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**§ 104-6. Acquisition of lands for river and harbor improvement; reservation of right to serve process.** — The consent of the legislature of the State is hereby given to the acquisition by the United States of any tracts, pieces, or parcels of land within the limits of the State, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the improvement of rivers and harbors within and on the borders of the State. The consent hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided; and this State retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this section, so far as that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired, or the buildings or structures thereon erected. (1907, c. 681; C. S., s. 8058.)

**§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.** — The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (1907, c. 25; C. S., s. 8059.)

**Cross Reference.** — See note to § 104-1.

**Editor's Note.** — As to note on jurisdiction relative to lands acquired by federal government, see 23 N.C.L. Rev. 258. For case law survey on jurisdiction over federal enclave, see 41 N.C.L. Rev. 451 (1963).

**Necessity for Acceptance of Jurisdiction by United States.** — This section cedes exclusive

jurisdiction to the United States over the land acquired, but this section and the State of North Carolina cannot compel the United States to accept such jurisdiction over an area. *State v. Burell*, 256 N.C. 288, 123 S.E.2d 795, cert. denied, 370 U.S. 961, 82 S. Ct. 1621, 8 L. Ed. 2d 827 (1962).

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So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (1907, c. 25; C. S., s. 8059.)

**Cross Reference.** — See note to § 104-1.

**Editor's Note.** — As to note on jurisdiction relative to lands acquired by federal government, see 23 N.C.L. Rev. 258. For case law survey on jurisdiction over federal enclave, see 41 N.C.L. Rev. 451 (1963).

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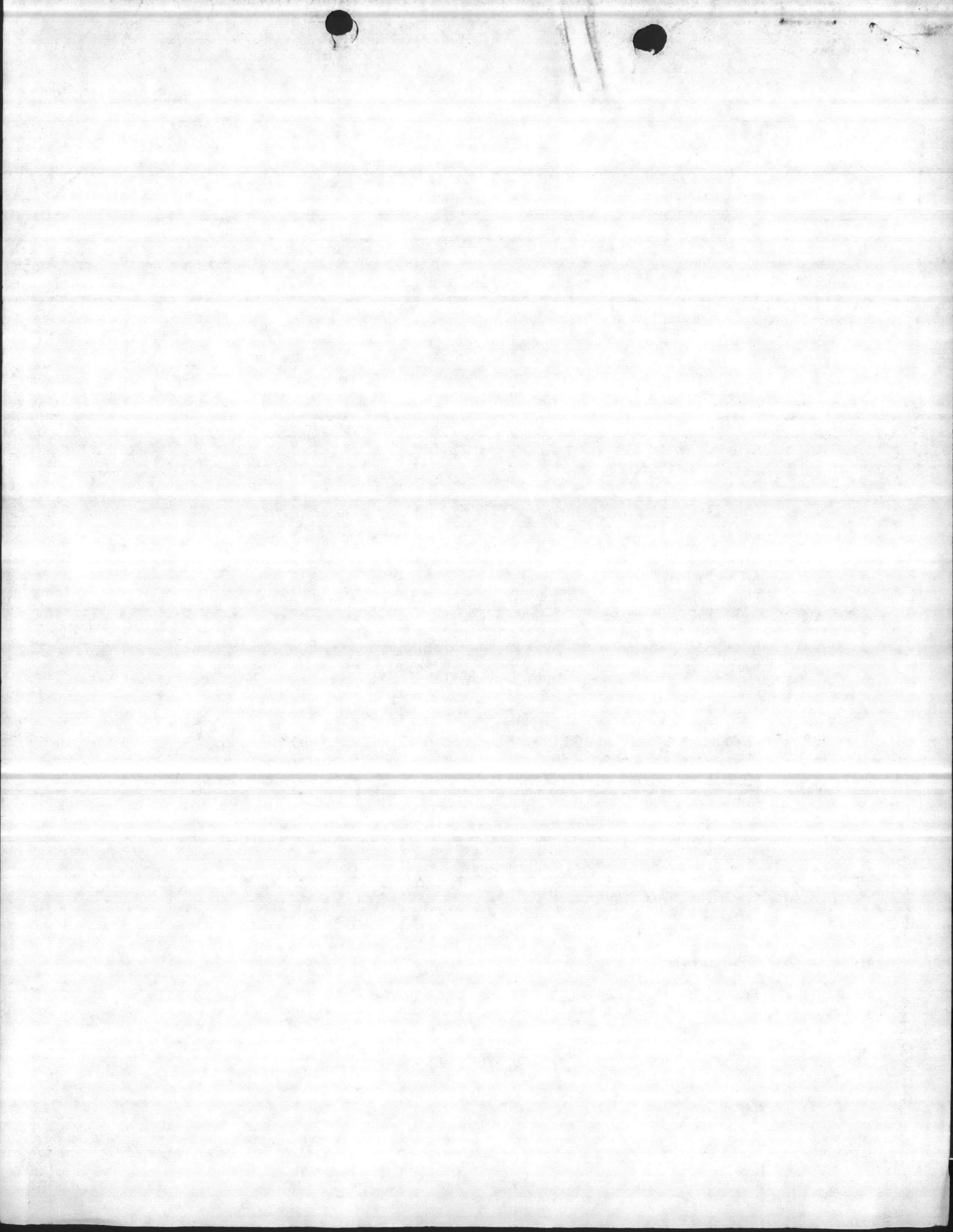
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accepted the exclusive jurisdiction over the area ceded by the section, this section is not applicable and the State retains its territorial jurisdiction over the area in question so far as its exercise involves no interference with the carrying out of the federal project, and the trial, conviction and judgment imposed upon a defendant by the State court for the felony of assault with intent to commit rape committed in the ceded area is no such interference. *State v. Burell*, 256 N.C. 288, 123 S.E.2d 795, cert. denied,

370 U.S. 961, 82 S. Ct. 1621, 8 L. Ed. 2d 827 (1962).

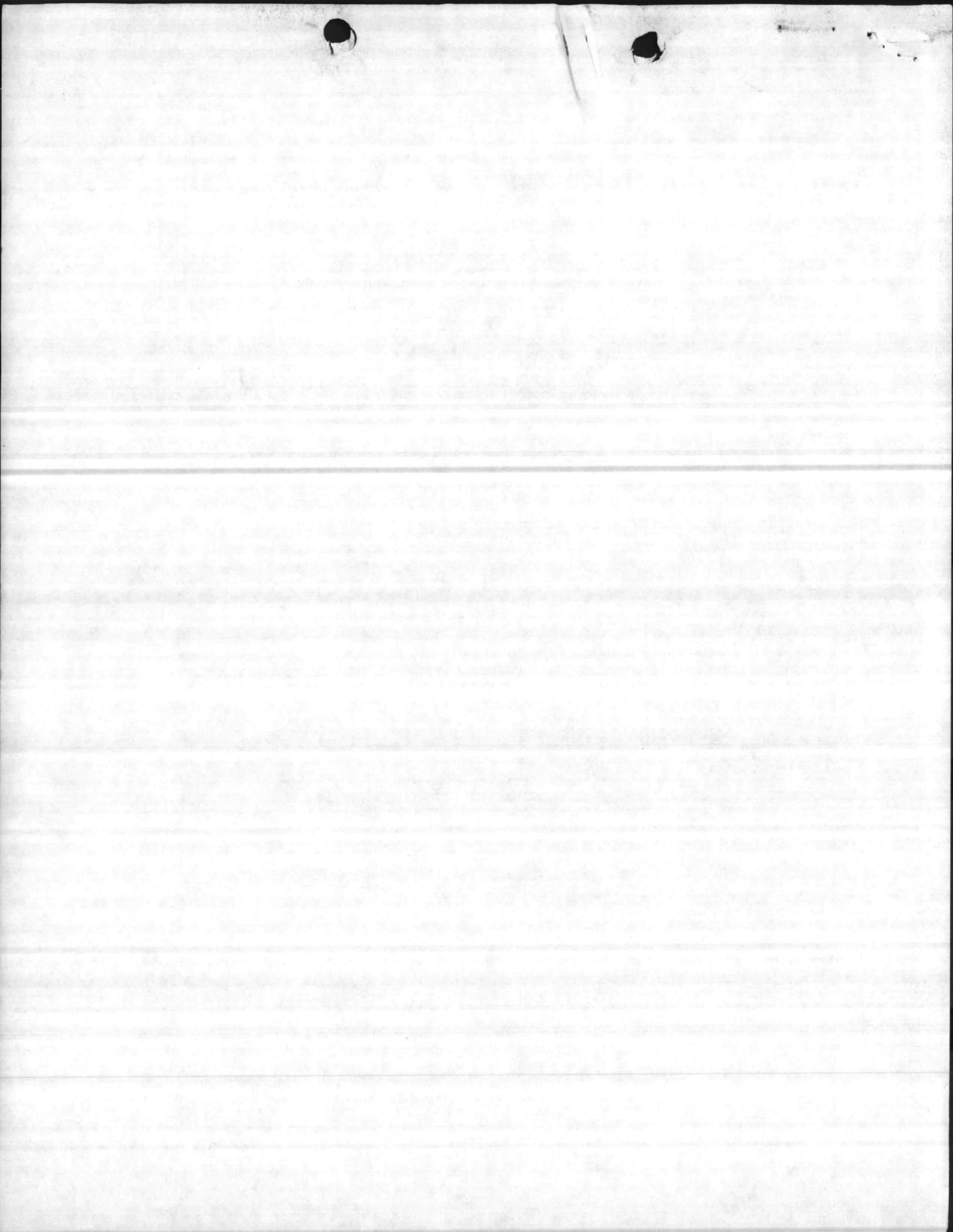
**Fixtures and improvements placed upon lands in a military reservation** leased from the federal government, as well as the value of the leasehold estate, are subject to taxation in this State, Congress having waived any immunity of such property from taxation. *Bragg Inv. Co. v. Cumberland County*, 245 N.C. 492, 96 S.E.2d 341 (1957).

**§ 104-8. Further authorization of acquisition of land.** — The United States is hereby authorized to acquire lands by condemnation or otherwise in this State for the purpose of preserving the navigability of navigable streams and for holding and administering such lands for national park purposes: Provided, that this section and G.S. 104-9 shall in nowise affect the authority conferred upon the United States and reserved to the State in G.S. 104-5 and 104-6. (1925, c. 152, s. 1.)

**§ 104-9. Condition of consent granted in preceding section.** — This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. (1925, c. 152, s. 2.)

**§ 104-10. Migratory bird sanctuaries or other wildlife refuges.** — The United States is authorized to acquire by purchase, or by condemnation with adequate compensation, such lands in North Carolina as in the opinion of the federal government may be needed for the establishment of one or more migratory bird sanctuaries or other wildlife refuges. This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime without or within said jurisdiction, may be executed therein in like manner as if this consent had not been given. Power is hereby conferred upon the Congress of the United States to pass such laws as it may deem necessary to the acquisition as hereinbefore provided, for incorporation in such sanctuaries or refuges such lands lying in North Carolina as in the opinion of the federal government may be suitable and needed for this purpose. Power is hereby conferred upon Congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor, as in its judgment may be necessary for the management, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this section. (1929, c. 163, s. 1.)

**§ 104-11. Utilities Commission to secure rights-of-way, etc., for waterway improvements by use of federal funds.** — Hereafter whenever any waterway improvement in North Carolina by the use of federal funds is provided for upon condition that the State or locality shall furnish rights-of-way, permits for the dumping of dredged material, or furnish or do any other thing in connection with the proposed waterway improvement, the Utilities Commission is authorized and empowered to represent the State or locality in such matter of securing the rights-of-way, permits for the dumping of dredged material, or other things so



### § 160A-44. Counties excepted from Part; Part 1 continued for such counties.

The provisions of this Part shall not apply to the following counties: Alleghany, Edgecombe, Halifax, Iredell, Nash, except for the towns of Nashville, Spring Hope, Castalia and Middlesex, Pender, Perquimans and Person, provided the provisions of this Part shall apply to the towns of Whitakers, Sharpsburg, and Battleboro in Edgecombe and Nash Counties. This Part shall not apply to the town of King in Stokes County, nor to the town of Pilot Mountain in Surry County. No territory located in Brunswick County may be annexed under the provisions of this Part. No territory in Pamlico County may be annexed under the provisions of this Part by any town or city with a population of 1,000 or less according to the most recent federal decennial census.

Notwithstanding any other provisions of this Part, Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of North Carolina and specifically G.S. 160A-31 as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 101, s. 12; 1961, c. 1081; 1965, cc. 782, 875; 1967, c. 156, s. 1; 1969, c. 438, s. 1; c. 1232; 1971, c. 28; 1973, c. 426, s. 74; 1975, c. 290, s. 1; 1977, c. 27, s. 1; c. 478, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 335, provides that the Town of Scotland Neck is authorized to annex property under the procedures of both Part 1 and Part 2 of this Article.

Session Laws 1973, c. 983, provides that all municipalities in Dare County are authorized to extend their corporate limits by any proce-

cedure contained in Part 1, Part 2 or Part 3 of this Article.

Session Laws 1975, c. 290, s. 3, provides that territory in Brunswick County may be annexed pursuant to the provisions of Chapter 160A, Article 4A, Part 1.

#### CASE NOTES

**Power to Authorize Alternative Procedures.** — The General Assembly has the authority to authorize the governing bodies of municipalities to annex territory upon meeting the requirements of Part 3 of this Article, which is equally applicable to annexation by a special act of the legislature. The only discretion given to the governing boards of such municipalities

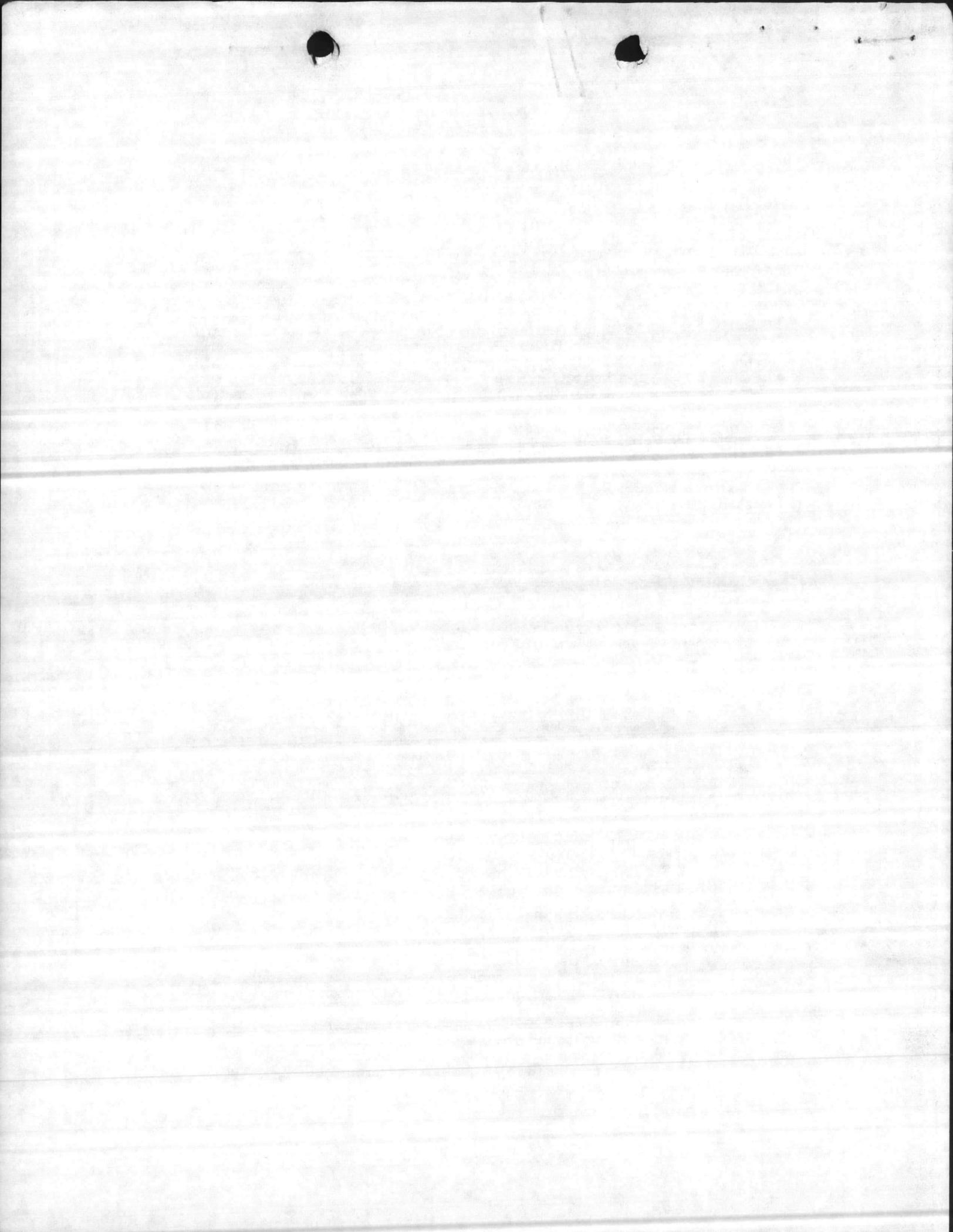
is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. *Plemmer v. Matthewson*, 281 N.C. 722, 190 S.E.2d 204 (1972).

### Part 3. Annexation by Cities of 5,000 or More.

#### § 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;



- (4) That new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1009, s. 1; 1973, c. 426, s. 74.)

**Editor's Note.** — Sections 160A-45 through 160A-56 were originally codified as §§ 160-453.13 through 160-453.24. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

**Legal Periodicals.** — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

CASE NOTES

**Annexation Procedure Constitutional.** — The procedure for annexation by cities of 5,000 or more, §§ 160A-45 through 160A-56, does not violate N.C. Const., Art. I, § 25, because it does not provide for trial by jury on issues of fact. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The procedure for annexation by cities of 5,000 or more does not authorize a taking of private property without just compensation in violation of the due process clause of the Fifth Amendment of the United States Constitution or the law of the land provision of N.C. Const., Art. I, § 19, on the alleged ground that petitioner will pay a substantial sum in ad valorem taxes to the annexing town without receiving any substantial benefits or major services he does not already receive, since petitioner may petition for a writ of mandamus pursuant to § 160A-49(h) if he discovers he is not receiving services other residents are receiving, within 12 to 15 months from the effective date of the annexation, and the annexation procedure thus provides adequate due process safeguards to assure that citizens in the annexed area get municipal services on a nondiscriminatory basis. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

**Rational Basis for Statutory Scheme.** — Given the State policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

**Prima facie complete and substantial compliance with this Part is a condition precedent to annexation of territory by a**

municipality. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

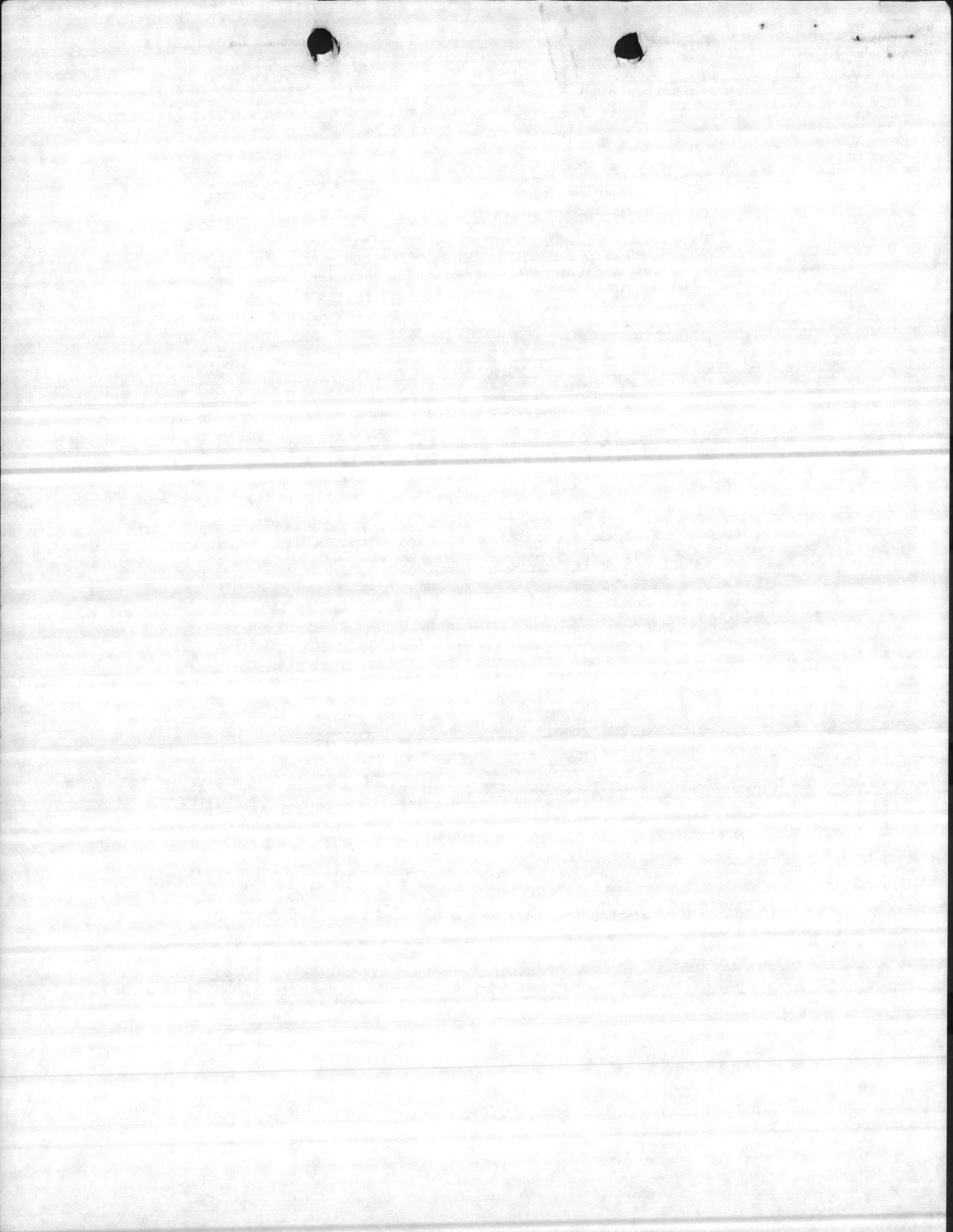
The provisions of this section are merely statements of policy. No procedural steps, substantive rights, or annexation requirements are contained in that statute. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

And the policies enumerated under this section are aids for statutory interpretation when other sections of Part 3 of this chapter are in need of clarification, definition, and interpretation. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

**Statement of Policy Not Part of § 160A-50 "Procedure."** — The statement of State policy with regard to annexation set forth in this section is not part of the "procedure" of annexation under § 160A-50. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

**Reports' Statement of Policy Objectives Held Sufficient.** — A statement in an annexation plan report that the annexation was designed to promote sound urban development and assure adequate provision of government services was a sufficient statement of the policy objectives to be met by the annexation to comply with this section. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Applied in *In re Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979); *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).



