic benefits), it is not a wholly desirable condition. The institutionally impacted county typically experiences an unusual demand for governmental services: for judicial services because of the number of lawsuits affecting mentally handicapped people that can be filed in the county (such as adjudications of incompetency and the appointment of guardians, or involuntary commitment, or for involuntary sterilization); for public health, mental health, social services, and educational services; and for such incidental needs as police and fire protection, voter registration, and other voting services. These additional demands may or may not outweigh the economic benefits of having the institutions or group homes in the county; service-agency representatives typically address only the demand for the services, not the economic benefits.

Finally, local governments are concerned with the location of group homes because some of their citizens may want to reside in such a home. Also, some of their citizens may properly assert a legal claim against area mental health authorities for community-based programs, including residential services.

Most group homes in North Carolina house mentally retarded or mentally ill people separately. . . . But no group homes house mentally disabled people who have been found to be dangerous to others.

At the same time, the state also has a vital interest in the location of group homes. The state licenses group homes. It funds area mental health authorities, which in turn may use state funds (or combined state-local-federal funds) to establish group homes. It operates four regional psychiatric hospitals and four regional mental retardation centers; each has the job of providing inpatient care and (when appropriate) outpatient services, including residential services. The state also funds community-based treatment and educational programs for local citizens, thus linking services to residence. Generally speaking, the cost of community-based residential placement (including room, board, and staff costs) is lower than the cost of institutional placement.

Moreover, the state's laws obligate it to the use of community-based services, including residential services. Thus the judge who presides over an involuntary commitment hearing must determine whether commitment to a program less restrictive than a state psychiatric hospital is appropriate and available. The statute regulating the admission of children to state psychiatric hospitals requires the judge to determine that a placement less restrictive than a psychiatric hospital is insufficient to meet the child's need. State law empowers the local social services agencies to provide protective services to abused, neglected, or exploited mentally handicapped adults and children. Guardians of adults adjudicated incompetent must prefer community-based treatment and residential services over institutional services. The statutes further provide that state and local governments may not discriminate in housing against mentally handicapped adults and children, and area mental health authorities must have plans for using state, regional, and area (i.e., local) facilities and resources to provide mental health services to the citizens in that area. The effect of these laws is to create a dual system of treatment and care—one based in the community and one based in the regional hospitals and centers. The community system requires community-based residences—including group homes, natural or foster families, and nursing homes—and community-based psychiatric hospitals or units.

Community-based residences

Evidence of the dual system is abundant. Mentally retarded citizens, for example, are served locally in a variety of ways; many of the services are jointly funded and supervised and administered by federal, state, and county governments and thus indicate the intergovernmental nature of the problem of siting group homes. Seventy adult development centers (essentially, centers for training and noncompetitive

employment) serve 2,800 clients, but another 600 prospective clients are unserved. Thirty-seven adult retarded citizens live in supervised apartment residences, but another 193 could profit from such an arrangement if the services were available. Eight group homes serve 40 children, but another 130 children are on waiting lists for such residences (11 more such residences are being planned in the Department of Human Resources' [DHR] Division of Mental Health, Mental Retardation, and Substance Abuse Services). Seventy-six group homes serve approximately 400 adults, but 875 more adults who need such facilities are now unserved. The Western Carolina Center in Morganton has created a satellite program to serve retarded adults and children who need institutional care; when fully operating, the satellite will serve 120 retarded persons in community-based centers, but another 600 people will still need the services. Although two state mental retardation centers are fully accredited (Western Carolina Center and O'Berry Center in Goldsboro), two others are not (Murdoch Center in Butner and Caswell Center in Lenoir). When these two become accredited, they will discharge approximately 600 residents into community-based programs because accreditation will require them to reduce their resident populations. Finally, the Division is moving slowly toward a single system of continuous care, combining institutional and community-based treatment and residential services. Among other things, the Division's plan calls for smaller, more specialized institutions; for the institutions to carry out community-based treatment; and for the establishment of additional group homes and community-based services.

