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<b>Resource Type:</b>	Regulations
<b>State:</b>	North Carolina
<b>Jurisdiction Type:</b>	State
<b>Municipality:</b>	N/A
<b>Year (adopted, written, etc.):</b>	2004
<b>Community Type – applicable to:</b>	Urban; Suburban; Rural
<b>Title:</b>	State of North Carolina Floodplain Protection Ordinances
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### ***Abstract***

Provisions regarding the authority of local governments to regulate use in floodplains are found in Part 6, Article 21, of Chapter 143. Under § 143-215.54, local governments are authorized to adopt ordinances to regulate uses in flood hazard areas and to grant permits for use in such areas. Flood hazard areas are defined at § 143-252(1d) as areas that local government has determined that development must be regulated in order to prevent flood damage. Base floodplains, defined at § 143-252(1b) as areas subject to a 1% or greater chance of flooding in a given year, must be designated as flood hazard areas. § 143-215.52(1d). A local government may show designated flood hazard areas by map, drawing, written description, or by reference to a National Flood Insurance Program map. § 143-215.56(c)

Any floodplain ordinance the local government adopts must, at a minimum, meet the requirements for participation in the National Floodplain Insurance Program; prohibit new facilities for solid waste disposal, hazardous waste management, chemical storage, and salvage yards (except as provided by § 143-251.54A(b)); and require that any chemical or fuel tank located in a 100-year floodplain be elevated above base flood elevation or designed to meet certain criteria as watertight. § 143-215.54A(a).

Section 143-215.57(c) authorizes local governments to develop their own procedures for issuing permits. In considering whether to issue a permit for use in a floodplain, a local government may take into account the impact the proposed obstruction may have on future and existing development. § 143-215.57(a). The local government must take into account the danger the proposed structure may cause by backing up or diverting water, by being swept downstream, and the “injury or damage at the site of the obstruction itself.” § 143-215.57(a).

Finally, under § 143-215.55, local governments have the power to acquire by purchase, exchange, or condemnation any property that it believes necessary in order to prevent flood damage.

## ***Resource***

### § 143-215.54. Regulation of flood hazard areas; prohibited uses

(a) A local government may adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas that are consistent with the requirements of this Part.

(b) The following uses may be made of flood hazard areas without a permit issued under this Part, provided that these uses comply with local land-use ordinances and any other applicable laws or regulations:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;

(2) Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.

(5) Land application of waste at agronomic rates consistent with a permit issued under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or an approved animal waste management plan.

(6) Land application of septage consistent with a permit issued under G.S. 130A-291.1.

(c) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under G.S. 143-215.54A(b).

### § 143-215.52. Definitions

(a) As used in this Part:

(1) "Artificial obstruction" means any obstruction to the flow of water in a stream that is not a natural obstruction, including any that, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the

stream.

(1a) "Base flood" or "100-year flood" means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year. The term "base flood" is used in the National Flood Insurance Program to indicate the minimum level of flooding to be addressed by a community in its floodplain management regulations.

(1b) "Base floodplain" or "100-year floodplain" means that area subject to a one percent (1%) or greater chance of flooding in any given year, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program or approved by the Department.

(1c) "Department" means the Department of Crime Control and Public Safety.

(1d) "Flood hazard area" means the area designated by a local government, pursuant to this Part, as an area where development must be regulated to prevent damage from flooding. The flood hazard area must include and may exceed the base floodplain.

(2) Repealed by Session Laws 2000, c. 150, s. 1, effective August 2, 2000.

(3) "Local government" means any county or city, as defined in G.S. 160A-1.

(3a) "Lowest floor", when used in reference to a structure, means the lowest enclosed area, including a basement, of the structure. An unfinished or flood resistant enclosed area, other than a basement, that is usable solely for parking vehicles, building access, or storage is not a lowest floor.

(4) "Natural obstruction" includes any rock, tree, gravel, or other natural matter that is an obstruction and has been located within the 100-year floodplain by a nonhuman cause.

(4b) "Secretary" means the Secretary of Crime Control and Public Safety.