§§ 160A-43, 160A-44: Repealed by Session Laws 1983, c. 636, s. 27, effective June 29, 1983.

**Editor's Note.** — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Section 160A-44 was amended by Session Laws 1983, c. 351, § 5, effective May 23, 1983.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-47(3). (1959, c. 1009, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 9.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Local Modification.** — (As to Part 3) Durham and Wake: 1985, c. 435, s. 2; town of Dobbins Heights: 1983, c. 658.

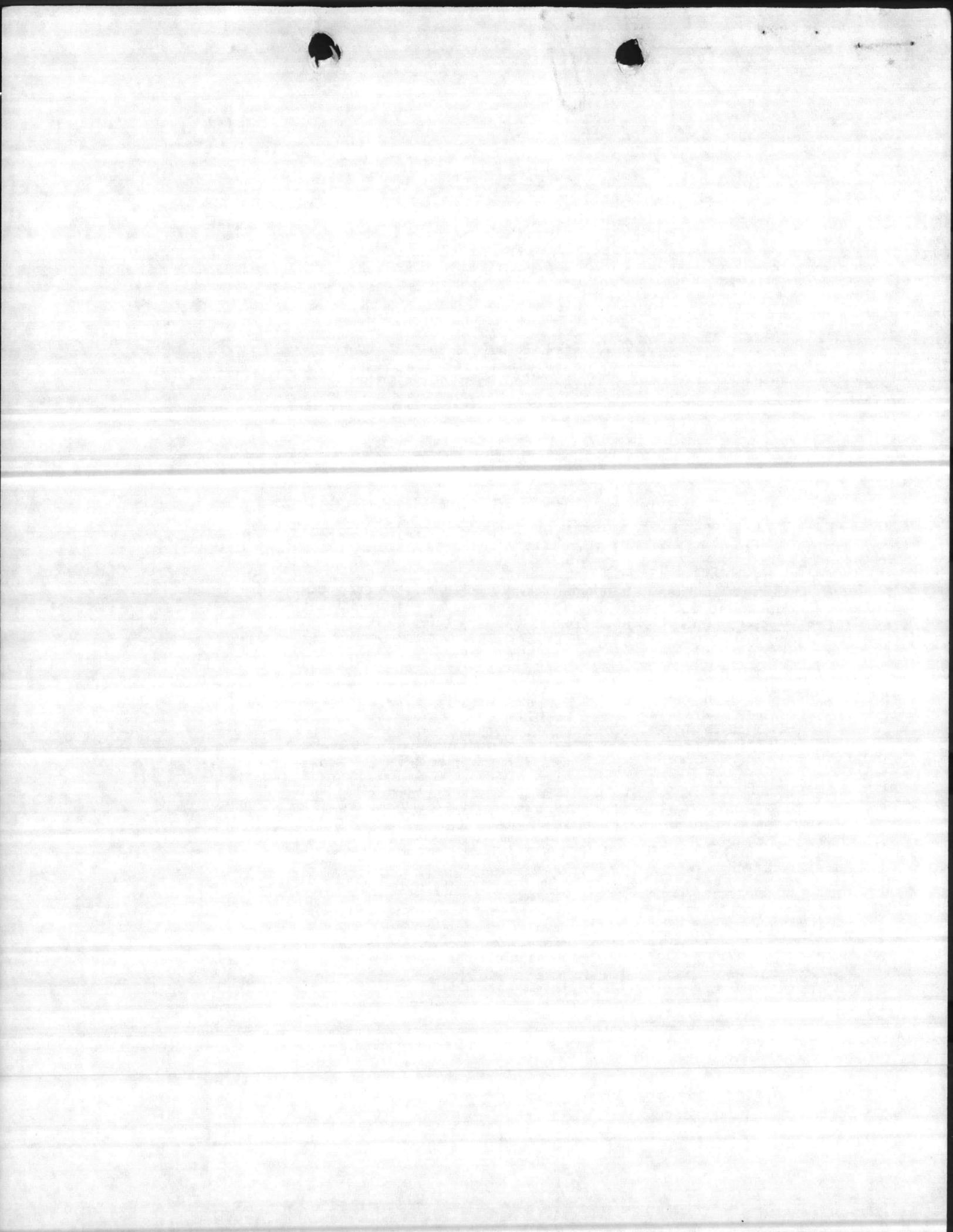
**Editor's Note.** —

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The act was ratified June 29, 1983.

**Effect of Amendments.** — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted "in accordance with G.S. 160A-47(3)" for "as soon as possible following annexation" at the end of subdivision (5).



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Quoted in In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

Stated in In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 269 S.E.2d 142 (1980).

Cited in Kritzer v. Town of S. Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977); In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981).

**§ 160A-46. Authority to annex.**

The governing board of any municipality having a population of 5,000 or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part. (1959, c. 1009, s. 2; 1973, c. 426, s. 74.)

**CASE NOTES**

This section is constitutional. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

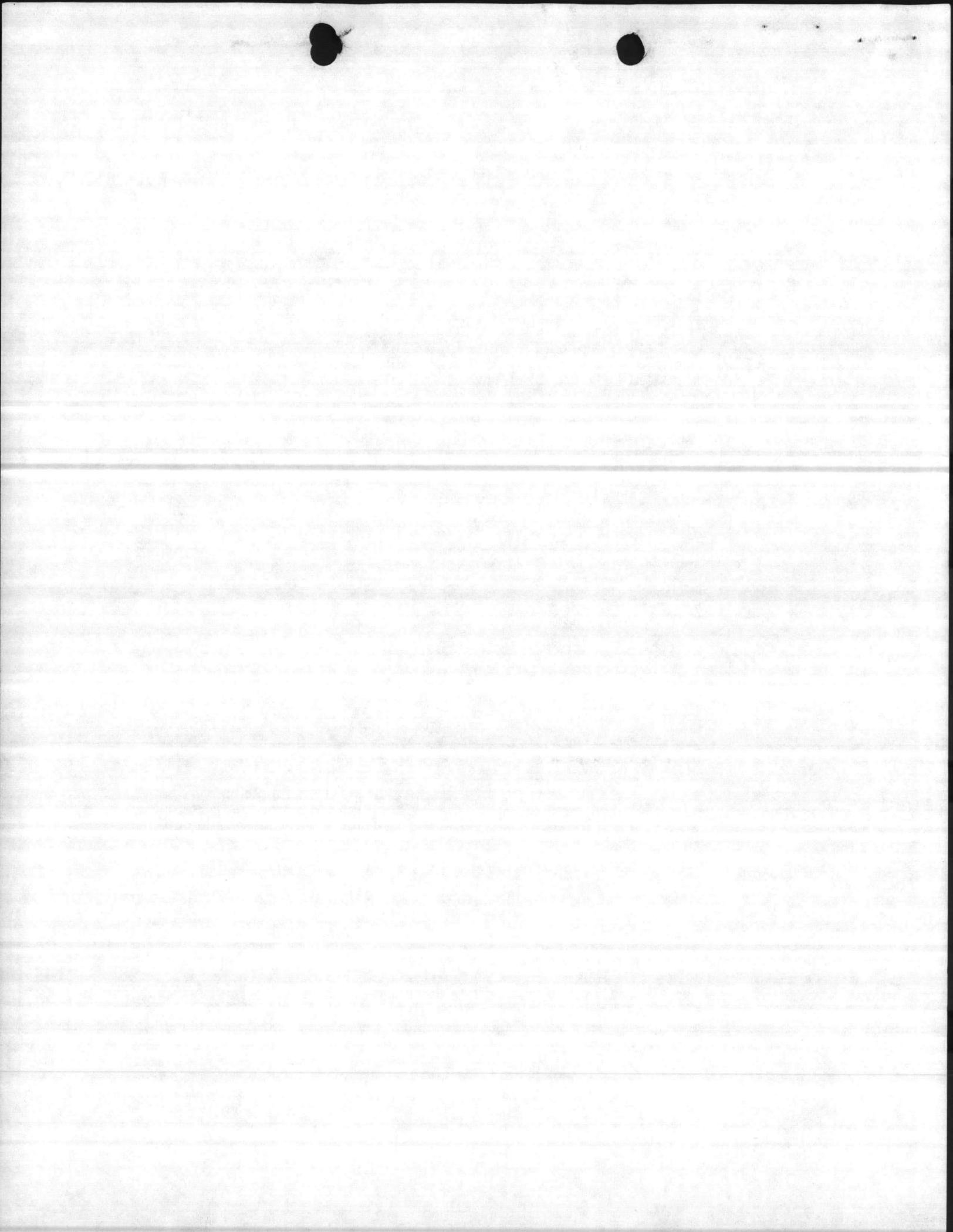
Right to Use New Annexation Method as Only Discretion Delegated to Municipalities. — By the enactment of Part 3 of this Article, the General Assembly did not delegate to the municipalities of the State having a population of 5,000 or more any discretion with respect to the provisions of the law. The guiding

standards and requirements of the act are set out in great detail. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

**§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.**

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
  - a. The present and proposed boundaries of the municipality.
  - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section.
  - c. The general land use pattern in the area to be annexed.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
  - a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines.



the proceeding. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

**Judicial Review.** — The General Assembly has provided for limited judicial review of annexation ordinances. Section 160A-50 provides that a property owner in the annexed area may seek judicial review of the ordinance. Upon such review, the superior court may consider only whether (1) the statutory procedure was

not followed, or (2) the provisions of § 160A-47 were not met, or (3) the provisions of § 160A-48 have not been met. Additionally, petitioner must carry the burden of showing both non-compliance with statutory requirements and procedure and material injury flowing from such noncompliance. *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Applied in *In re Annexation Ordinance No. 1219*, 62 N.C. App. 588, 303 S.E.2d 380 (1983).

### § 160A-46. Authority to annex.

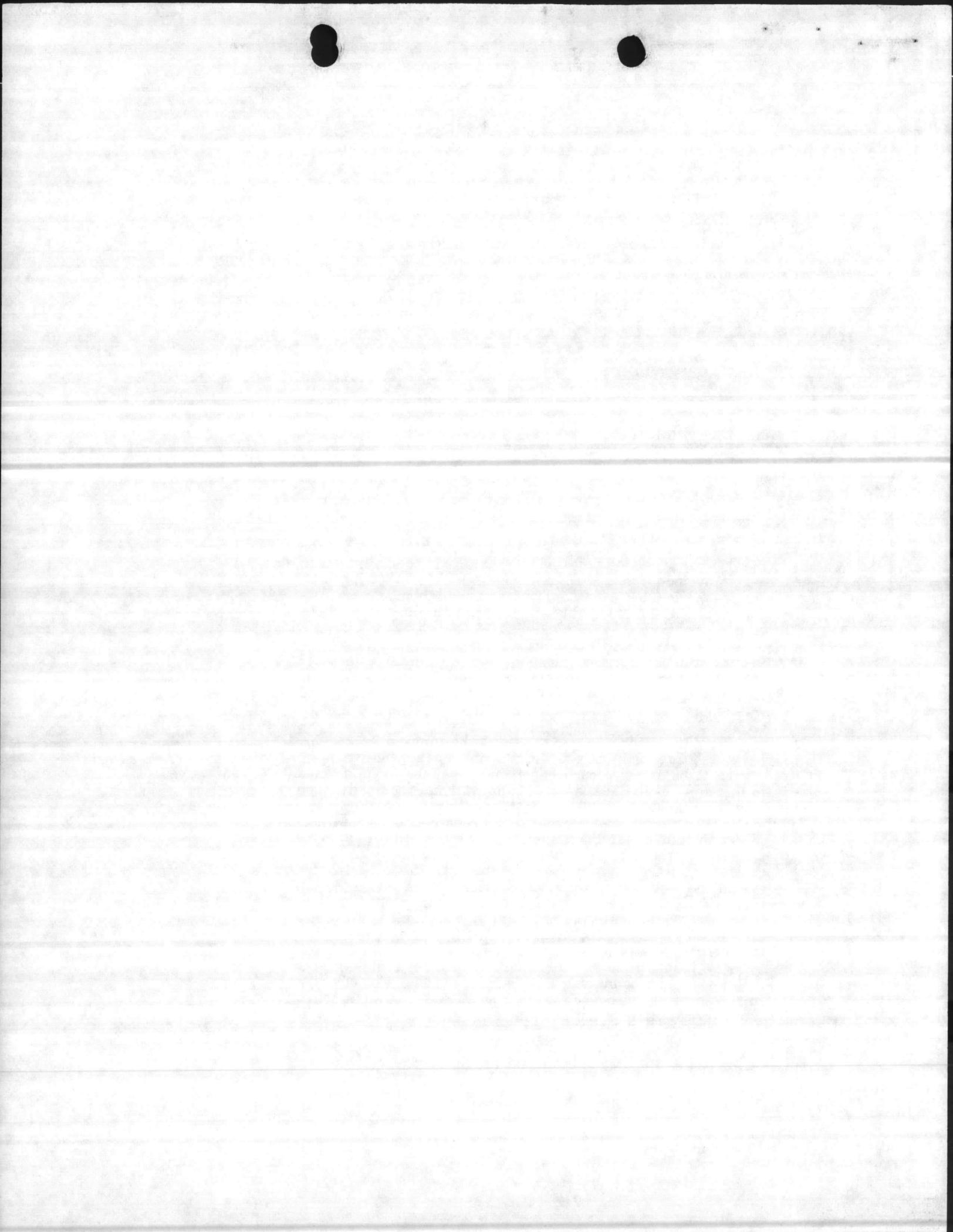
#### CASE NOTES

Cited in *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129 (1983); In re *City of Durham Annexation Ordinance Numbered 5991 for Area A*, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

### § 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
  - a. The present and proposed boundaries of the municipality.
  - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
  - c. The general land use pattern in the area to be annexed.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
  - a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
  - b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are



constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.

- c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.
  - d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. (1959, c. 1009, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7, 10, 11, 17, 19; 1985, c. 610, ss. 2, 6, 7.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this

act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as

provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 2.

The act was ratified June 29, 1983.

Session Laws 1985, c. 610, s. 8, which amended this section, provides that the act applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, except that ss. 5 and 6 of the act are effective upon ratification (July 4, 1985).

**Effect of Amendments.** — The 1985 amendment, effective with respect to all annexations where resolutions of intent were adopted on or after June 29, 1983, added the second sentence of subdivision (1)b, inserted the present second sentence of subdivision (1)c, added the last two sentences of subdivision (3)b, rewrote subdivision (3)c, and added subdivision (4).

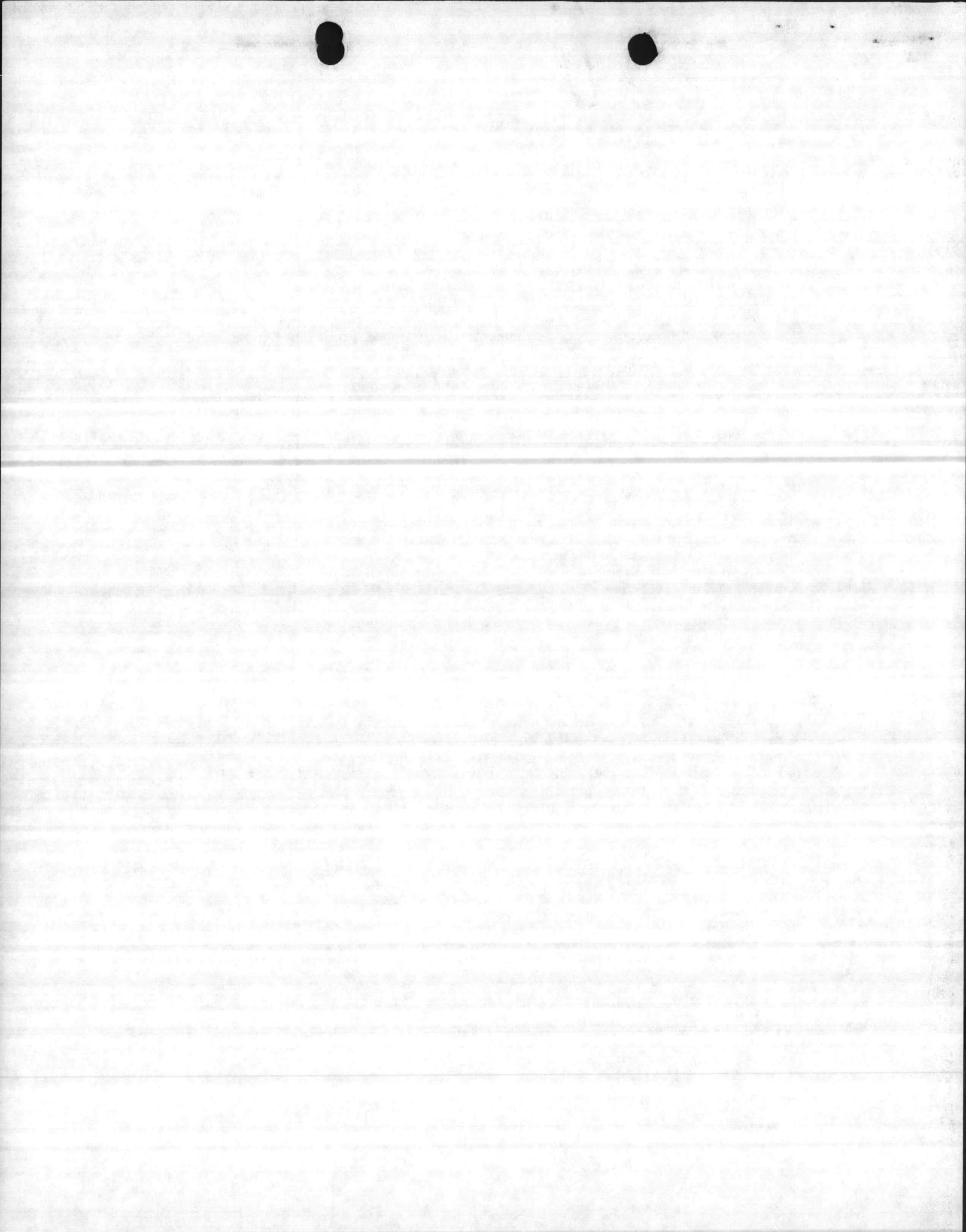
The annexation statutes are not tax statutes, nor are they retrospective tax statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

**Central purpose behind the annexation procedure** is to assure that, in return for the added financial burden of municipal taxes, the residents receive the benefits of all major services available to municipal residents. *Cockrell v. City of Raleigh*, 306 S.E.2d 479, 293 S.E.2d 770 (1982); *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 697 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984); *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

**This Article requires that services, et cetera, be provided by law to provide for the disposal of services on substantially the same basis and in the same manner as such services are provided within the municipality prior to annexation.** *Stillings v. City of Winston-Salem*, 63 N.C. App. 618, 306 S.E.2d 489 (1983), cert. denied, 311 N.C. 689, 319 S.E.2d 898 (1984).

Nowhere in this section does the concept of equality with "average service" appear in reference to the municipal services to be supplied by the annexing municipality. No reasonable reading of the statutory language permits such an inference. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Subdivision (3)(a) of this section requires that the annexation report reflect the plans to provide certain enumerated services on substantially the same basis and in



report substantially complied with subdivision (1) of this section, although the eastern boundary and approximately one-fifth of the town area were omitted and the map showing the general land use pattern contained several blank areas representing vacant lots which did not appear as a category on the legend of the maps, where both the entire area contiguous to the area to be annexed and that area itself were included on the map. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Applied in *Kritzer v. Town of S. Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977); In re *Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979).