Retarded adults also will benefit from a federal grant to the North Carolina Association for Retarded Citizens to establish new group homes. The Association has received a $7.9 million grant from the Department of Housing and Urban Development to create 52 group homes (five residents per home) and four intermediate care facilities ("mini-institutions" that house up to fifteen people). Although the federal government will pay for the land-acquisition and operating costs of these group homes, the state may decide to contribute funds to hire managers for them. Group home projects are under way in 23 counties; 14 projects already have received federal approval, while land is now being acquired for another nine. Fifteen more group homes are planned for some of these 23 counties and for five other counties. Some counties will have more than one group home.

The prospect for community residences for mentally ill citizens is far less promising. North Carolina has only 31 group homes for emotionally disturbed children; all are funded in part by the Division for Mental Health. No group homes for mentally ill adults receive state funding, and there are less than six privately funded homes for mentally ill people.

The need for group homes for mentally ill people becomes clear in light of the nature of the services being rendered by the state's four psychiatric hospitals. Inpatient treatment and community services are interrelated. The average population in the hospitals has declined dramatically in the last ten years, from 7,325 to 3,671. But the number of people served has not changed nearly as sharply, falling only from 22,802 to 18,749 in the ten years. These figures indicate that, while the hospitals still serve a large number of people, they are serving them for shorter periods of time. Accordingly, more mentally ill people are being served in the community; it can be assumed that some of them need residential services—such as group or foster homes—to complement their community-based treatments.

The change in the location of services is underscored by the growth in the number of people served by area (local) mental health programs. In 1962-63 (their first year) these programs served 9,658 people; in 1977-78 they served over 137,000. Those being served in the communities are less handicapped than those served in the hospitals. The trend suggests that the hospitals will become more specialized and the community services will expand.

Partially in response to these trends, the state has received Housing and Urban Development funds to develop community support programs for the mentally ill. Three such programs already have been approved—in Orange, Buncombe, and Johnston counties.

Although there apparently are no data that show the number of mentally ill people who need services but are unserved, every indication is that community-based services are growing rapidly and will continue to grow. It can be assumed that community services and community residences, including group homes or other nontraditional places, are interconnected; as community services grow, the need for community residences also grows.

By now it is conventional wisdom that the location of group homes is a matter that concerns only local governments. . . . The location of group homes is a matter that affects the state government as well as counties and cities.

The admission of a mentally retarded or mentally ill person into a group home results from a process involving the person; his family or guardians; the staff of the institution where he resides; the staff and directors of the group home; and representatives of local mental health, social services, and (in some cases) educational and rehabilitation agencies. The ultimate issue is always whether the group home will be a more appropriate place for him to reside—better for him in terms of his development and receipt of services—than his family's home, an institution, or some other placement (such as a nursing home or foster home). Thus there normally are as many assurances as possible that residence in a group home is appropriate for those who live in them; by the same token, lay and uninformed professional objections to the appropriateness or efficacy of the placement usually should be discounted.

Myths, community reactions, and realities

Notwithstanding the legal underpinnings for group homes and the progress made in North Carolina toward establishing them, these homes still face formidable obstacles. Some of these obstacles are purely legal in nature and are described by my earlier discussion of

group homes. Others result essentially from attitudes.

Community resistance is founded on at least three bases. First, residents of group homes, whether adults or children, are thought to be inherently dangerous to others. Some mentally handicapped people are indeed dangerous to others and have been or might be involuntarily committed because of their dangerousness. But there is substantial evidence that mentally *retarded* people are no more prone to criminal activity than nonhandicapped people and that, with proper supervision (such as is provided in group homes and in community-based employment, treatment, and education), they are less likely to become involved in the criminal justice process than nonhandicapped people.

The situation with respect to mentally *ill* people, however, is far more complicated. The only safe generalization is that there are no safe generalizations. There are, however, tentative conclusions that seem to be fairly well accepted by mental health professionals.