(5) "Stream" means a watercourse that collects surface runoff from an area of one square mile or greater.

(6) "Structure" means a walled or roofed building, including a mobile home and a gas or liquid storage tank.

(b) As used in this Part, the terms "artificial obstruction" and "structure" do not include any of the following:

(1) An electric generation, distribution, or transmission facility.

(2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility.

(3) A water treatment or distribution facility, including a pump station.

(4) A wastewater collection or treatment facility, including a lift station.

(5) Processing equipment used in connection with a mining operation.

§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of Department; powers of local governments and of the Department

(a) For the purpose of delineating a flood hazard area and evaluating the possibility of flood damages, a local government may:

(1) Request technical assistance from the competent State and federal agencies, including the Army Corps of Engineers, the Natural Resources Conservation Service, the Tennessee Valley Authority, the Federal Emergency Management Agency, the North Carolina Department of Crime Control and Public Safety, the North Carolina Geodetic Survey, the North Carolina Geological Survey, and the U.S. Geological Survey, or successor agencies.

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department shall provide advice and assistance to any local government having responsibilities under this Part. In exercising this function the Department may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any other advice and assistance that the Department deems appropriate. The Department shall send a copy of every rule adopted to implement this Part to the governing body of each local government in the State.

(c) A local government may delineate any flood hazard area subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. A local government may also delineate a flood hazard area by reference to a map prepared pursuant to the National Flood Insurance Program. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to the appropriate map, drawing, or description. Entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of the map, drawing, or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government may provide for the redrawing of any map. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) The Department may prepare a floodplain map that identifies the 100-year floodplain and base flood elevations for an area for the purposes of this Part if all of the following conditions apply:

(1) The 100-year floodplain and base flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.

(2) The Department determines that the 100-year floodplain and the base flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part in order to prevent damage from flooding.

(3) The Department prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.

(e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the Department shall advise each local government whose jurisdiction includes a portion of the area to be mapped.

(f) Upon completing a floodplain map pursuant to subsection (d) of this section, the Department shall both:

(1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.

(2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.

(g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section by the Federal Emergency Management Agency for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance.

§ 143-215.54A. Minimum standards for ordinances; variances for prohibited uses

(a) A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:

(1) Meet the requirements for participation in the National Flood Insurance Program and of this section.

(2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this section.

(3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(b) A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under G.S. 143-215.54(c). A county or city shall notify the Secretary of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:

(1) The use serves a critical need in the community.

(2) No feasible location exists for the location of the use outside the 100-year floodplain.

(3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(4) The use complies with all other applicable laws and regulations.

#### § 143-215.57. Procedures in issuing permits

(a) A local government may establish application forms and require maps, plans, and other information necessary for the issuance of permits in a manner consonant with the objectives of this Part. For this purpose a local government may take into account anticipated development in the foreseeable future that may be adversely affected by the obstruction, as well as existing development. They shall consider the effects of a proposed artificial obstruction in a stream in creating danger to life and property by:

(1) Water that may be backed up or diverted by the obstruction.

(2) The danger that the obstruction will be swept downstream to the injury of others.

(3) The injury or damage at the site of the obstruction itself.

(b) In prescribing standards and requirements for the issuance of permits under this Part and in issuing permits, local governments shall proceed as in the case of an ordinance for the better government of the county or city as the case may be. A city may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county that is outside the zoning jurisdiction of a city in the county. If a city does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the county may exercise the powers granted in this Part

in the city's extraterritorial zoning jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose governing body, by resolution, agrees to the regulation. The governing body of a city may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the city's jurisdiction.

(c) The local governing body is hereby empowered to adopt regulations it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. These regulations may provide for the issuance of permits under this Part by the local governing body or by an agency designated by the local governing body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part.

#### § 143-215.55. Acquisition of existing structures

A local government may acquire, by purchase, exchange, or condemnation an existing structure located in a flood hazard area in the area regulated by the local government if the local government determines that the acquisition is necessary to prevent damage from flooding. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Article 3 of Chapter 40A of the General Statutes.