Quoted in *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

Cited in *Armento v. City of Fayetteville*, 32 N.C. App. 256, 231 S.E.2d 689 (1977); In re *Annexation Ordinance 301-X*, 304 N.C. 565, 284 S.E.2d 475 (1981).

**§ 160A-48. Character of area to be annexed.**

(a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty percent (60%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban

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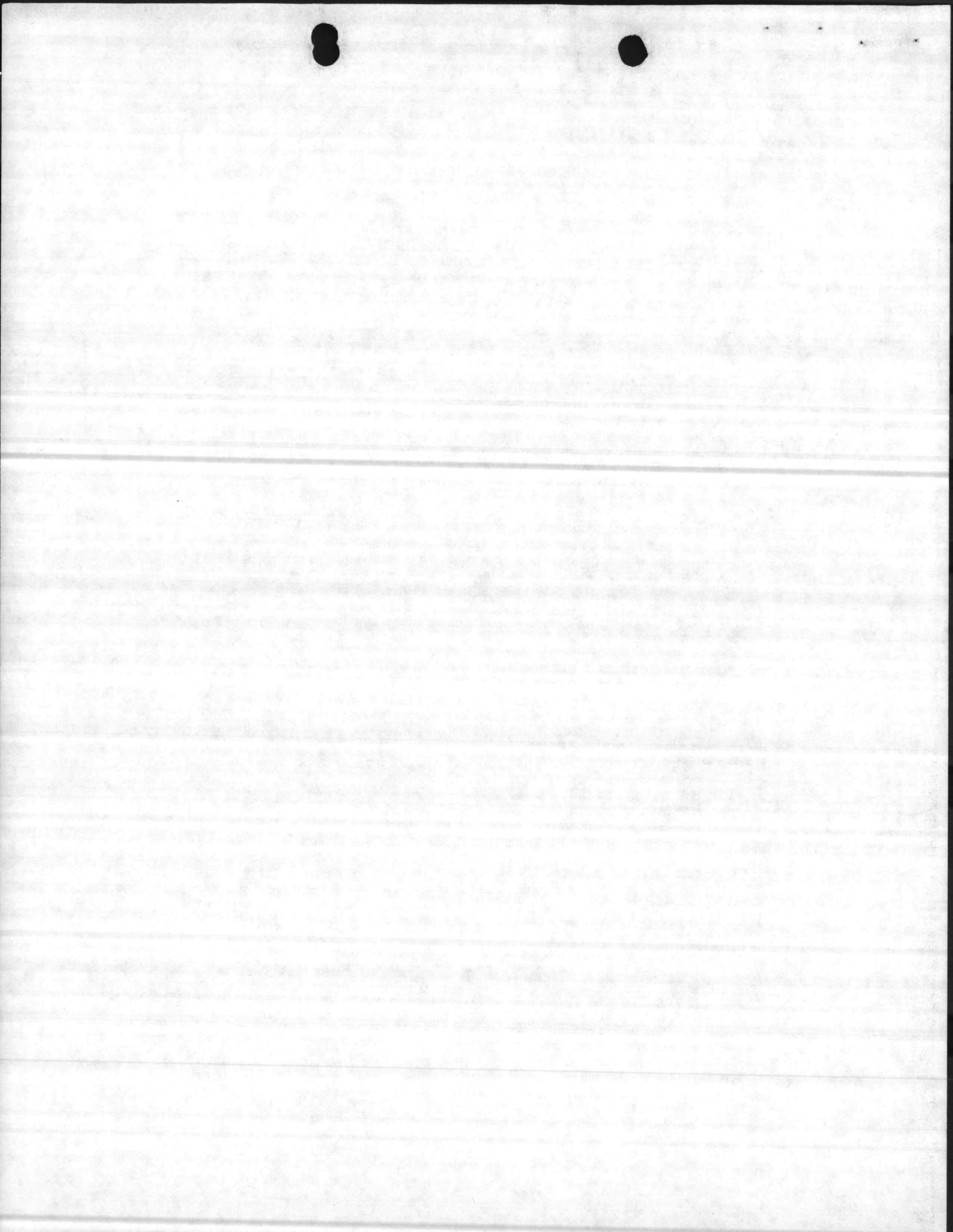
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purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street. (1959, c. 1009, s. 4; 1973, c. 426, s. 74.)

**Legal Periodicals.** — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

#### CASE NOTES

**Question whether area is ripe for annexation should be addressed under statutory criteria set up in this section.** *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

**Tests as to Urban Development to Be Applied to Whole Annexation Area.** — Not only must the entire annexation area meet the requirements of subsection (c)(1), but even more importantly, the tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. *In re Annexation Ordinance*, 284 N.C. 442, 202 S.E.2d 143 (1974).

The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. *In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 249 S.E.2d 698 (1978).

**Division into Subareas or Study Areas Improper.** — The urban area that a city seeks to qualify for annexation under one of the urban purposes tests set forth in subdivision (c)(1) through (c)(3) of this section must be considered as a whole, i.e., as one area, and may not be divided into subareas or study areas. *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

City acted under a misapprehension of the law, and misapplied the statutory standard in subsection (c)(1), in deciding that population credits should be applied only in the "study area" in which such credits were accumulated, rather than applied uniformly to the whole area to be annexed. *In re Annexation Ordinance*, 284 N.C. 442, 202 S.E.2d 143 (1974).

**The entire area to be annexed must meet the requirements of subsection (b) of this section.** *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

Cities with 5,000 or more people may annex an outlying urban area pursuant to subsection

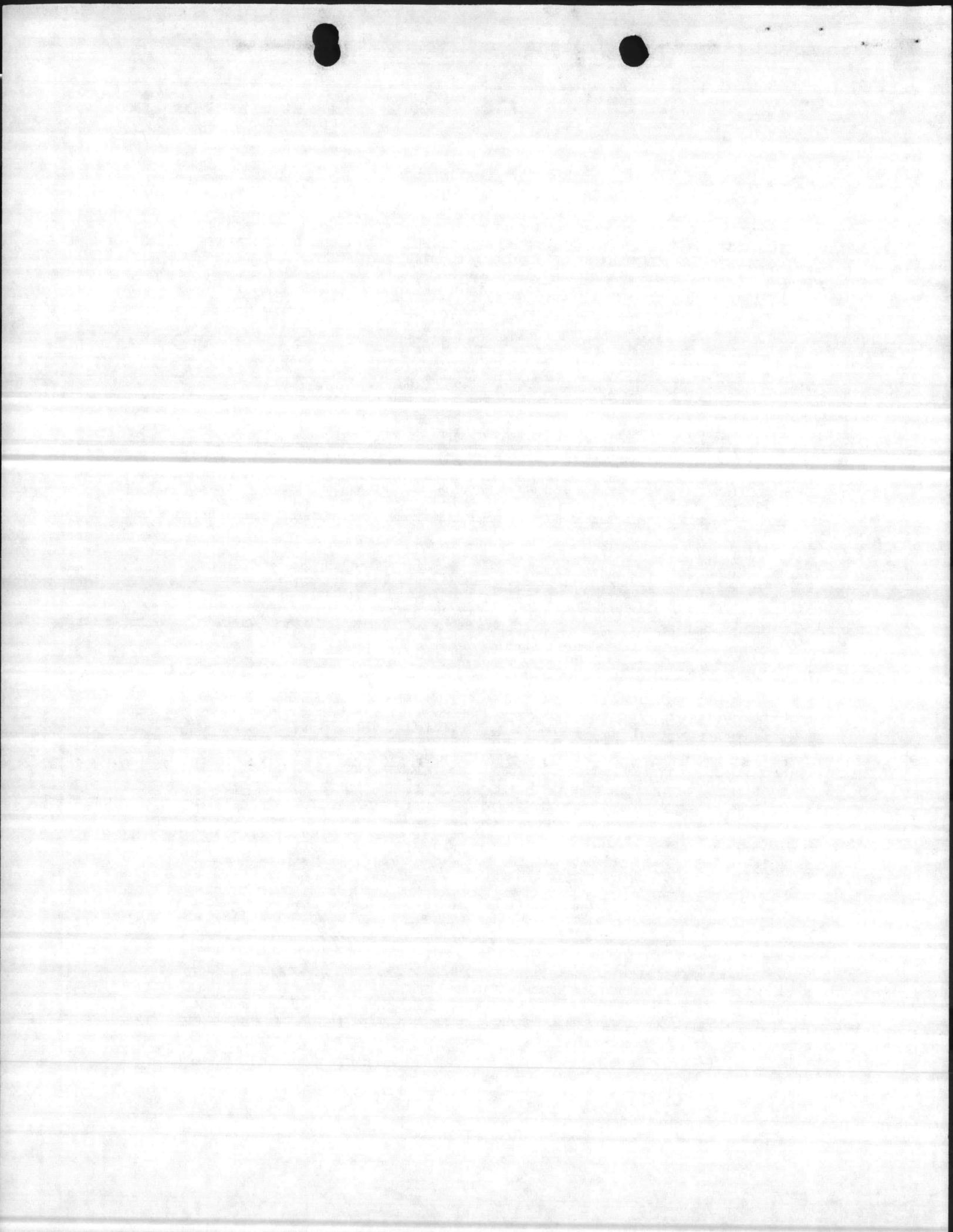
(c) of this section and the intervening undeveloped lands pursuant to subsection (d) so long as the entire area meets the requirements of subsection (b). *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

**Alternative Standards in Subdivisions (c)(1) and (c)(2).** — This section's requirement that the area to be annexed must be developed for urban purposes is satisfied if either the standard of subdivision (c)(1) or the standard of subdivision (c)(2) is met. It is not required that both standards be satisfied. *In re Annexation Ordinance 301-X*, 304 N.C. 565, 284 S.E.2d 475 (1981).

**To perform the computations required by the "subdivision test" under subdivision (c)(2) of this section, two figures are needed: the total acreage and the subdivided acreage.** *In re Annexation Ordinance 301-X*, 304 N.C. 565, 284 S.E.2d 475 (1981).

**Applicability of Error Margins of § 160A-54 to Calculations under Subsection (c).** — The five percent error margins allowed in subdivisions (2) and (3) of § 160A-54 apply exclusively to calculations made by the municipality for purposes of establishing compliance with the population and subdivision tests contained within the alternative standards prescribed by subsection (c) of this section. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

The language of § 160A-54 is free from ambiguity and represents a legislative determination that margins of error should be allowed with respect to the calculations made by a municipality to establish compliance with the population and subdivision tests of subsection (c) of this section, but not with respect to the calculations made to establish compliance with the use test of subsection (c). *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).



Cockrell v. S.E.2d 770

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of an annexa- review, with ctions which d in a differ- tules of Civil Nevertheless, tion proceed- eive evidence the various

procedures prescribed, as to its annexation plan meeting the requisites of this section, and as to the area involved being eligible for annexation under § 160A-48, in those instances where discovery may illuminate these issues it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in Knight v. City of Wilmington, — N.C. App. —, 326 S.E.2d 376 (1985).

Cited in Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984); Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 160A-48. Character of area to be annexed.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

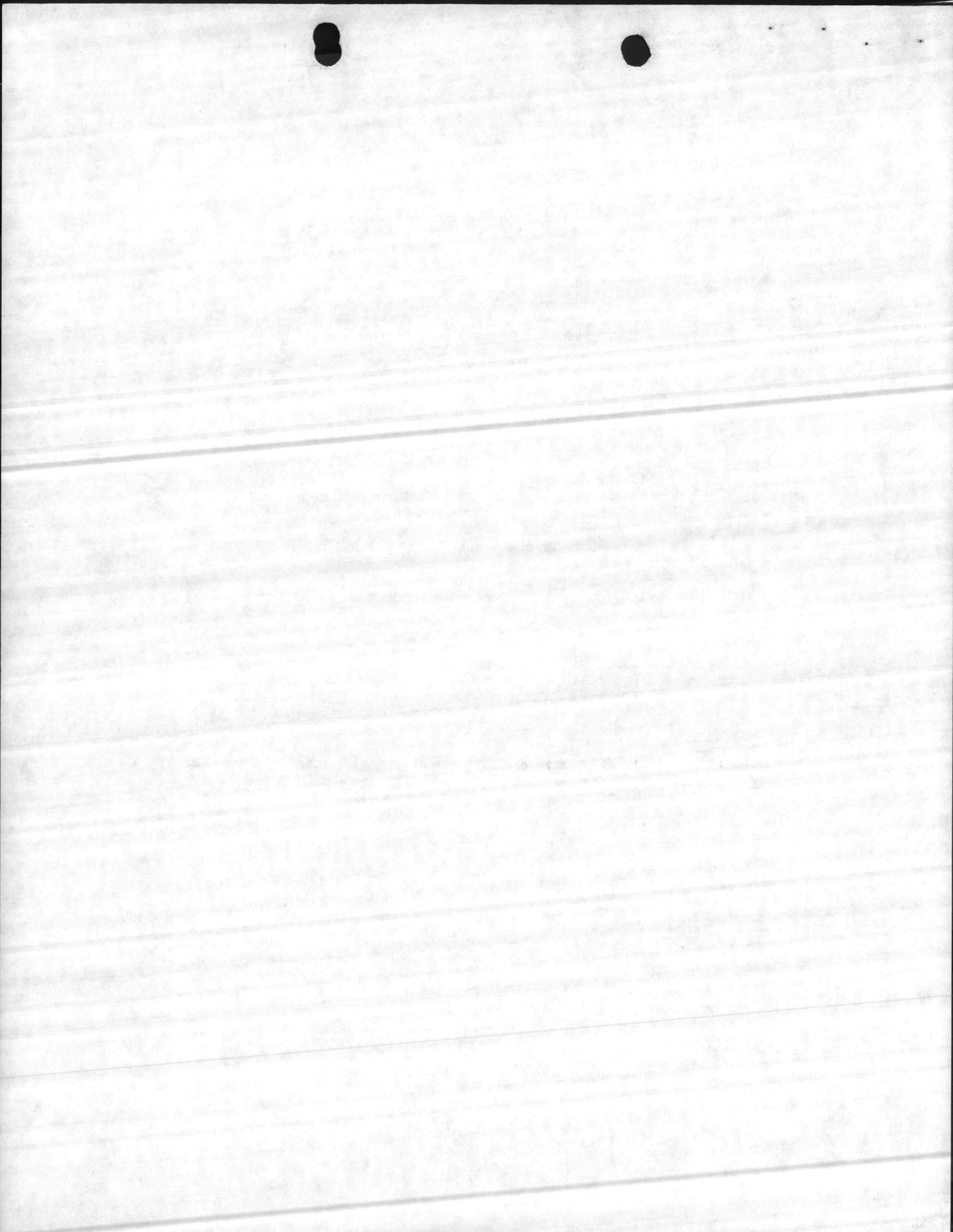
(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. (1959, c. 1009, s. 4; 1973, c. 426, s. 74; 1983, c. 636, s. 15; 1985, c. 757, s. 205(d).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

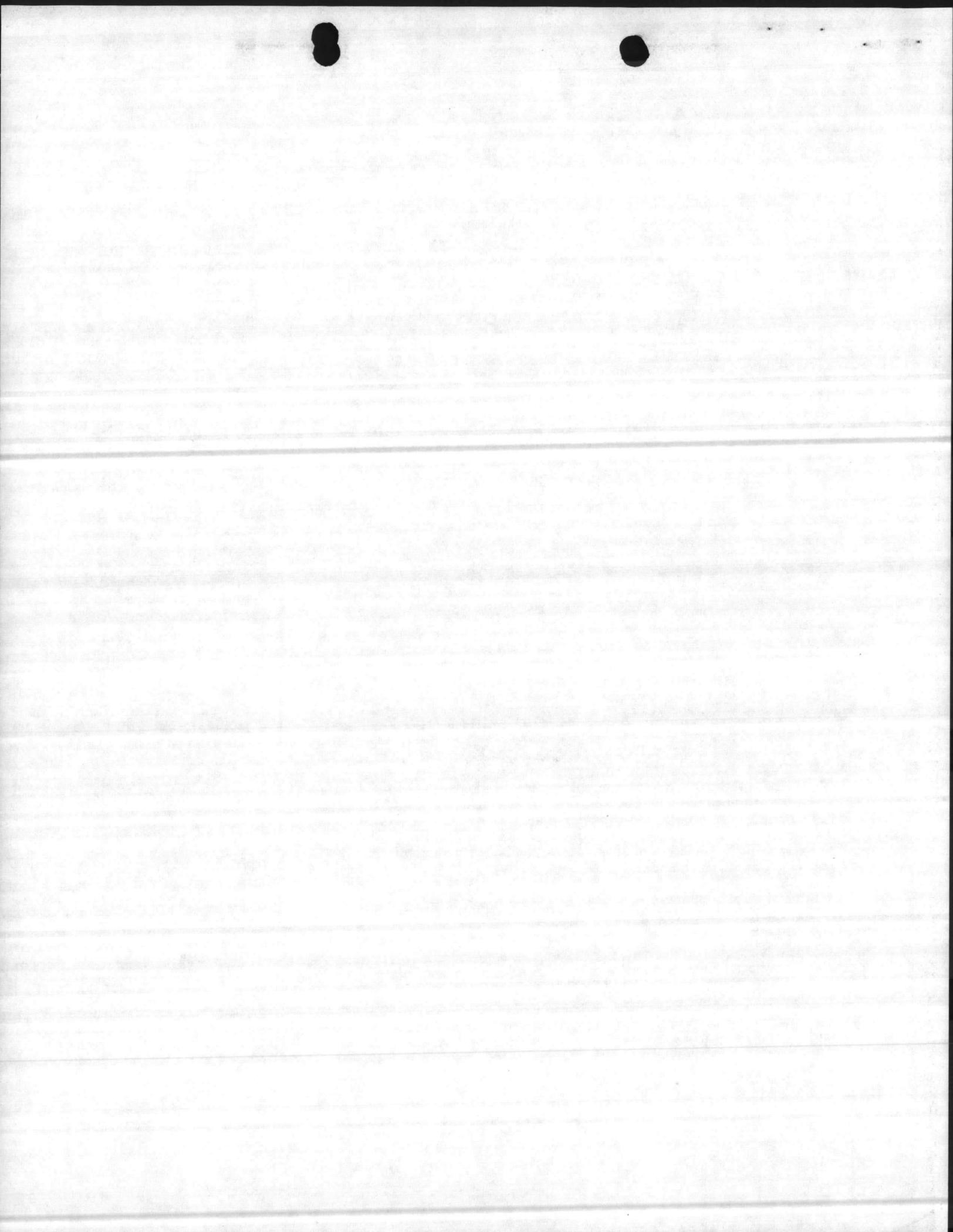
Editor's Note. — Session Laws 1983, c. 636, s. 37.1, amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25." The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted







**Counting "Total Resident Population".** — A person is properly counted as a member of the "total resident population" under this section if such person would have been counted as an inhabitant of the proposed area of annexation under rules governing the last preceding decennial census. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

**Finding of Domicile Not Required.** — The annexing unit is not required to make a finding that a person is actually domiciled within the proposed area of annexation before counting that person for the purpose of making the population estimate required by this section. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

**Military Personnel Properly Counted in Estimating Annexed Population.** — In an annexation proceeding the military personnel on an air force base in the area to be annexed were properly counted in determining the population estimate required by this section, since in accordance with census practice dating back to 1790 persons enumerated in the 1970 census who lived on military bases as members of the armed forces were counted as residents of the states, counties, and minor civil divisions in which their installations were located. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

**Annexation of Intervening Undeveloped Land under Subsection (d).** — The requirement that the urban area that a city seeks to qualify for annexation be considered as a whole does not preclude annexation of intervening undeveloped land pursuant to subsection (d) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Where the area proposed to be annexed by a municipality, when considered as a whole, meets the requirements of subsections (b) and (c) of this section, the fact that a part of the area

is an undeveloped tract which does not comply with the standards set out in the statute does not require that such part be excluded from annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The language of this section simply means that where a developed tract and an undeveloped tract are included in an area to be annexed, and the developed tract complies with subsection (c), but when the undeveloped tract is added, the area as a whole does not so comply, then the undeveloped tract must be excluded unless it complies with one of the requirements of subsection (d). In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

**Annexation of Air Force Base.** — A federal air force base was subject to annexation by the City of Goldsboro where the annexation was not for the sole purpose of generating revenue, and it did not interfere with federal jurisdiction. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The annexation of a federal air force base by the City of Goldsboro did not create unconstitutional tax classes. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

**Record of annexation proceedings showed prima facie full compliance with requirements of this section as to the character of the area to be annexed.** In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

**Applied in Food Town Stores, Inc. v. City of Salisbury,** 303 N.C. 539, 279 S.E.2d 557 (1981).

**Cited in Armento v. City of Fayetteville,** 32 N.C. App. 256, 231 S.E.2d 689 (1977); **Hawks v. Town of Valdese,** 299 N.C. 1, 261 S.E.2d 90 (1980); **Humphries v. City of Jacksonville,** 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981).