Data gathered before 1950 revealed that ex-mental patients had, if anything, lower crime rates than the population in general; and more recent data indicate that the incidence of violent or felonious acts apparently has no significant relationship to mental illness. Except for suicide, the rate of violent behavior by mentally ill people is no different from the violence rate for the general population. Nevertheless, discharged mental patients do have a higher arrest rate than nonhandicapped people. This fact is explained, however, not by the mental status of the people themselves but rather by independent phenomena. First, more hospitalized patients nowadays have prior criminal records than they did several years ago. This is so (1) because earlier public attitudes were such that mentally ill people who committed a crime were incarcerated in a correction facility rather than in a mental hospital; (2) because the involuntary commitment standards are more stringent now than formerly, with the result that the mentally ill person who is involuntarily committed is more certainly dangerous to himself and others than a person involuntarily committed at an earlier time might have been, and he is therefore at greater risk of subsequent dangerous behavior than his earlier counterpart; and (3) because involuntary commitments and voluntary admissions to psychiatric hospitals are of a far shorter duration than before, with the result that many more discharged patients are found in the community than previously.

Mentally ill people in group homes who are closely supervised and appropriately placed in day-time activities usually are less likely than mentally ill people in group homes who are not as well supervised to become implicated in the criminal justice system.

Finally, the nature of criminal behavior of mentally ill people varies widely—from relatively innocuous offenses such as loitering or not having any visible means of support to far more serious ones such as commission of felonies.

The fact that mentally handicapped people have been institutionalized in psychiatric hospitals or have come into contact with the criminal justice system thus is not a reliable basis for saying that mentally ill people are more prone to criminal behavior than "normal" people; the type of contact, the nature of the person who is involved (whether he previously has been involuntarily committed as dangerous to others or convicted of a crime), and the nature of the supervision in the group home are important factors in the determination of whether a resident of a group home is dangerous to others.

[The] state's laws obligate it to the use of community-based services, including residential services.

A second fear is that a group home will depress the value of neighboring properties. This fear has been shown to be baseless with respect to group homes for other mentally retarded or mentally ill people; no studies prove that group homes for the mentally retarded or mentally ill are solely responsible for depressing property values.

A third reason for opposition to group homes is that nonhandicapped people prefer not to associate with mentally disabled people or at least not with those who do not already live in the community as members of "normal" families. Since this reason is based on attitudes or prejudgments, not on "facts," it cannot be dispelled by trotting out evidence that proves the attitude or prejudice to be groundless; attitudes and prejudgments of course can be changed by facts showing that their fundamental assumptions are wrong, but opposition to group homes grounded on associational preferences is not itself answerable by "contrary evidence."

Accommodating local and state interests

North Carolina's state and local governments have not accommodated each others' interests in establishing group homes. In the last four years, two bills regulating local governments' ability to exclude group homes from residential zones have failed to pass the General Assembly.

In 1975, House Bill 277 declared that family-care or group homes that were licensed or certified by DHR and have fewer than nine residents are permitted uses in all residential zones, including single-family zones. It also prohibited any city or county from imposing greater restrictions on those homes than apply to similar dwellings in the same zones.

A committee substitute for H 277 defined a group home as a single-family residence group or family-care home that (a) is licensed by DHR, (b) has no more than eleven residents (including supervisory personnel) who have not been involuntarily committed, and (c) is operated for the purpose of 24-hour care or rehabilitation of mildly or moderately retarded, physically disabled, emotionally disturbed, dependent, neglected, abandoned, or orphaned people. Under the bill's terms a group home could not have been established for the care or rehabilitation of drug offenders, alcoholics, adult or youthful offenders, or juvenile delinquents who have committed crimes, and it could not have been a day-care or medical-treatment facility. A professional would have had to certify that each resident of the home should not be in an institution or a hospital. The home also would have had to be licensed by the Department of Insurance and to comply with the state's

building code; no local government would have been allowed to impose other fire or building code requirements. Finally, the committee's substitute provided that (a) city and county building codes and other ordinances "should not unreasonably obstruct" the creation and operation of group homes, and (b) each city and county should be prepared to "assume some responsibility" for such homes but no single city or county should bear a "disproportionate share" of such homes.