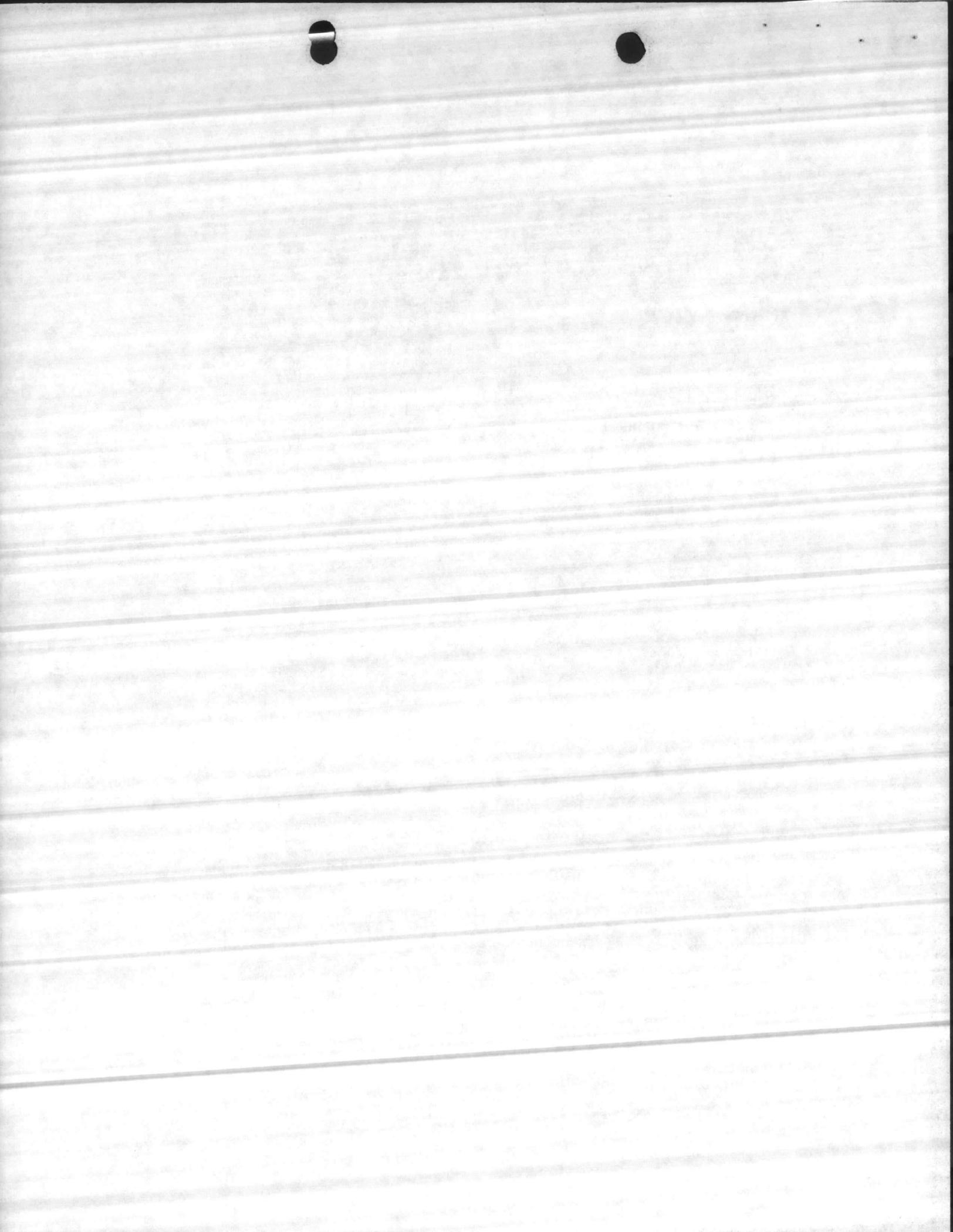
## § 160A-49. Procedure for annexation.

(a) **Notice of Intent.** — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

(b) **Notice of Public Hearing.** — The notice of public hearing shall

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks



prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than 22 days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

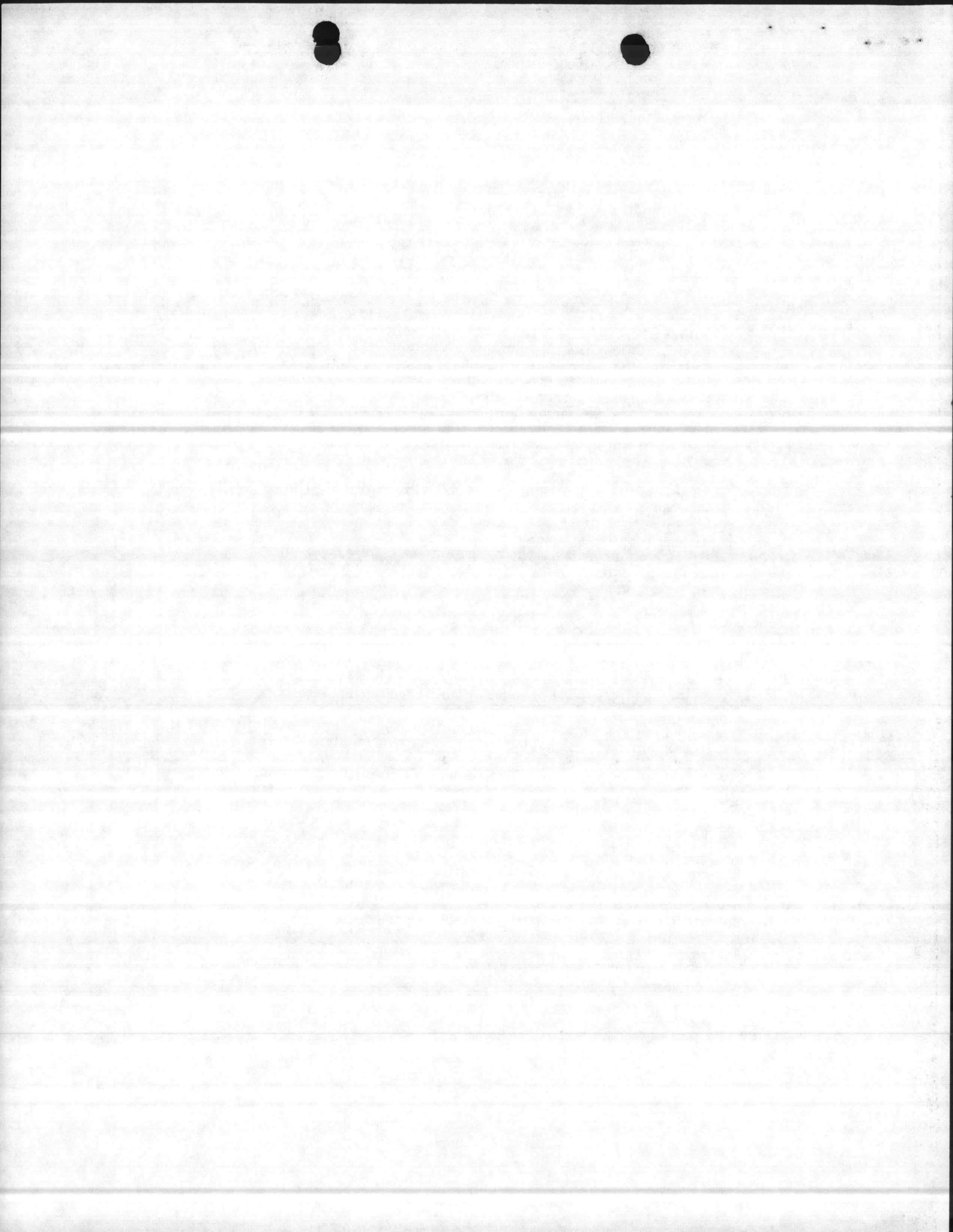
(c) Action Prior to Hearing. — At least 14 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47. At any regular or special meeting held no sooner than the seventh day following the public hearing and no later than 60 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts



of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) **Simultaneous Annexation Proceedings.** — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) **Remedies for Failure to Provide Services.** — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

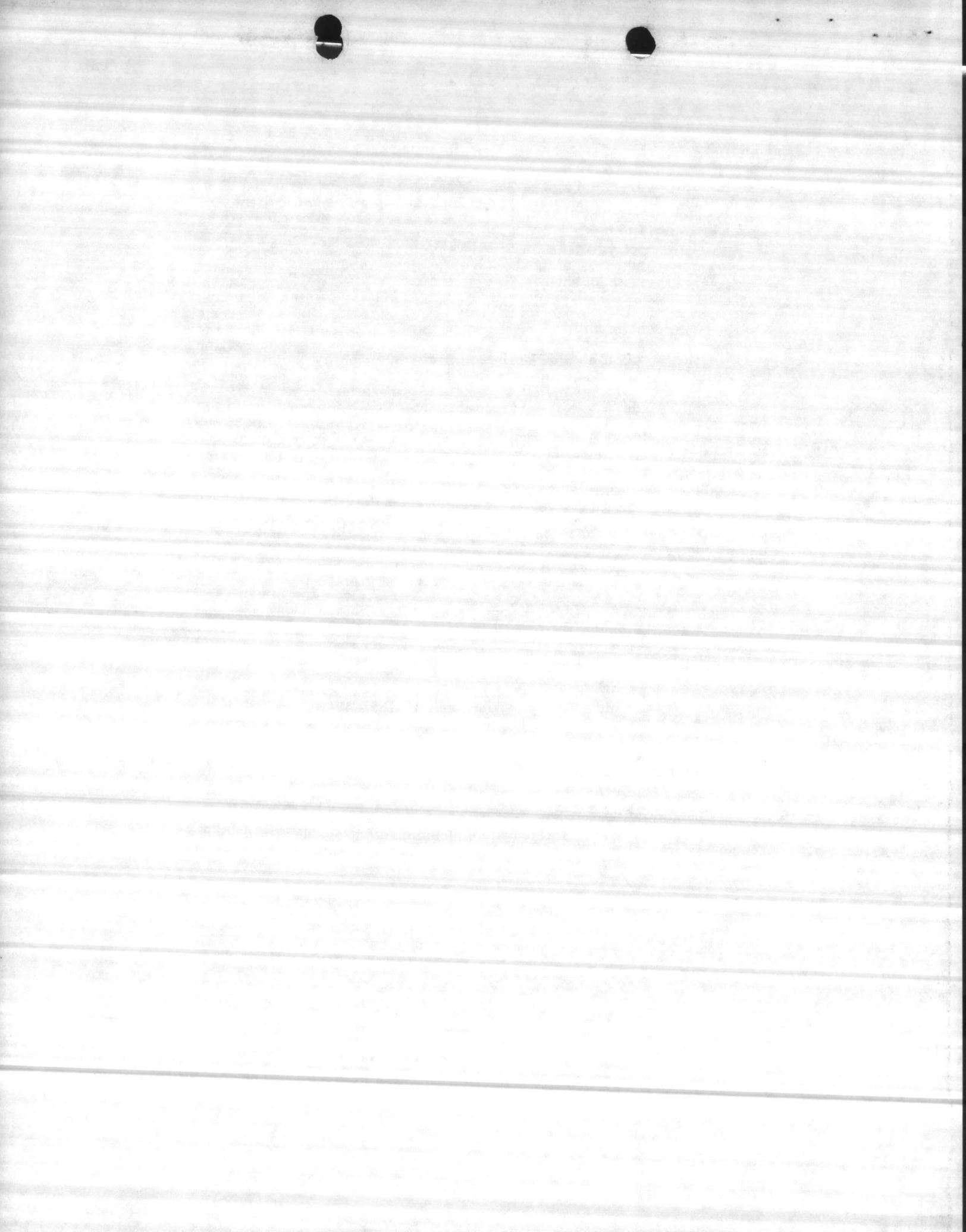
If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6.)

**Local Modification.** — City of Raleigh: 1977, c. 351.

**Editor's Note.** — Session Laws 1977, c. 517, which amended this section, provided in s. 10: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that

method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, provided in s. 11: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."



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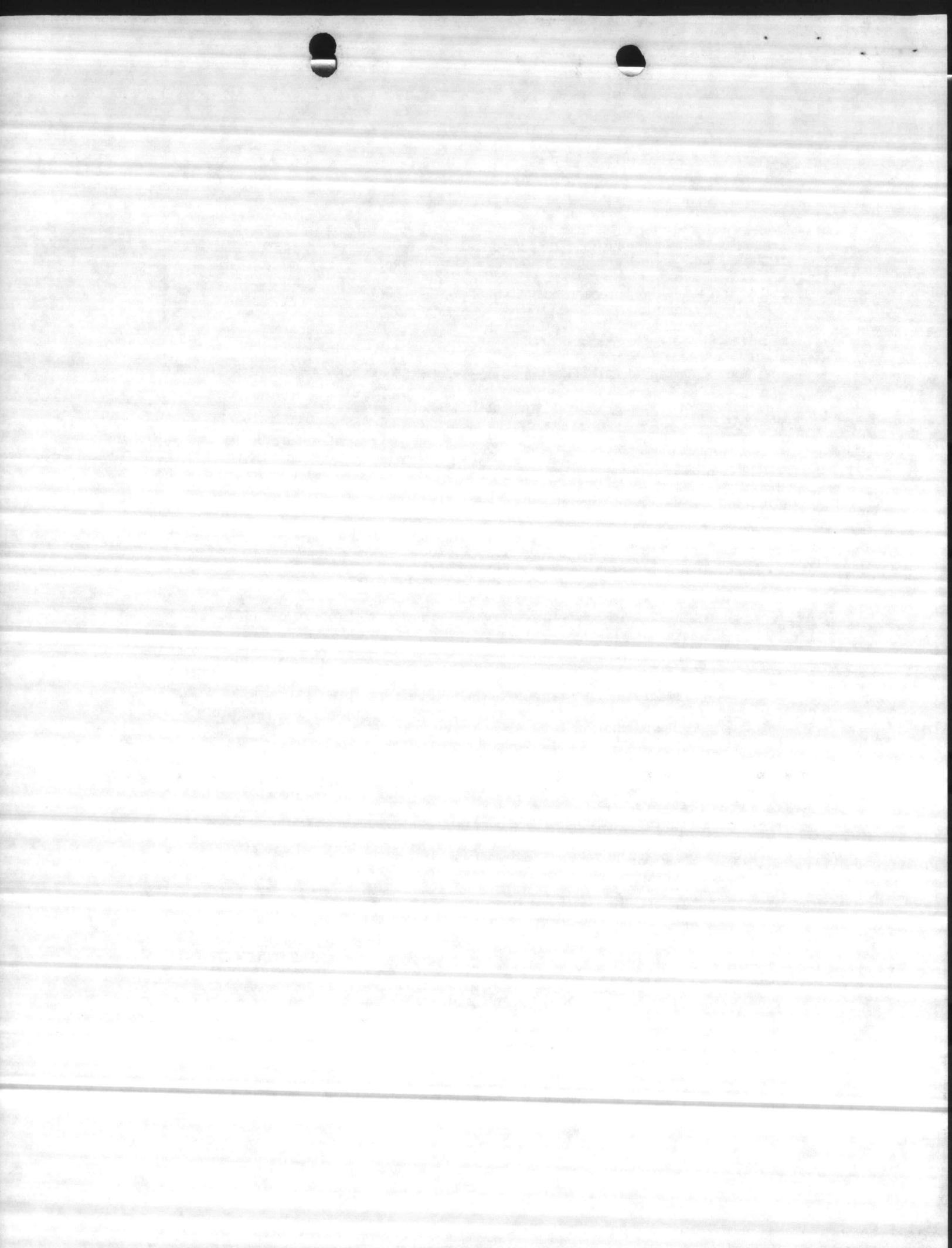
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be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public hearing, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In show-



ing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) (Effective with Respect to All Are Adopted on or after July 1, 1985) under subsection (a) of this section created or designated under either resolution adopted at least one year prior to the effective date of this act, identified the area as being annexed, and the resolution is more restrictive than that identified by the resolution under consideration may have a metes and bounds description and shall remain effective for two years after the effective date of this act.

(j) (Effective with Respect to All Are Adopted on or after July 1, 1985) apply to the annexation of any area and the ordinance annexing the area shall be at least as restrictive as the annexation ordinance.

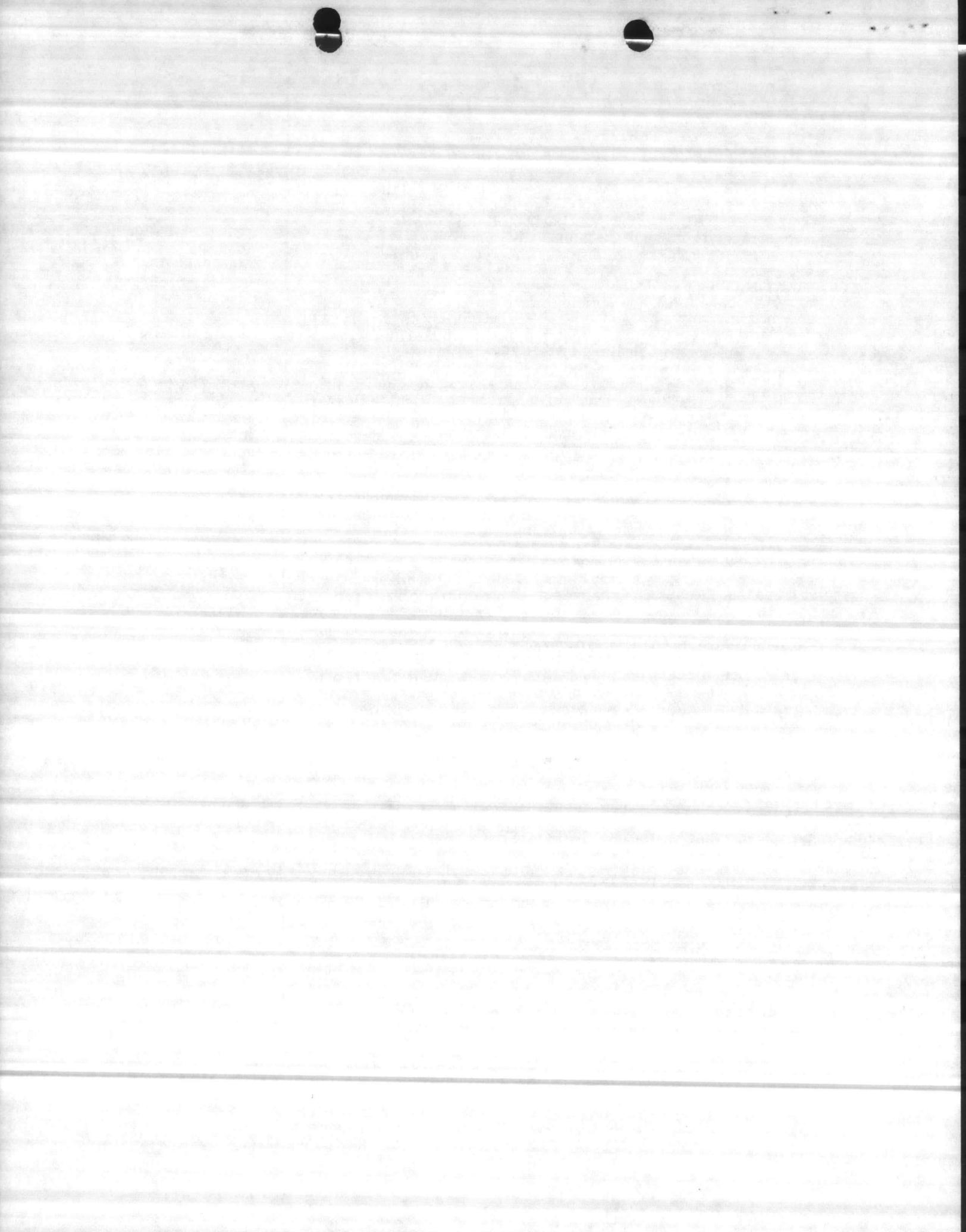
(k) If a valid request for extension of the two-year period under G.S. 160A-47(3)b, and the extension expires two years after the effective date of the ordinance, the property owner may petition the Local Government for a writ of mandamus to require the city to pay the taxes to be paid to the city which would have been paid had the date of the two-year period, if such extension is granted, the expiration of the two-year period shall be the expiration of the two-year period, it shall enter an order for the payment of further ad valorem taxes on the property for the two-year period after completion of the extension. If the commission found that the extension to the two-year period, and if it finds that the extension began beginning with the first day of the two-year period, and if the extension became effective and ending with the expiration of the two-year period expired, the city may not assess or maintainance of a water or sewer system by the city made as a customer of the system, and if ad valorem taxes are levied, then the city shall be required to release or refund an amount of money for that year in question in proportion to the amount of the fund made for water and sewer construction, operation and maintenance of ten million dollars. If the levy was one thousand dollars (\$1,000) or more, it shall be ten dollars (\$10.00). (1959, c. 100; 1977, c. 517, s. 6; 1983, c. 636, ss. 1-3, s. 1.)

Only Part of Section Set Out. — A portion of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983, c. 636, s. 37.1 amended by Session Laws 1983, c. 768, s. 1 provides: "The General Assembly intends to repeal this act to repeal all acts and provisions of

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(i) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk.

(j) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

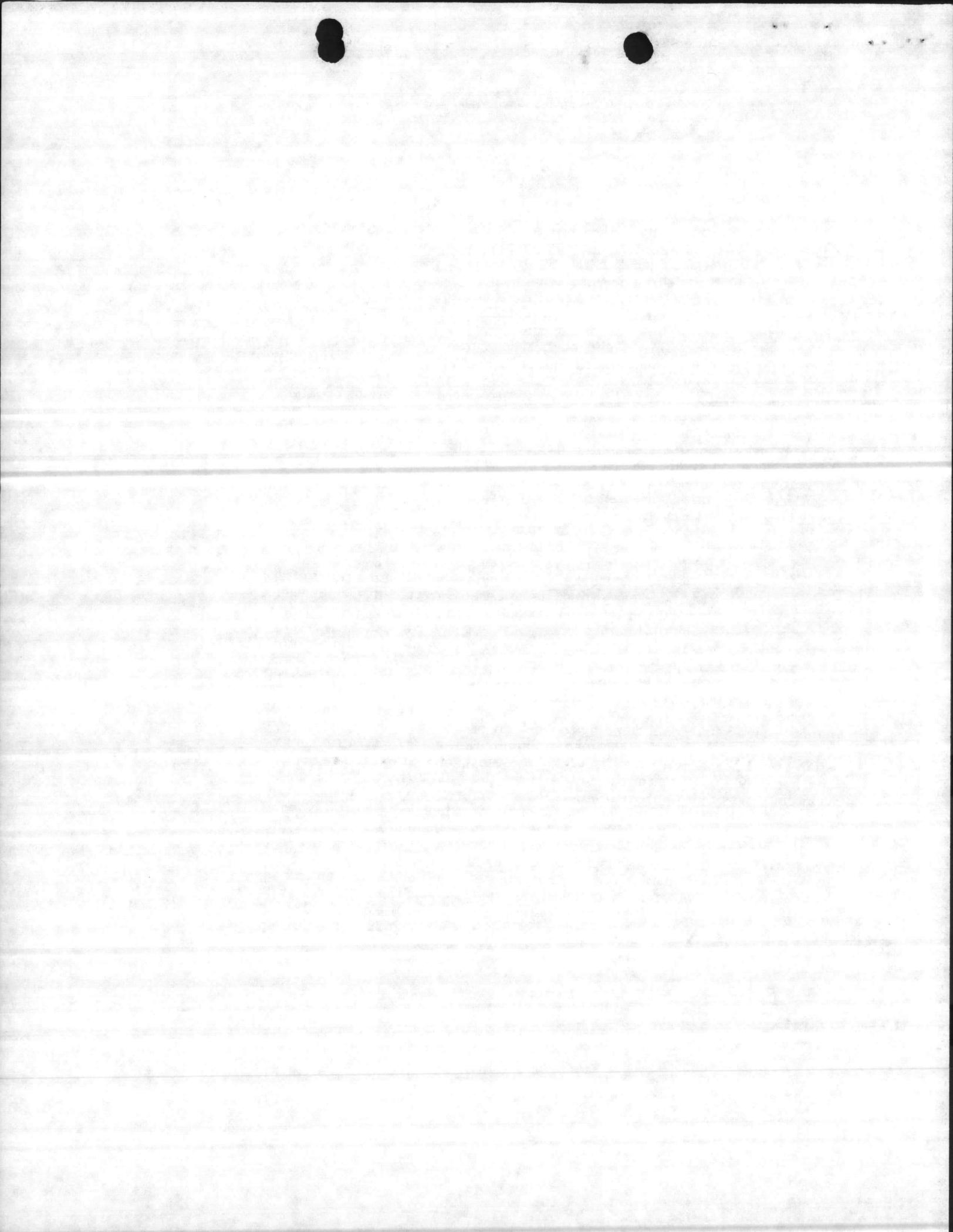
(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00). (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendments, it is not set out.

**Editor's Note.** —

Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts

that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are re-



**§ 160A-50. Appeal.**

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

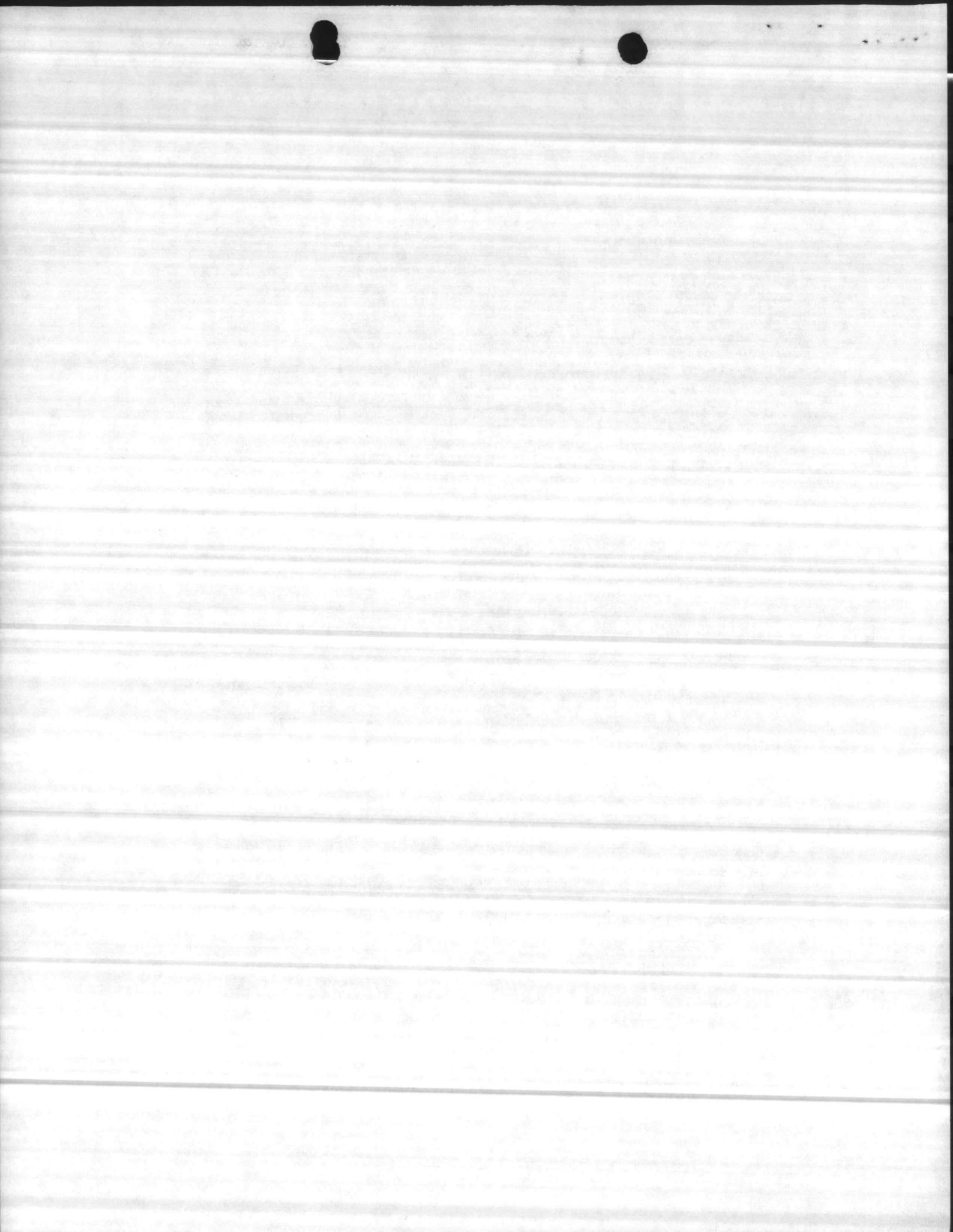
- (1) That the statutory procedure was not followed, or
- (2) That the provisions of G.S. 160A-47 were not met, or
- (3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

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(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court or Court of Appeals on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, substituted "Court of Appeals" for "Supreme Court" near the middle of the first sentence of subsection (h), and substituted "appellate division" for "Supreme Court" near the middle of the second sentence of subsection (h). The amendment also

substituted "superior court or Court of Appeals" for "superior or Supreme Court" near the beginning of subsection (i), and substituted "superior court or appellate division" for "superior or Supreme Court" near the end of subsection (i).

#### CASE NOTES

**Annexation statutes are not unconstitutional in providing that review by the superior court is without a jury.** In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

**Provisions for Nonjury Trial in Subsection (f) Not Superseded by Rules of Civil Procedure.** — The provisions of subsection (f) authorizing review of annexation proceedings by the court without a jury have not been superseded by the North Carolina Rules of Civil Procedure. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

**Limited Scope of Review.** — The judicial review afforded in annexation proceedings is limited in scope and serves as a safeguard against unreasonable and arbitrary action by the annexing municipality. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Judicial review of an annexation ordinance is limited to determination of whether the annexation proceedings substantially comply with the requirements of the applicable annexation statute. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

This section specifies the inquires to which the courts are limited. In re Annex-

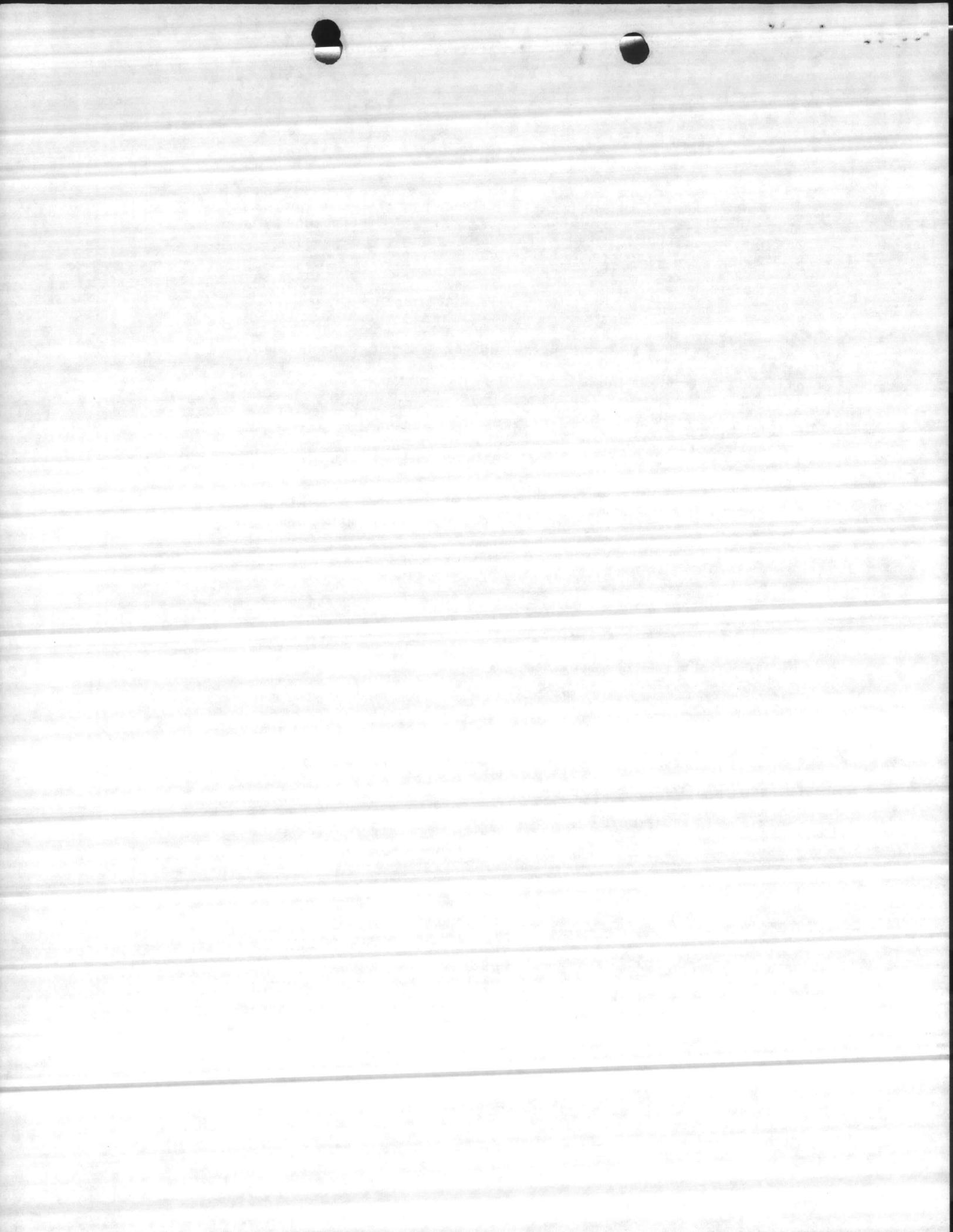
ation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

**There is no test of "reasonableness" which must be considered upon judicial review of an annexation proceeding.** In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

**On appeal, the findings of fact made below are binding on the Supreme Court if supported by the evidence, even when there may be evidence to the contrary.** *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

**But Conclusions of Law Are Reviewable De Novo.** — Conclusions of law drawn by the trial judge from the findings of fact are reviewable de novo on appeal. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

**Record Must Show Prima Facie Compliance.** — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this Article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this Article as a condition precedent to the right of the municipality to annex the territory. In re Annexation



Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150A of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than five days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. (1985, c. 610, s. 4.)

**Editor's Note.** — Session Laws 1985, c. 610, s. 8 provides that this section applies to all annexations where a resolution of intent under Parts 2 or 3 under Article 4A of Chapter 160A is adopted on or after September 1, 1985.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

§ 160A-50. Appeal.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g), and in either case a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are

adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

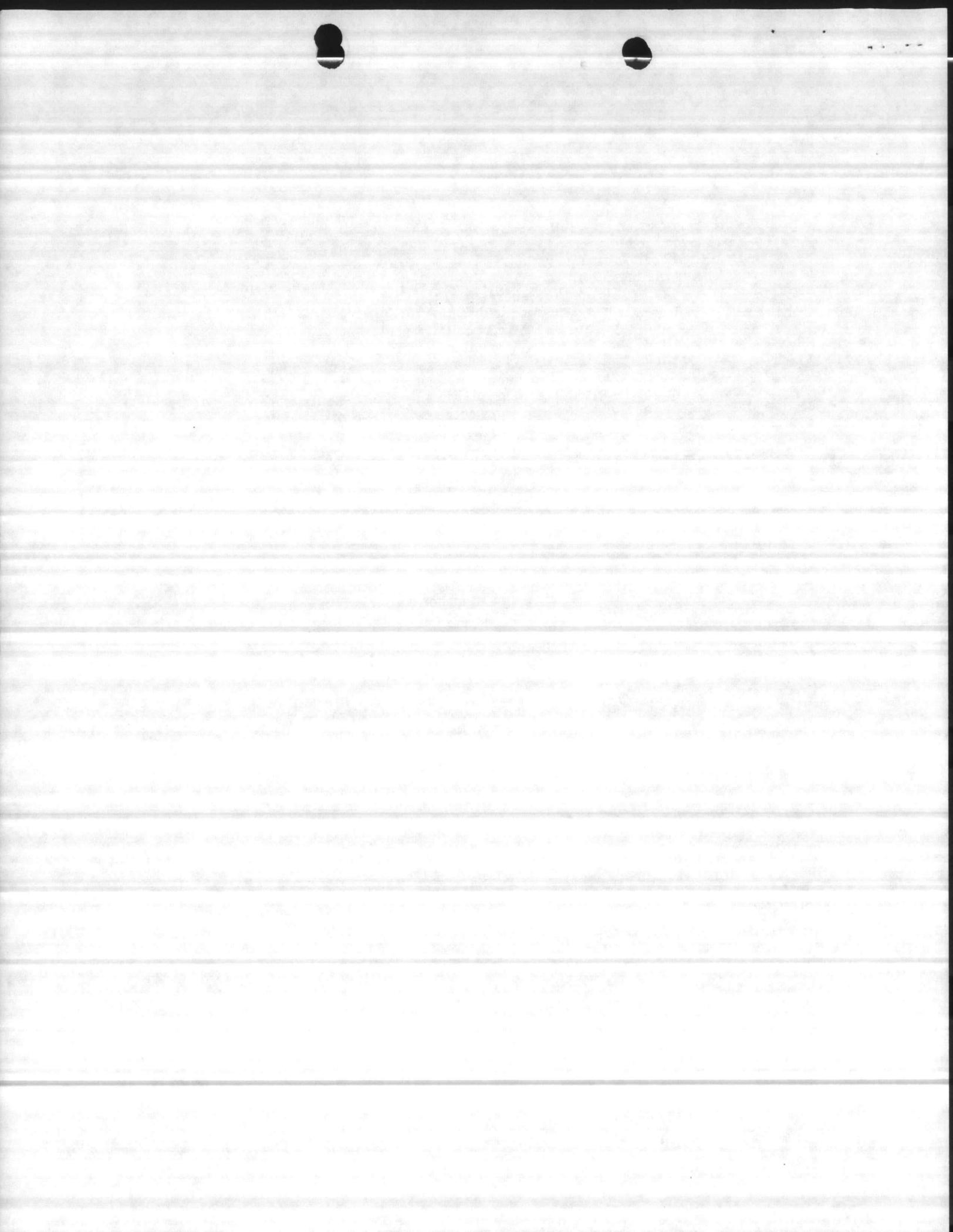
The act was ratified June 29, 1983.

**Effect of Amendments.** —

The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, added subsection (j).

**Legal Periodicals.** — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).





DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20350

FAC

SECNAVINST 11011.29B  
FAC 20R  
9 July 1984

SECNAV INSTRUCTION 11011.29B

From: Secretary of the Navy

Subj: ANNEXATION BY LOCAL MUNICIPALITIES OF DEPARTMENT OF THE NAVY LANDS

Ref: (a) OPNAVINST 5400.24D

FAC ROUTING			
DATE	ACTION	INFO	INT
16 OCT 1984			

copy for Eng Engr

1. Purpose. To revise Department of the Navy Policy and procedures regarding annexation of Department of the Navy land by local municipalities.

2. Cancellation. SECNAVINST 11011.29A.

3. Definitions

a. The term "annexation proceeding" means a proceeding initiated by a municipality to incorporate Department of the Navy land into the corporate limits of such municipality or to include Department of the Navy land within the corporate limits of a new municipality seeking to incorporate.

b. The term "municipality" means any political subdivision of a state or possession such as a city or village, school, drainage, irrigation or other service district.

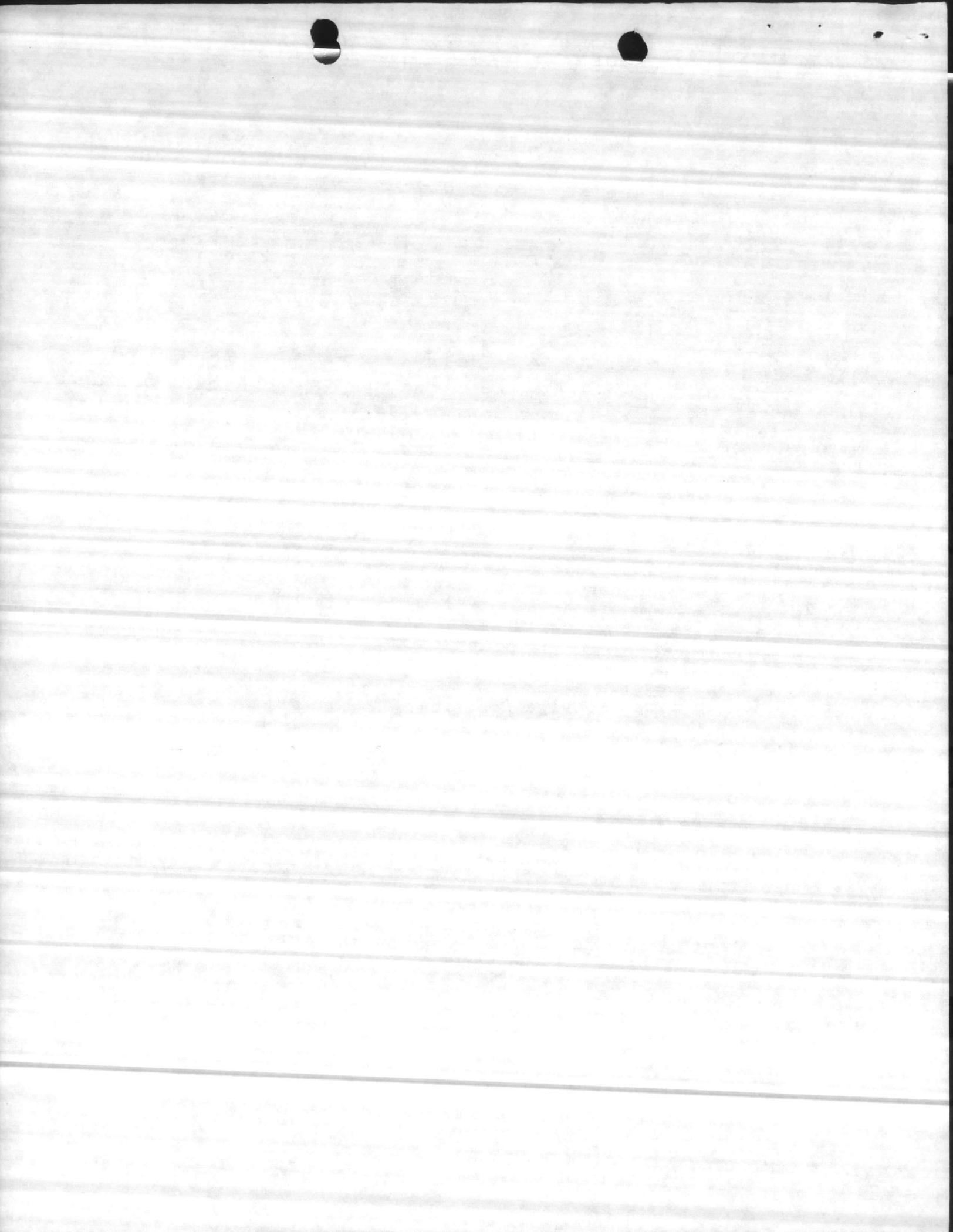
4. Background. Annexation proceedings are covered by laws of the states or possessions of the United States which generally require:

a. Initiation or approval of the annexation by the governing body of the municipality.

b. Public or other notice to landowners involved.

c. Approval, consent, or acquiescence by a majority of the landowners involved.