In 1979 Senate Bill 626 declared a public policy of providing handicapped people an opportunity to live in "a normal residential environment." It defined handicapped people as those with physical, emotional, or mental disabilities (mental retardation, epilepsy, cerebral palsy, autism, or emotional disturbance) and defined a group home as one that has supervisory personnel and provides room, board, personal care, habilitation, and services in a family environment for not more than six handicapped residents. It declared group homes to be residential uses of property for zoning purposes and to be permitted uses in all zoned areas. It prohibited cities or counties from requiring a group home to obtain a conditional-use permit, a special-use permit, a special exception, or a variance from a zoning ordinance and plan. It allowed a city or county to prohibit group homes from being closer than a quarter-mile from one another. Finally, it declared void any restrictive covenants in subdivision plans or deeds.

These bills were similar in many ways to legislation passed in other states and proposed "model legislation." For example, they contained a statement of policy; they defined a group home; they specified the size of the "family"; they defined the types of handicapped people eligible to live in a group home; they required state licensure; they overrode local zoning and building codes; they made marginal efforts at controlling density within a community; and they declared restrictive covenants void. Similar provisions are essential in future bills to overcome local legal objections to group homes.

Perhaps the reason that the bills failed is not that they were thoughtful attempts to dissipate the legal grounds for local opposition to group homes. Nor did they fail solely because they preempted local governments' autonomy in land-use matters. Rather, they may have failed because of a conceptual flaw. They rested on the premise that local governments' opposition is ill founded and simply should not be a consideration in siting group homes. For example, they sought to override local zoning and code regulations; they paid too little heed to the local density-control issue; the later bill did not explicitly exclude patently dangerous people from its benefits, and neither bill addressed the institutional-impact issue adequately.

In fact, local governments' opposition, though it may be grounded on unjustified fears and stereotypic myths about mentally handicapped people, also is based in part on legitimate considerations having to do with local autonomy in land-use regulation and institutional impact.

But the issue is not whether state interest or local government interest alone should prevail. The real issue is how to accommodate the two so that the community-based residence can be available to those who need and want it.

Perhaps an accommodation can be reached by adding to the North Carolina pre-emption bills some provisions found in other states' laws or created primarily for use in this state. Thus legislation might address only the need for group homes for nondangerous mentally retarded or mentally ill people; in its definition of a group home, it would exclude drug addicts, alcoholics, juvenile or adult offenders, the physically ill, the aged, or involuntarily committed handicapped people as residents. Such a narrowly tailored definition might reduce community fears and undercut local opposition to associating with such people and to laws that benefit them. Likewise, treatment facilities such as hospitals, nursing homes, or clinics—even those that have 24-hour patients—could be excluded on the ground that they are not family-like residences. Such a provision might mollify those who do not want to risk changing the nature of traditional residential neighborhoods.

The size of group homes could be made decisive for some zoning purposes. Thus relatively small group homes (for example, those with a maximum of six to eight residents, including supervisory staff) could be declared permitted uses (uses by right) in single-family zones. Larger group homes (for example, those with between eight and sixteen residents, including supervisory staff) could be declared permitted as a matter of right only in multifamily zones but could be allowed by special- or conditional-use permits in single-family zones. Finally, large group homes (for example, more than sixteen residents, including supervisory staff) could be permitted as a matter of right in commercial zones but only as a special or conditional use in multifamily zones and never in single-family zones. By making the size of the group home a determining factor, the legislation might be consistent with, rather than contrary to, zoning schemes that attempt to segregate various uses from each other according to the size or type of dwelling.

The need for group homes for mentally ill people becomes clear in light of the nature of the services being rendered by the state's four psychiatric hospitals: Inpatient treatment and community services are interrelated.

The term "group home" probably should include such terms as "community living facility," "family care home," and the like. Although the function of such homes is generally the same (so that they justifiably can be defined alike), city and county land-use codes and regulations contain a variety of definitions that simply confuse people who are trying to interpret and comply with them.