5. Policy. It is the policy of the Department of the Navy not to oppose annexation and to cooperate where local statutes so provide, except where the Secretary of the Navy determines that annexation would not be in the interest of the Government.



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R) 6. Delegation. Authority, as set forth in paragraph 7, is delegated to the officer in command of the activity concerned (hereinafter referred to as the commanding officer) to cooperate with or oppose annexation proceedings in accordance with the policy expressed in paragraph 5. Area coordinators under reference (a) will be available to assist in problem solving. Commanders/commanding officers of the engineering field divisions of the Naval Facilities Engineering Command will also be available to provide technical support.

7. Action

a. When notice that annexation proceedings have been instituted or advice is received from a municipality that annexation proceedings of Department of the Navy lands are planned, such notice or advice shall be forwarded to the commanding officer of the activity concerned. The commanding officer shall obtain comments and recommendations from:

R) (1) The activity's chain of command, as appropriate.

R) (2) Commander/commanding officer of the appropriate engineering field division of the Naval Facilities Engineering Command.

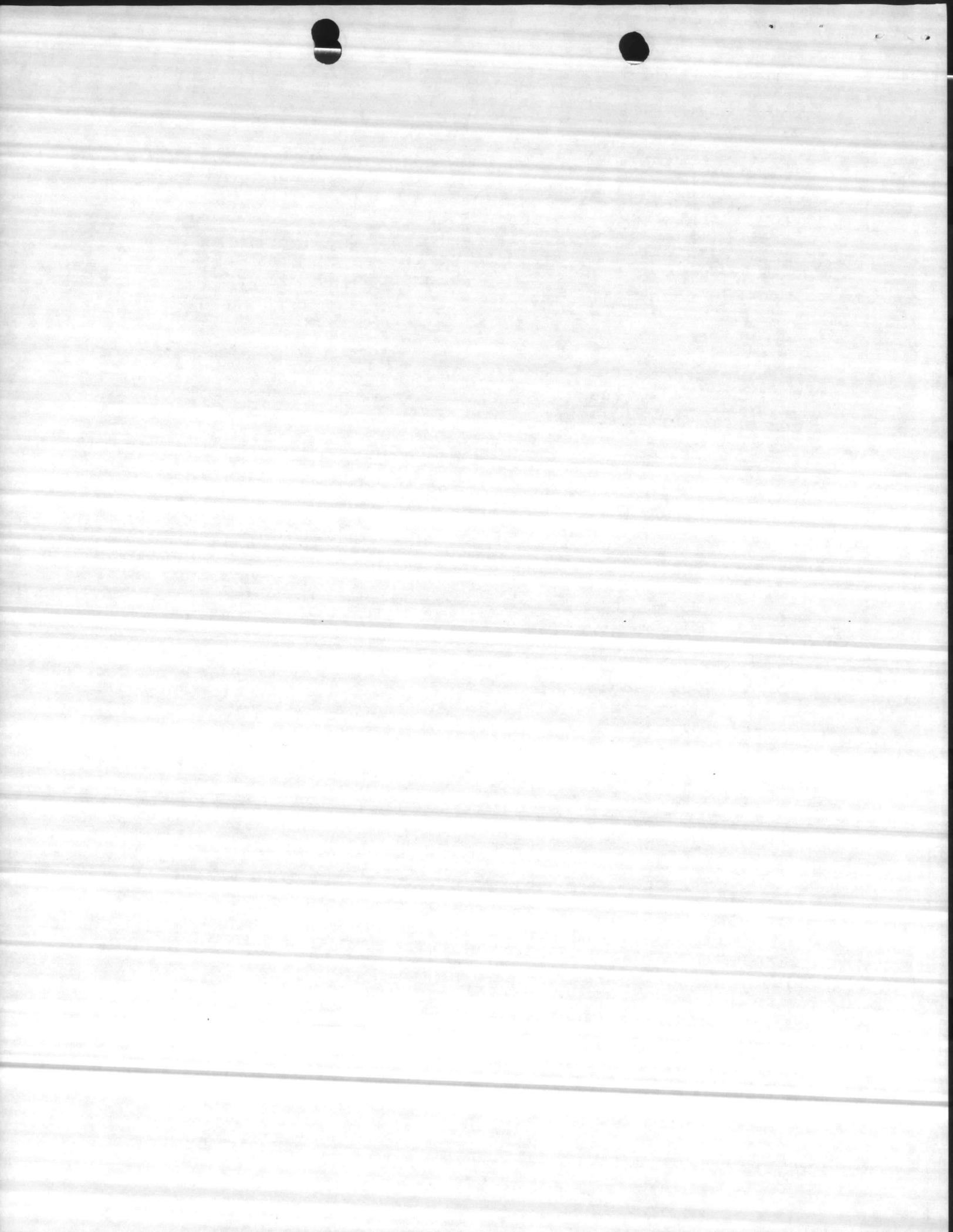
A) (3) Commandant of the Marine Corps for Marine Corps activities.

R) b. Upon receipt of comments and recommendations, the commanding officer will review the annexation proceedings or proposal for annexation and will determine, in accordance with paragraph 5, whether or not the annexation would be in the interest of the Government. Each determination shall be in writing and shall be based on the following fully developed and supported considerations:

(1) Adverse effects, if any, such as an adverse effect on arrangements for or the cost of utilities, fire and policy protection, schools, other essential services, or any other adverse effect upon the mission of the activity.

(2) Demonstrable benefits, if any, such as the improved provision of utilities, fire and policy protection, schools, or a reduction in the costs thereof.

Police.



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c. Upon determining that annexation would not be contrary to the interest of the Government, the commanding officer shall:

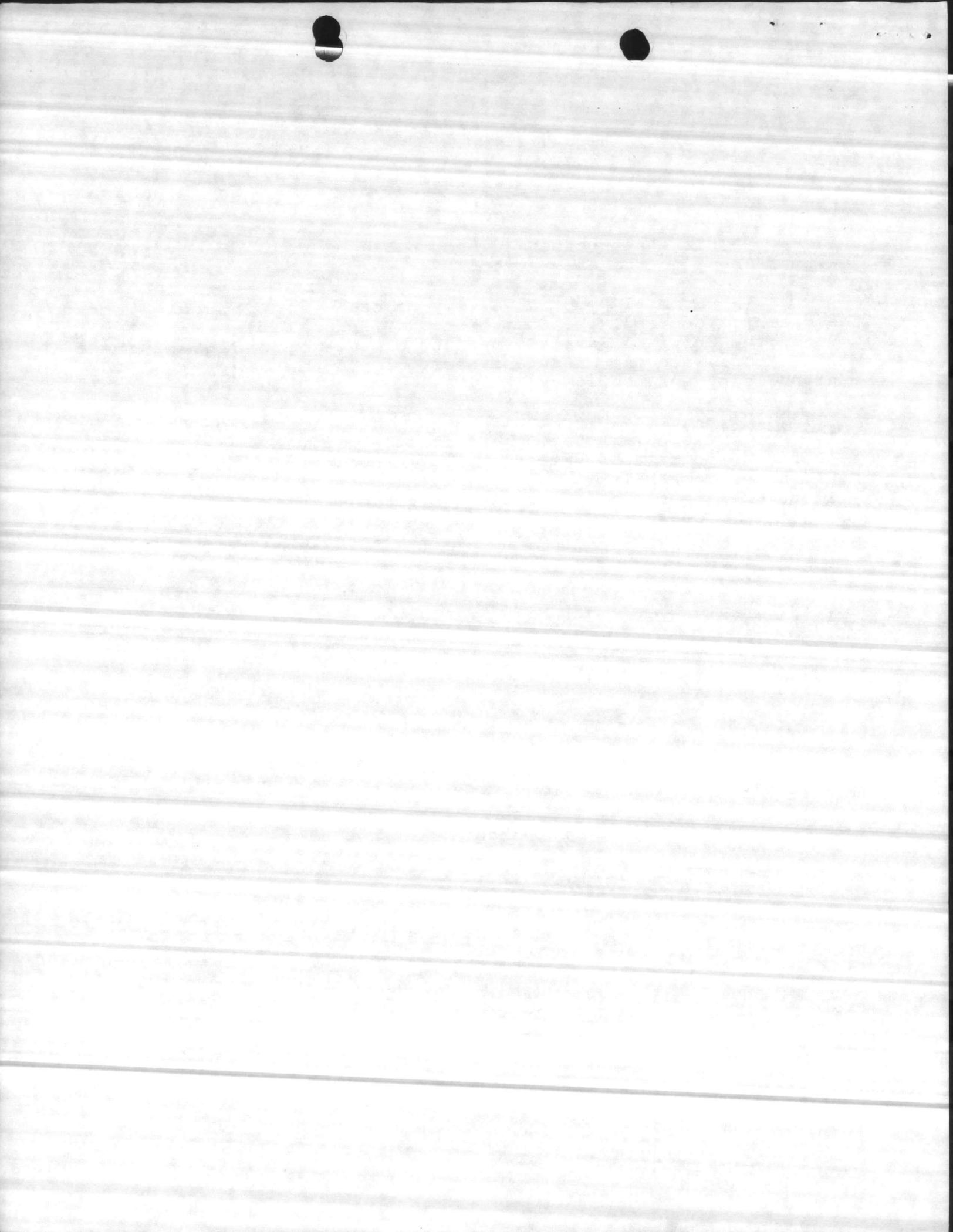
- (1) Advise the annexing municipality that the Department of the Navy will not oppose annexation.
- (2) Take such other action as may be required by state law to consent to the annexation.
- (3) Promptly provide a copy of each such determination to the chain of command, the Commander, Naval Facilities Engineering Command, the Chief of Naval Operations or the Commandant of the Marine Corps, and the Assistant Secretary of the Navy (Shipbuilding and Logistics).

d. Upon determining that annexation would not be in the interest of the Government, the commanding officer shall submit a request for prior approval to protest annexation to the Assistant Secretary of the Navy (Shipbuilding and Logistics). Such request will be submitted via the chain of command, the Commander, Naval Facilities Engineering Command and the Chief of Naval Operations or the Commandant of the Marine Corps. Each request shall include:

- (1) Copies of commanding officer's written determination.
- (2) Summary of applicable laws.
- (3) The title held by the United States in the property.
- (4) The legislative jurisdiction held by the Government.
- (5) The reasons advanced for annexation by the proponents.
- (6) Interest, if any, of other municipalities or organizations in the area.
- (7) A vicinity map showing the boundaries of Government property, the limits of the annexing municipality and the area proposed for annexation.

Upon receipt of prior approval of the Assistant Secretary of the Navy (Shipbuilding and Logistics), the commanding officer shall take appropriate action to protest the annexation.

e. When the time allowed during which protest may be filed is too short to obtain comments, recommendations and final decision



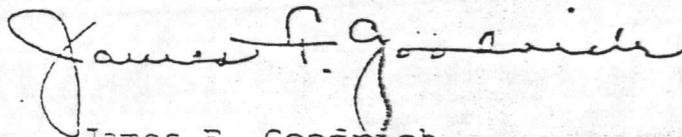
JUL 1984

by the Assistant Secretary of the Navy (Shipbuilding and Logistics), the commanding officer shall:

(1) Enter an appearance in the proceeding and request an extension of time.

(2) Enter a protest to assure that the Government's interests in the matter are not forfeited.

(3) Provide advance information to the Assistant Secretary of the Navy (Shipbuilding and Logistics), with copy to all addressees listed in paragraph 7d, of any action taken to secure additional time or enter a protest in the proceeding



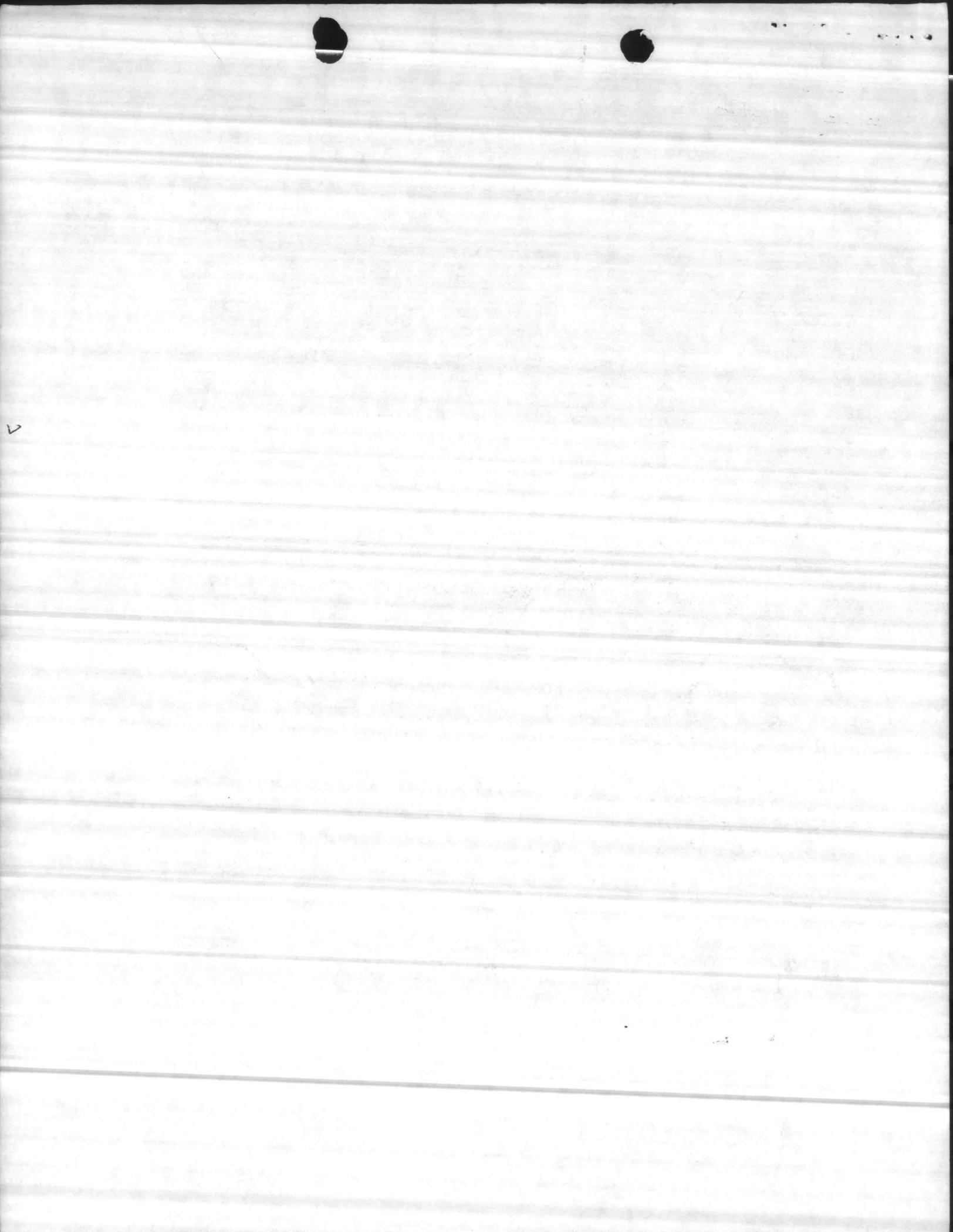
James F. Goodrich  
Acting Secretary of the Navy

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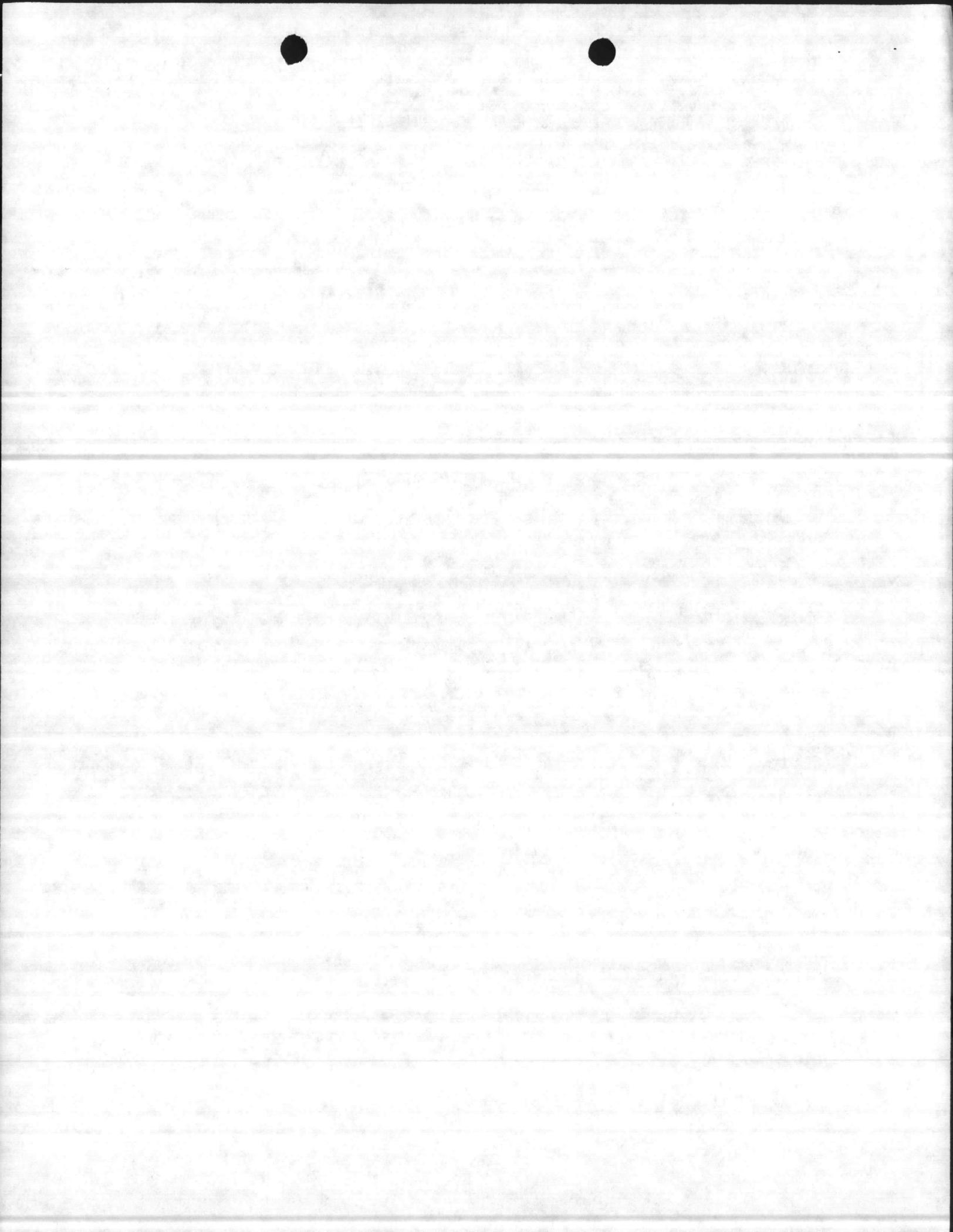












CH. 160A. CITIES AND TOWNS

Article 17A.

Cemetery Trustees.

- Sec.  
 160A-349.1. Creation of board authorized; official title; terms of office; vacancies.  
 160A-349.2. Members to meet and organize; meetings; bond of secretary and treasurer; record of proceedings.  
 160A-349.3. Property vested.  
 160A-349.4. Control and management; superintendent and assistants; enumeration of powers.  
 160A-349.5. Rules continued in force.  
 160A-349.6. Rules for maintaining order and policing; force of rules; copy to governing body; publication.  
 160A-349.7. Presentation of budget; details of budget; appropriation; payment to board.  
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 160A-349.9. Power to acquire land; adjacent property; disposal of money from lot sales; investments; income from investment.  
 160A-349.10. Power to condemn land; procedure for condemnation; board incorporated.  
 160A-349.11. Price of lands included in budget.  
 160A-349.12. Power to accept gifts; exclusive use of gifts.  
 160A-349.13. Sale of unnecessary property.  
 160A-349.14. Exercise of powers subject to approval.  
 160A-349.15. Termination.

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 160A-351. Declaration of State policy.  
 160A-352. Recreation defined.  
 160A-353. Powers.  
 160A-354. Administration of parks and recreation programs.  
 160A-355. Joint parks and recreation systems.  
 160A-356. Financing parks and recreation.  
 160A-357. [Repealed.]  
 160A-358, 160A-359. [Reserved.]

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Planning and Regulation of Development.

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- 160A-360. Territorial jurisdiction.  
 160A-361. Planning agency.  
 160A-362. Extraterritorial representation.

Sec.

- 160A-363. Supplemental powers.  
 160A-364. Procedure for adopting or amending ordinances under Article.  
 160A-364.1. Statute of limitations.  
 160A-365. Enforcement of ordinances.  
 160A-366. Validation of ordinance.  
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- 160A-371. Subdivision and regulation.  
 160A-372. Contents and requirements of ordinance.  
 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.  
 160A-374. Effect of plat approval on dedications.  
 160A-375. Penalties for transferring lots in unapproved subdivisions.  
 160A-376. Definition.  
 160A-377 to 160A-380. [Reserved.]

Part 3. Zoning.

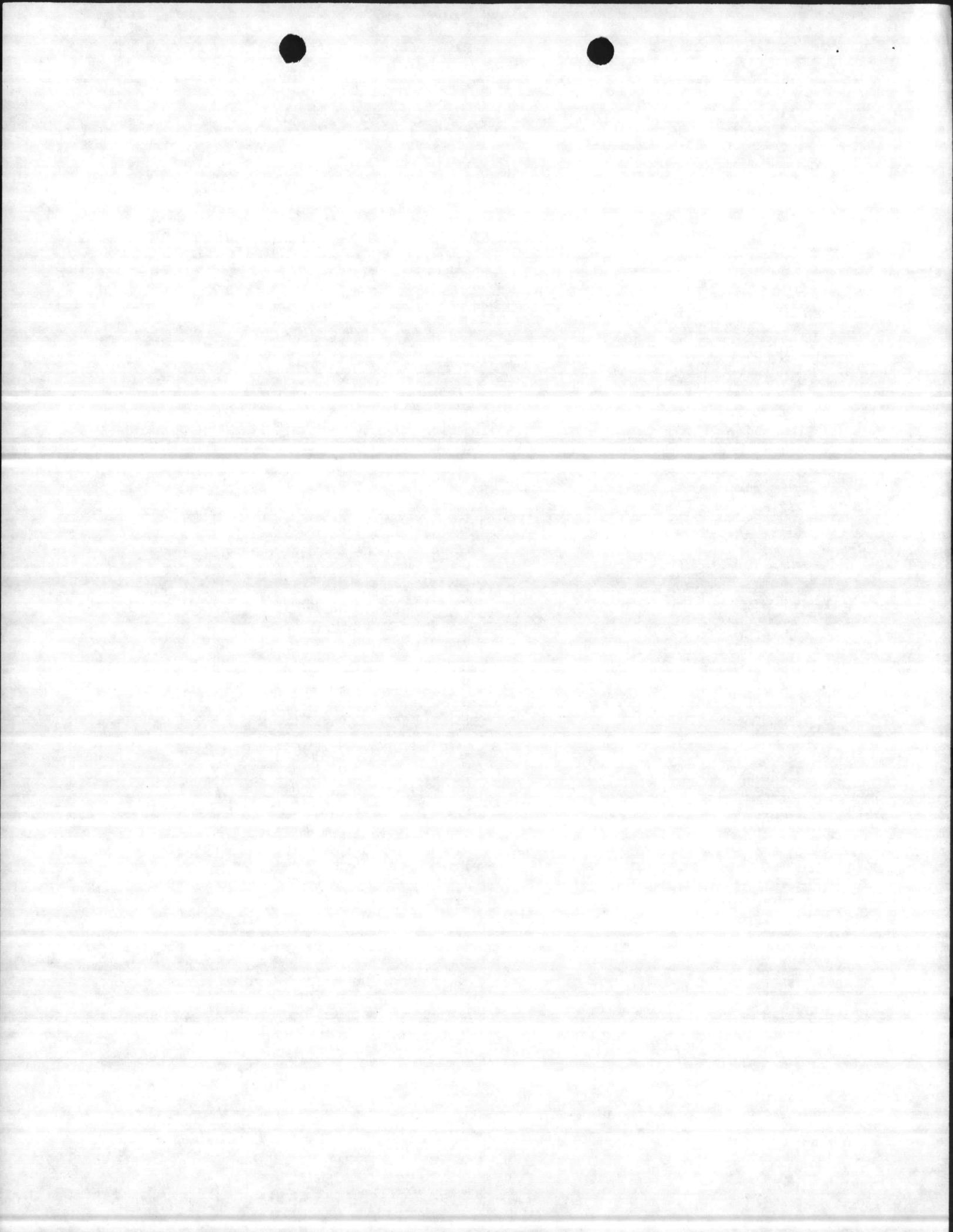
- 160A-381. Grant of power.  
 160A-382. Districts.  
 160A-383. Purposes in view.  
 160A-384. Method of procedure.  
 160A-385. Changes.  
 160A-386. Protest petition; form; requirements; time for filing.  
 160A-387. Planning agency; zoning plan; certification to city council.  
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 160A-392. Part applicable to buildings constructed by State and its subdivisions.  
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- 160A-395. Exercise of powers under this Part by counties as well as cities; designation of historic districts.  
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## CH. 160A. CITIES AND TOWNS

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160A-399.4. Adoption of an ordinance; criteria for designation.  
160A-399.5. Required procedures.  
160A-399.6. Certificate of appropriateness required.  
160A-399.7. Certain changes not prohibited.  
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160A-433. Records and reports.  
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160A-436. Restrictions within primary fire limits.  
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### Part 8. Miscellaneous Powers.

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160A-458.1. Floodway regulations.  
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## Article 20.

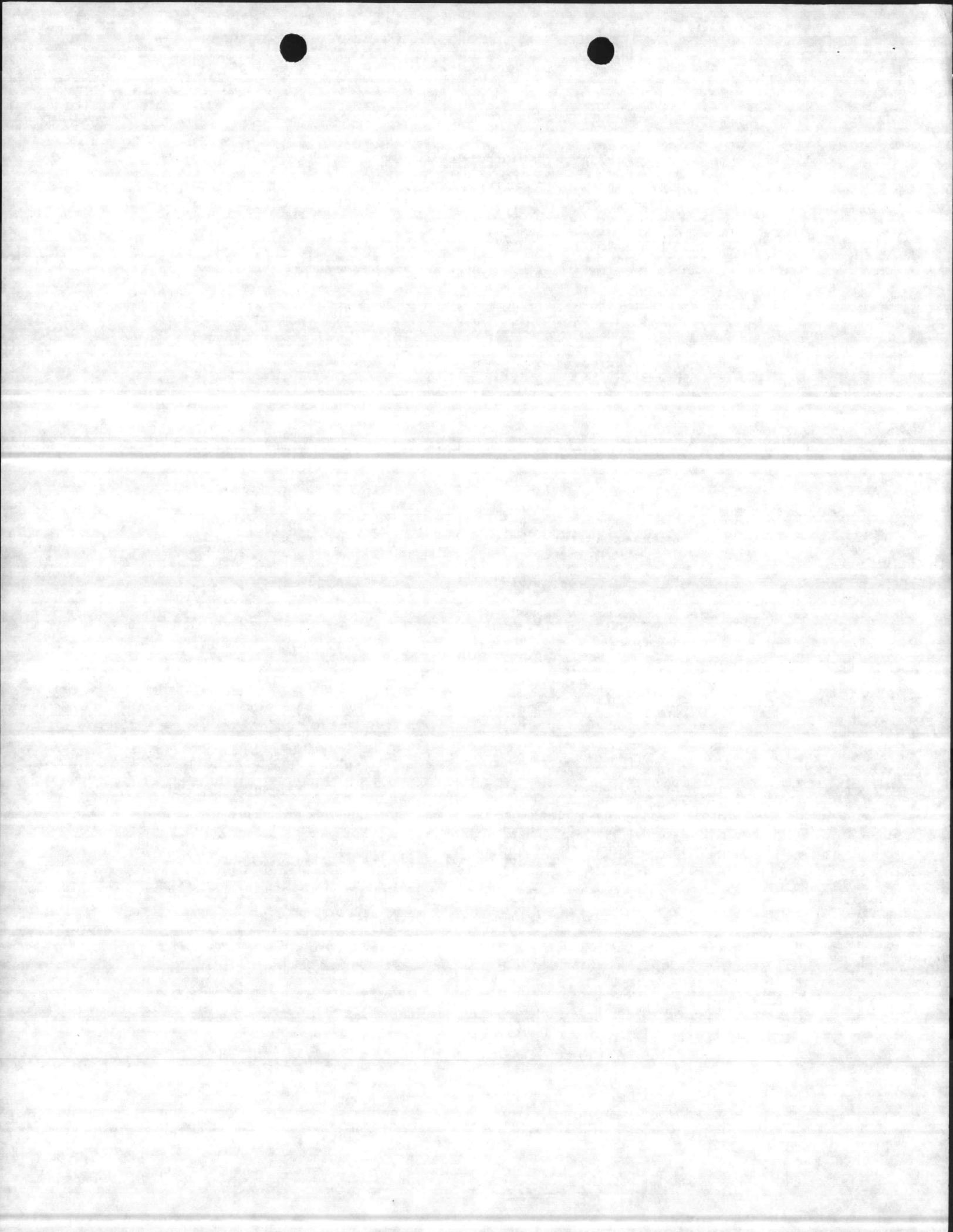
### Interlocal Cooperation.

#### Part 1. Joint Exercise of Powers.

- 160A-460. Definitions.  
160A-461. Interlocal cooperation authorized.  
160A-462. Joint agencies.  
160A-463. Personnel.  
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- 160A-470. Creation of regional councils; definition of "unit of local government."  
160A-471. Membership.  
160A-472. Contents of charter.



an established public park. *Wishart v. City of Lumberton*, 254 N.C. 94, 118 S.E.2d 35 (1961).

**§ 160A-354. Administration of parks and recreation programs.**

A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system. (1945, c. 1052; 1971, c. 698, s. 1.)

**§ 160A-355. Joint parks and recreation systems.**

Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter. (1945, c. 1052; 1967, c. 1228; 1971, c. 698, s. 1.)

**§ 160A-356. Financing parks and recreation.**

Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. (1945, c. 1052; 1971, c. 698, s. 1; 1975, c. 664, s. 12.)

**§ 160A-357:** Repealed by Session Laws 1975, c. 664, s. 13.

**§§ 160A-358, 160A-359:** Reserved for future codification purposes.

**ARTICLE 19.**

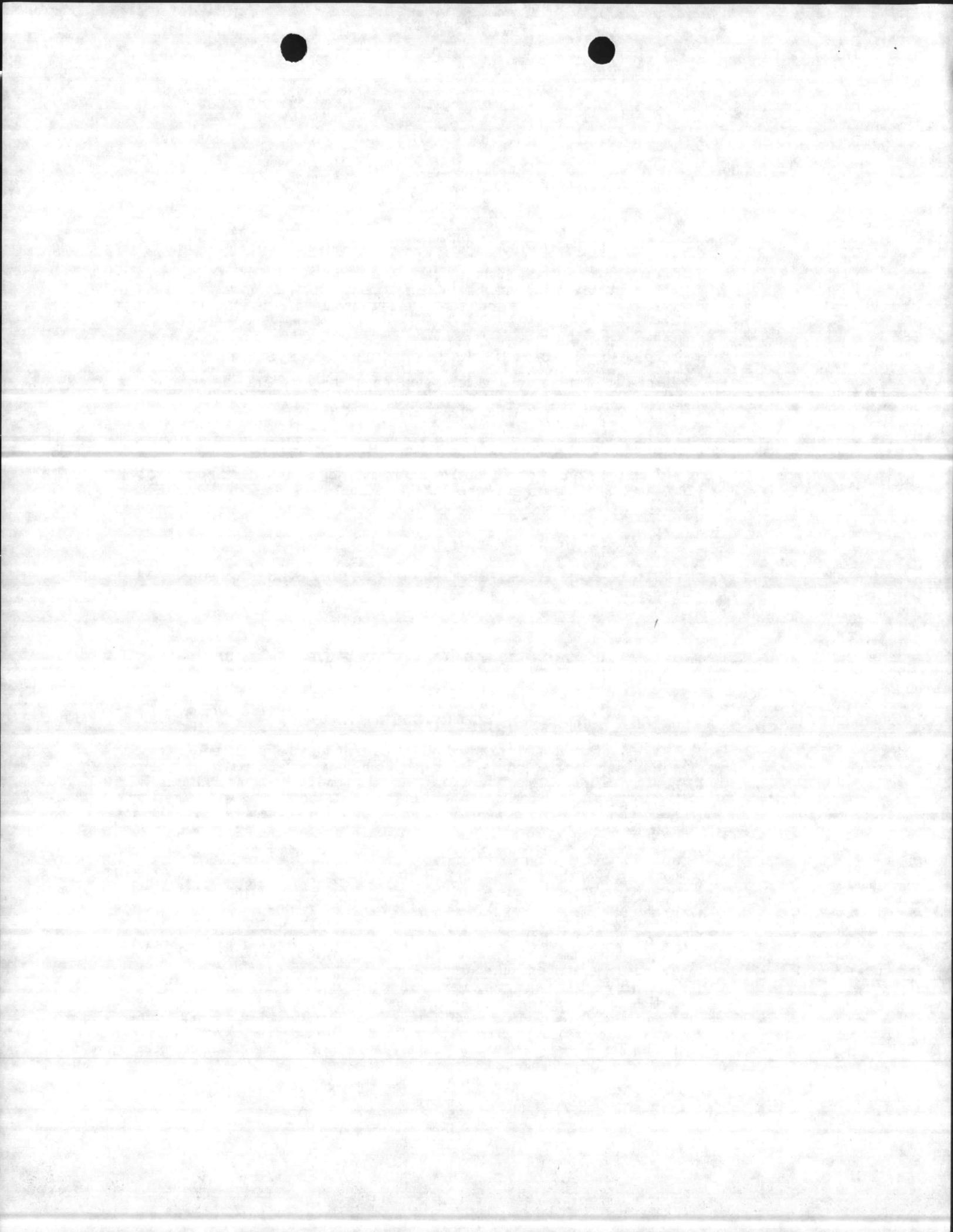
*Planning and Regulation of Development.*

**Part 1. General Provisions.**

**§ 160A-360. Territorial jurisdiction.**

(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in



terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any

action regarding such could have been to its ordinance any building, stri county has acquir the city or county

(j) Repealed by c. 548, ss. 1, 1¾; s. 2; c. 450, s. 1; c. 1208, s. 3; 1969 s. 3; 1973, c. 426,

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The obvious pur mandate in subsec boundaries be def graphical features i is that boundaries b feasible, so that own city can easily ar whether their proper which the city exer zoning authority. Sell N.C. App. 544, 236 S Definiteness in I Not Met. — The bour

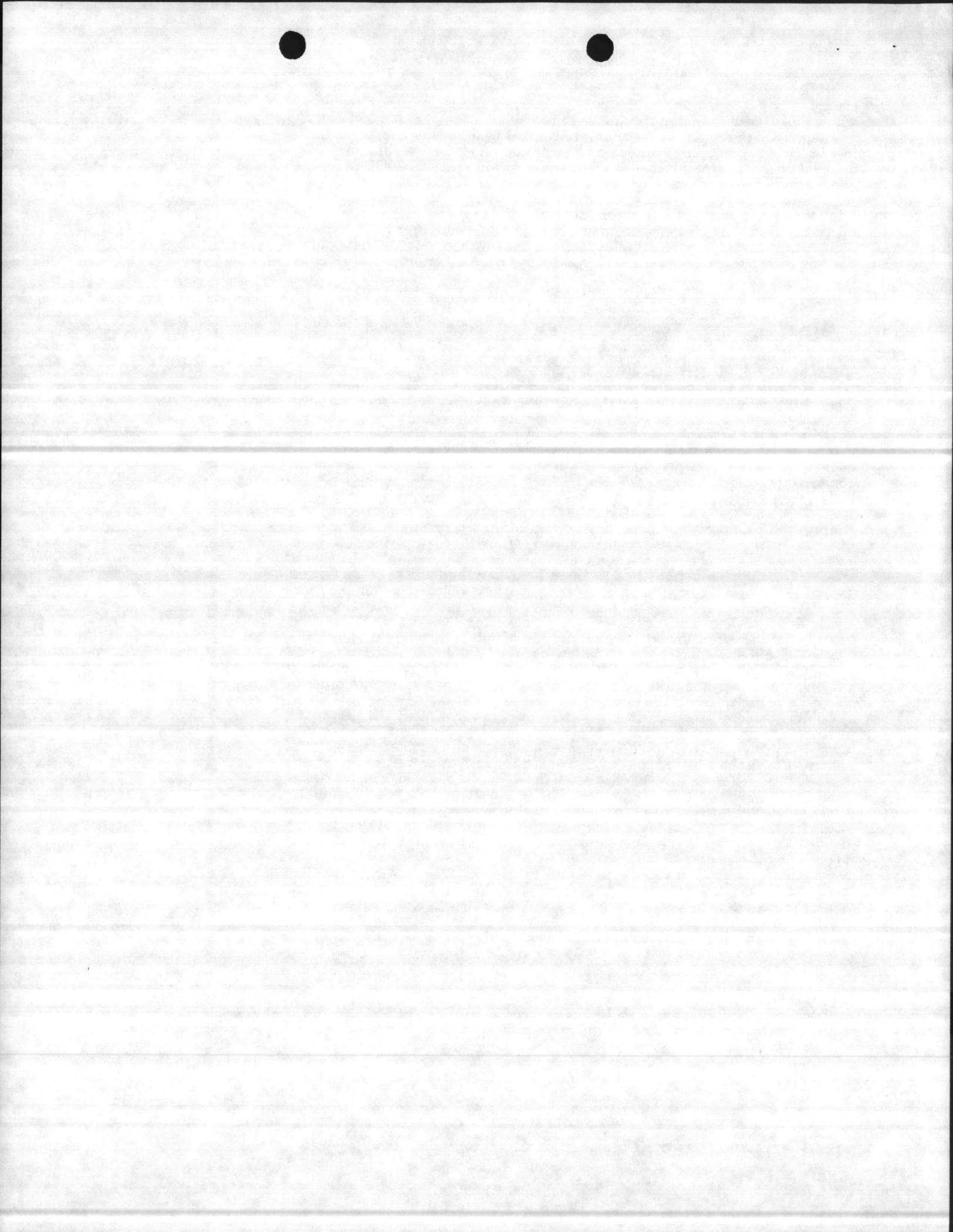
## § 160A-361. ]

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action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed by Session Laws 1973, c. 669, s. 1. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1<sup>3</sup>/<sub>4</sub>; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3; 1973, c. 426, s. 56; c. 525; c. 669, s. 1; 1977, c. 882; c. 912, ss. 2, 4.)

**Local Modification.** — Mecklenburg: 1971, c. 860; Pamlico County: 1977, c. 478, s. 3.

**Cross References.** — As to powers of counties under this Article, see also §§ 153A-320 through 153A-324. As to territorial jurisdiction of counties under this Article,

see § 153A-320. As to procedure for adopting or amending county ordinances under this Article, see § 153A-323. As to validation of certain ordinances not in compliance with this section, see § 160A-366.

CASE NOTES

The obvious purpose of the statutory mandate in subsection (b) requiring that boundaries be defined in terms of geographical features identifiable on the ground is that boundaries be defined, to the extent feasible, so that owners of property outside the city can easily and accurately ascertain whether their property is within the area over which the city exercises its extraterritorial zoning authority. *Sellers v. City of Asheville*, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

**Definiteness in Boundary Descriptions Not Met.** — The boundaries of a city's proposed

extraterritorial zone failed to meet the degree of definiteness mandated by subsection (b) where the only description merely referred to "the territory beyond the corporate limits for a distance of one mile in all directions" and the map showed the "mile boundary" drawn in sweeping curves. *Sellers v. City of Asheville*, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Quoted in *Taylor v. City of Raleigh*, 290 N.C. 608, 227 S.E.2d 576 (1976); *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C. App. 518, 269 S.E.2d 672 (1980).