It seems appropriate for the legislation to provide that a local community may not exclude a group home solely on the grounds that it will be occupied by mentally handicapped people. It also might be appropriate for state law to place a condition on state financial aid for housing or public works—a condition that would require local land-use codes and regulations to be free of provisions that have the intent or effect of discriminating in housing against mentally handicapped people solely because they are handicapped.

The legislation also might deal with the density issue by setting standards that control density. The standards could be based on any number of factors, including the proximity of one group home to another (a quarter-mile or 1,500 feet apart, for example), the percentage of the city's or county's population constituted by residents of group homes (total combined occupancy may not exceed *x* number of people or *x* per cent of the city's or county's population, whichever is greater), the size of the group homes, the availability of community services, the number and size of existing group homes in the city or county, or the percentage of residential land already occupied by group homes (state law might require a maximum set-aside of, say, 10 per cent). Density-control provisions in state law tend to serve various purposes and effects. First, they attempt to assure residents of hospitable or accommodating local governments that the locality will not become unduly impacted by group homes. As a result, density-control provisions also tend to require group homes to be dispersed into communities that might not be so accepting of them, thereby distributing the benefits and perceived burdens of group homes over a broader, more statewide basis.

The legislation could assure community and local government participation in decisions about siting group homes by requiring operators of group homes to file a notice with the appropriate city or county government that they propose to operate a home and by allowing that government or local residents to file an objection to the planned group home with the state licensing agency or some other state executive agency. The objection would be limited to the home's prospective violation of state or local standards. The licensing agency would have to determine whether the home would violate these standards; if it found that a violation would be likely, it would have to deny the license. Its decision would be appealable to the courts. Failure to object within a specified period of time would constitute a bar to objections until the group home was in operation; at that point, objections to actual violations could be filed.

Although the community-objection procedure contemplates state licensure, the legislation could permit state and local governments to license jointly or permit local governments to set their own licensure standards. Local licensure standards, however, would have to apply equally to all residences in the zone so that group homes will not be subject to higher local standards than typical single-family or multi-family dwellings within the zone; or they would have to be justified and thus permitted by the state agency on the basis that extraordinary local conditions of health and safety require local standards to exceed state ones.

Finally the General Assembly might revise state funding for area mental health programs to take into account the impact of group homes on local governments. The Mental Health Study Commission is reviewing the formula by which the legislature allocates state aid for local mental health programs. The Commission will probably propose a change in the formula, and there seems to be little reason, in light of the "institutional impact" problem, why the formula could not take into account the number, size, and resident population of group homes in mental health catchment areas. Such a formula might fairly answer complaints about impact and not have the undesirable effect of inducing local governments to accept a disproportionate share of group homes simply in order to draw state dollars.

But the issue is not whether state interest or local government interest alone should prevail. The real issue is how to accommodate the two so that the community-based residence can be available to those who need and want it.

While the attempt to resolve the conflict between state and local interests in siting group homes has taken the posture of state pre-emption of local control over land use, there are other ways to resolve the conflict. One might be for the legislature explicitly to grant the power of eminent domain to the DHR or the State Department of Administration so that sites for group homes could be obtained by condemnation rather than by gift or purchase.

Another might be for the legislature to direct affected state and local government agencies to establish standards for zoning and licensure of group homes jointly and then to apply those standards through relatively less coercive means.

One way of applying the standards less drastically is for the General Assembly to grant DHR the power to review and comment on local zoning ordinances with respect to the effect on siting of group homes. That power falls short of the type of coercion that exists in state pre-emption or eminent domain statutes and assumes that the publicity that attends adverse comments would influence local officials.

The power to comment might be made more powerful if local governments' power to enact zoning ordinances affecting group homes—after receiving adverse comment by the state agency—were conditioned on publication of a written justification for disregarding the comment. This procedure would bring more pressure to bear on local governments to conform to the state agency's recommendations but still would allow local governments to deviate from those recommendations whenever they could demonstrate legitimate reasons for doing so. Although these pressures are subtle (perhaps so subtle that they will be ineffective), requiring local governments to submit written reasons might reduce arbitrary decisions by requiring these governments to state their reasons in terms acceptable to their constituents, other local governments (particularly the ones that accommodate group homes), the state agency, and the consumers of mental health services.

Another device might be to forbid a local governing board from enacting exclusionary zoning except by vote of an extraordinary majority (for example, two-thirds) if the state agency has commented adversely on the proposed ordinance. The matter might even be required to be submitted to a vote of the electorate.

Finally, state technical assistance might be made available to assist local

governments in decisions about sites for group homes. Also, if a local government still refused to accept group homes, the state agency might be empowered to withhold a portion of the mental health funds that it otherwise would allocate to the area mental health authority that serves that local government. Withholding state aid, however, may penalize not only the consumers of mental health services of the particular county but also the citizens of other counties in the same mental health area. Instead of withholding aid, then, the agency might be empowered to increase mental health aid to the area mental health programs that serve the accommodating local government and require that the bonus be spent primarily for the advantage of the accommodating governments.

Conclusion

The group home movement is here to stay in North Carolina. That is not to say, however, that it has been dealt with effectively or thoughtfully enough. Despite the substantial merit of the 1975 and 1979 bills, the problem of siting these homes has not yet been addressed jointly by the people and the governments affected by it. Thus no substantial joint effort has been made by state executive agencies, by representatives of local governments, or by special state-local groups (such as the Implementation Task Force of the 1979 Governor's Conference on Mental Health or the Mental Health Study Commission) to fashion a remedy to the legal and governmental problems that arise from the sitings of group homes. Nor have data been collected in North Carolina that dispel or confirm the fears that mentally handicapped people have criminal propensities (especially those who live in group homes and other community-based programs) or that a group home will adversely affect the value of neighboring property.

Myopic views of the group home movement—that group homes are a purely local or purely state concern—may prevent joint problem-solving efforts and data collection. If so, it will fall to the courts, which have been inclined to overrule legal objections to group homes for the mentally handicapped, to continue making decisons about important human, legal, and governmental issues. That may or may not be a satisfactory decison-making method, but surely it need not be the only one. □

(continued from page 37)

CAMA: A Progress Report

procedures, advance site designations, advance purchase programs, or state override of local regulation of energy facilities in the coastal zone. North Carolina's AEC procedure permits designating appropriate sites for industrial use, including energy facilities.

A LOOK TO THE FUTURE: PENDING STUDIES OF CAMA

As 1980 begins, three studies lie ahead that will significantly shape CAMA's future. The Secretary of Natural Resources and Community Development will be making a study designed to gauge the impact of regulation under CAMA and the Dredge and Fill Law on land use and land values of private lands subject to such regulation.[42] He is directed to report to the 1980 legislative session (which will convene in May of this year) on (1) inequities or unfairness to landowners that has resulted from CAMA regulation, and (2) funding that would be needed to compensate landowners adequately for their losses as a result of such regulation. In essence this report will set the stage for a legislative review of the "takings" issue in light of early CAMA experience.

A second study calls for the North Carolina Marine Science Council to examine (1) the problems and concerns of coastal erosion, (2) the building of structures along or near beaches, (3) current or past programs that deal with these issues and with assistance in navigation maintenance and beach erosion control.[43] The Council is to make recommendations to the General Assembly on an appropriate erosion policy, on the feasibility of further beach development, and on the financing of proposed programs. An interim report is to be made to the 1980 legislative session and a final report to the 1981 General Assembly.

Finally, the evaluation of the CAMA program under the North Carolina Sunset Law is scheduled for the 1981-83 fiscal biennium. If CAMA passes the acid test of sunset review, we may look forward to another five-year progress review in 1985; if not, CAMA will expire by the terms of the Sunset Law on July 1, 1983.[44] □

42. 1979 N.C. Gen. Assem., Res. 33.

43. 1979 N.C. Sess. Laws, Ch. 1062.

44. N.C. Gen. Stat. § 143-34.13.

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