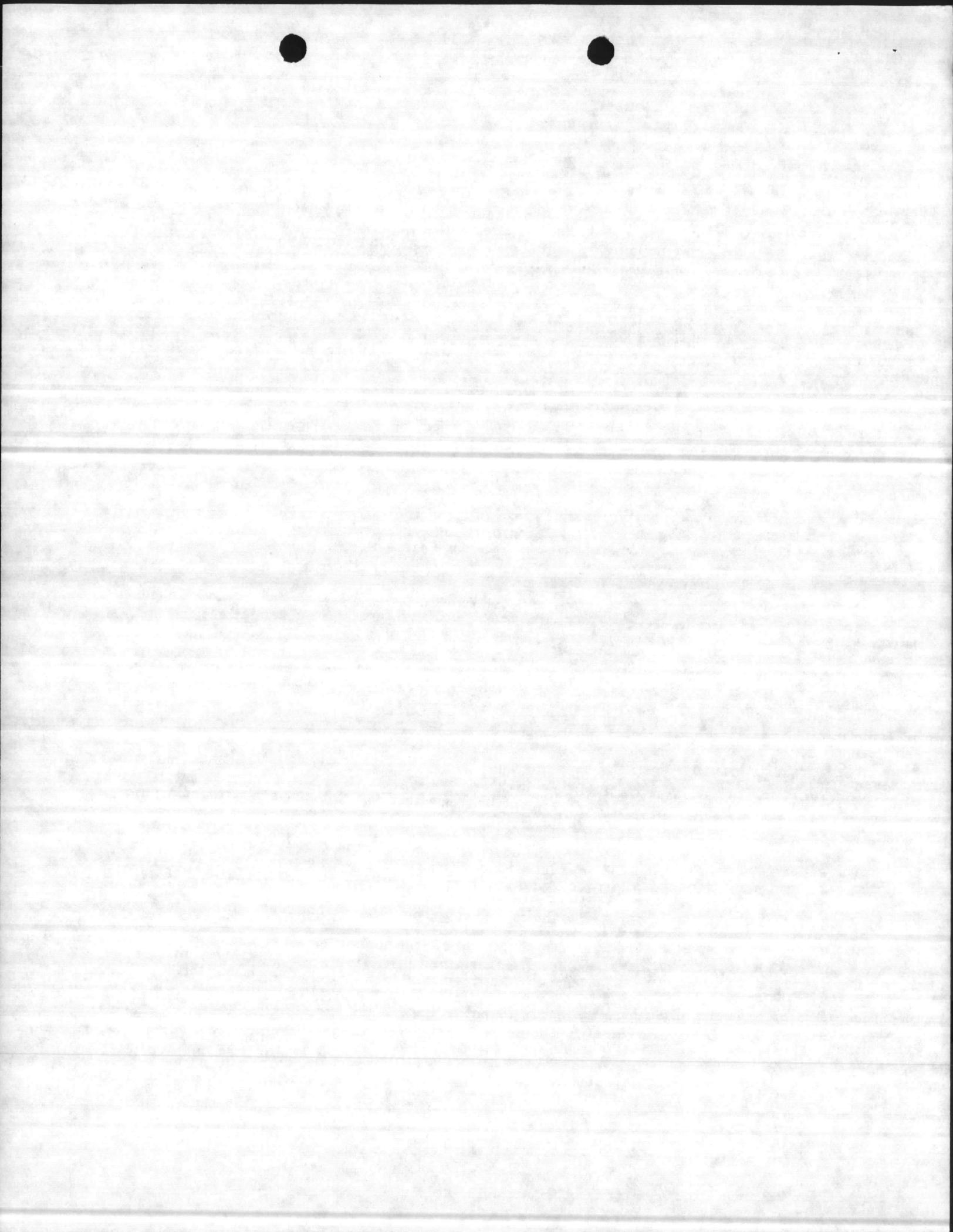
§ 160A-361. Planning agency.

Any city may by ordinance create or designate one or more agencies to perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the council concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- (7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include, but shall not be limited to, one or more of the following, with such staff as the council may deem appropriate:

- (1) A planning board or commission of any size (not less than three members) or composition deemed appropriate, organized in any manner deemed appropriate;



### § 160A-372. Contents and requirements of ordinance.

A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, and rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

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

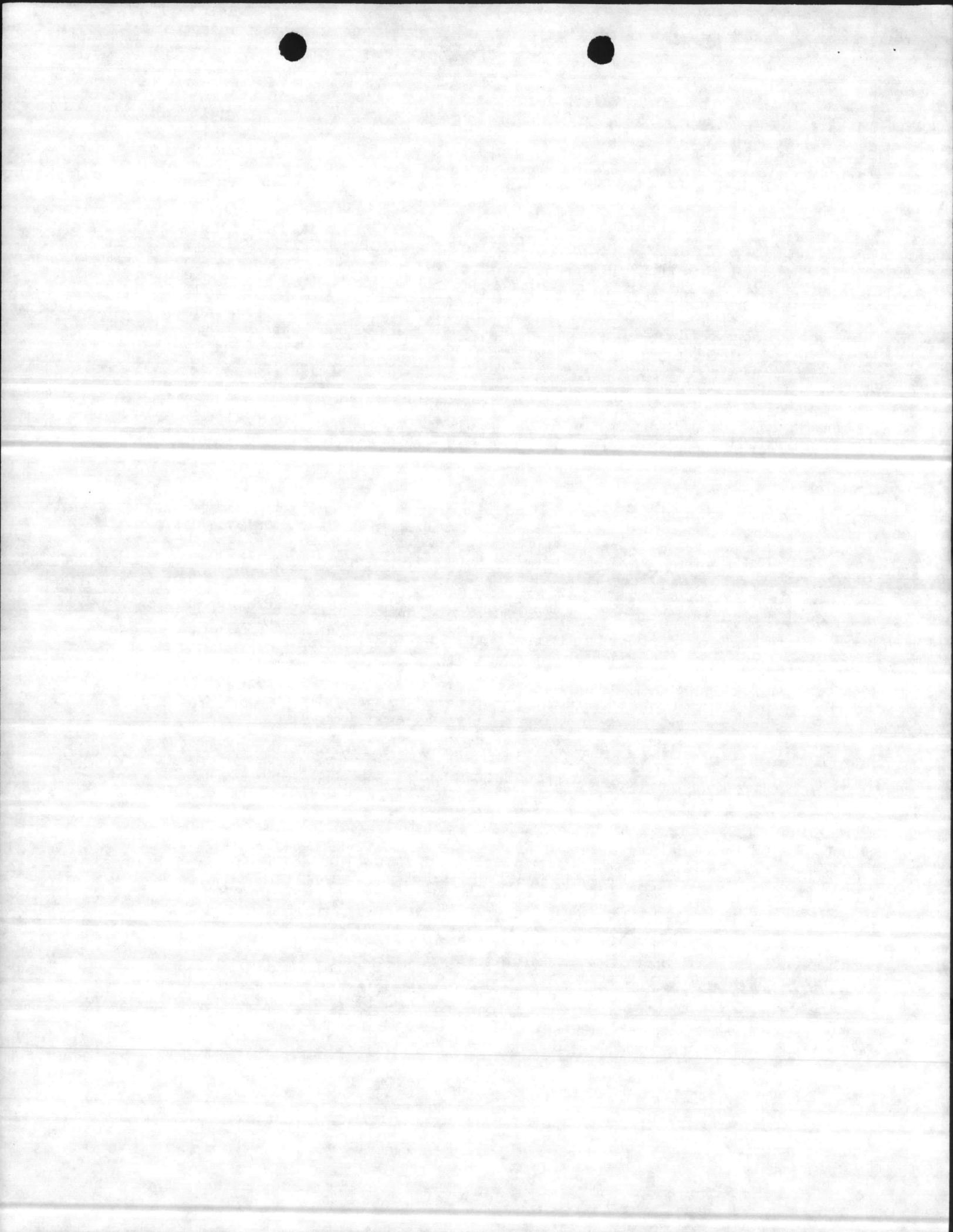
The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59.)

### § 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recording; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

- (1) The city council,
- (2) The city council on recommendation of a planning agency, or
- (3) A designated planning agency.



## § 160A-376. Definition.

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

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets; and
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 61; 1977, c. 912, s. 6.)

§§ 160A-377 to 160A-380: Reserved for future codification purposes.

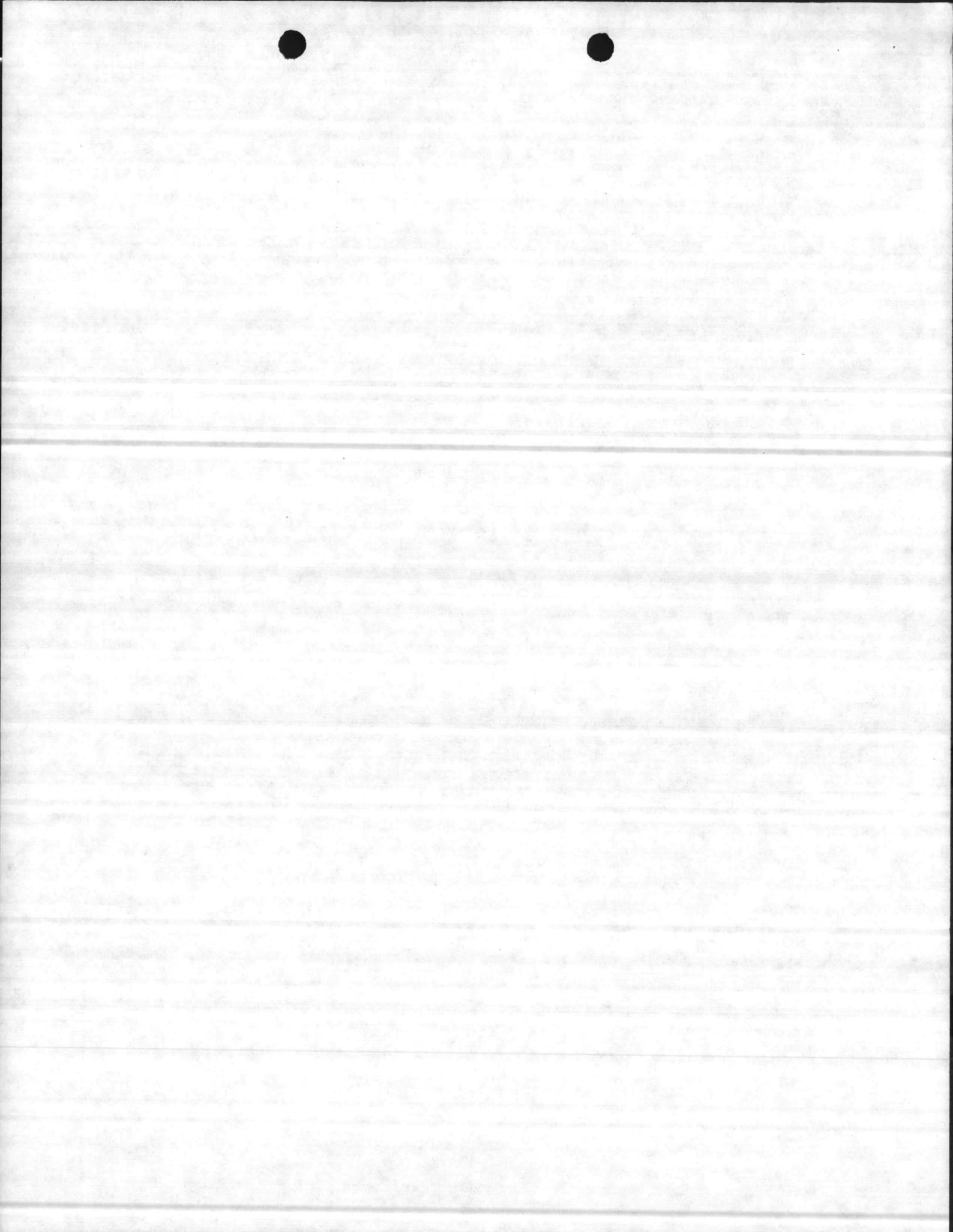
## Part 3. Zoning.

## § 160A-381. Grant of power.

For the purpose of promoting health, safety, morals, or the general welfare of the community, any city is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5.)

Effect of Amendments. — The 1981 amendment, effect Sept. 1, 1981, added the last sentence.

Legal Periodicals. — For survey of 1972 case law on spot and contract zoning, see 51 N.C.L. Rev. 1132 (1973).



Reasonableness of Ordinances. — While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute or ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property; hence, where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new

roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious, and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. *State v. Johnson*, 114 N.C. 846, 19 S.E. 599 (1894), decided under former similar provisions.

### § 160A-437. Restriction within secondary fire limits.

Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with any rules and regulations established by ordinance of the areas. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C.S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

### § 160A-438. Failure to establish primary fire limits.

If the council of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest. (1905, c. 506, s. 7; Rev., s. 3608; C.S., s. 2747; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

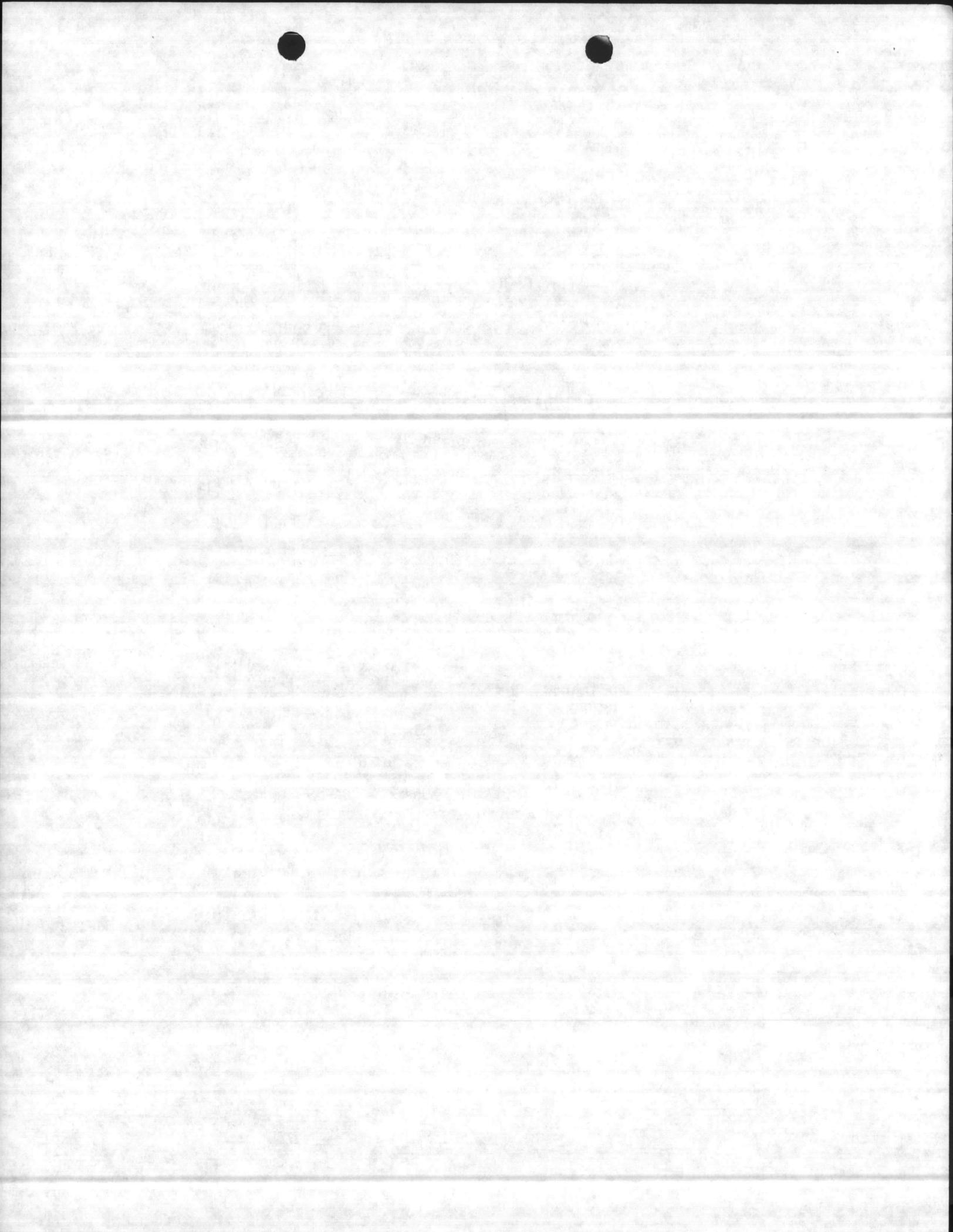
§§ 160A-439, 160A-440: Reserved for future codification purposes.

## Part 6. Minimum Housing Standards.

### § 160A-441. Exercise of police power authorized.

It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of any county or city subject to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

In the exercise of police power authorized herein, respectively they may by ordinance provide for the repair, closing or demolition of any structure



# City of Jacksonville

Home of Camp Lejeune

Office of City Manager

November 22, 1983

Major General Donald G. Fulham  
Commanding General  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

CONFIDENTIAL

Re: City Extraterritorial Area

Dear Don:

You have previously indicated to me your support for the further extension of the city's planning jurisdiction. The City Council has decided, at the strong urging of its Planning Board, to seek County approval for this additional jurisdiction. I am enclosing a map illustrating the extent of the potential two-mile jurisdiction and a list of the planning controls that would accompany this jurisdiction.

If you desire to actively support this proposal, the following are some of the steps you might take to advance this initiative:

- 1) Write to the county commissioners expressing your support for the additional jurisdiction and asking their strong support for good planning in the areas bordering the Marine Corps bases.
- 2) Encourage military personnel, especially those living in the urban fringe areas, to publicly support the additional jurisdiction in order to protect the quality of life for military families.
- 3) Seek the support of the Military-Civilian Community Council for this planning measure.
- 4) Contact the county commissioners personally to solicit their support for this matter of significant concern to the base.

We believe, as you apparently do, that there is a much better chance to eliminate some of the problems in these areas and to insure a better living environment for military personnel if the City exercises greater planning jurisdiction.

Thank you for your interest and concern in this matter.

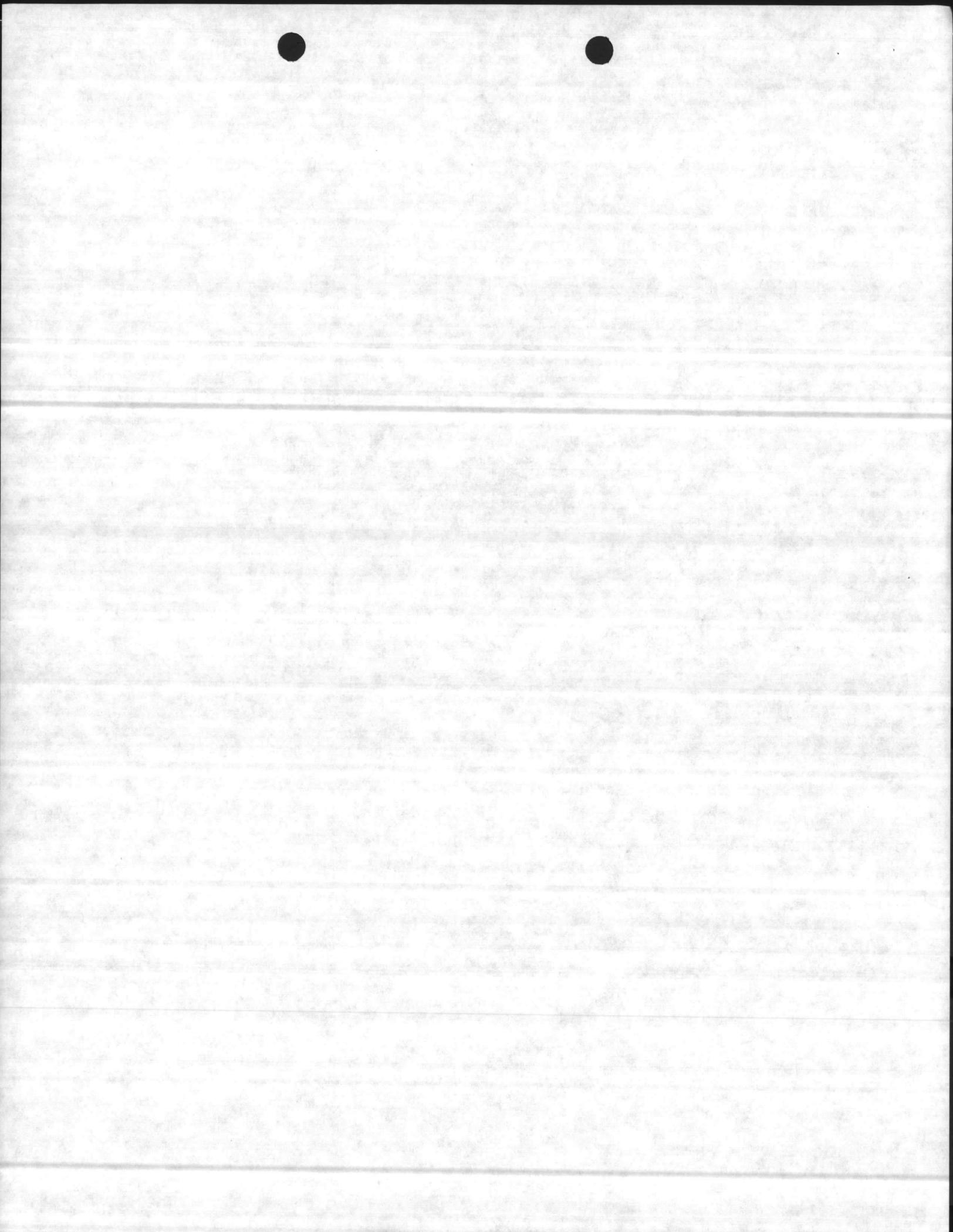
Best regards,



Patrick A. Thomas  
City Manager

PAT/cb  
Enclosure (2)

REF (B)











COMMANDING GENERAL  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

6 December 1983

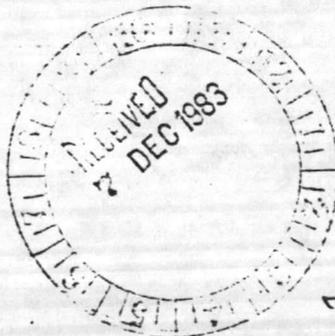
Mr. Edward Hurst, Chairman  
Onslow County Commissioners  
Swansboro, North Carolina 28584

Dear Mr. Hurst,

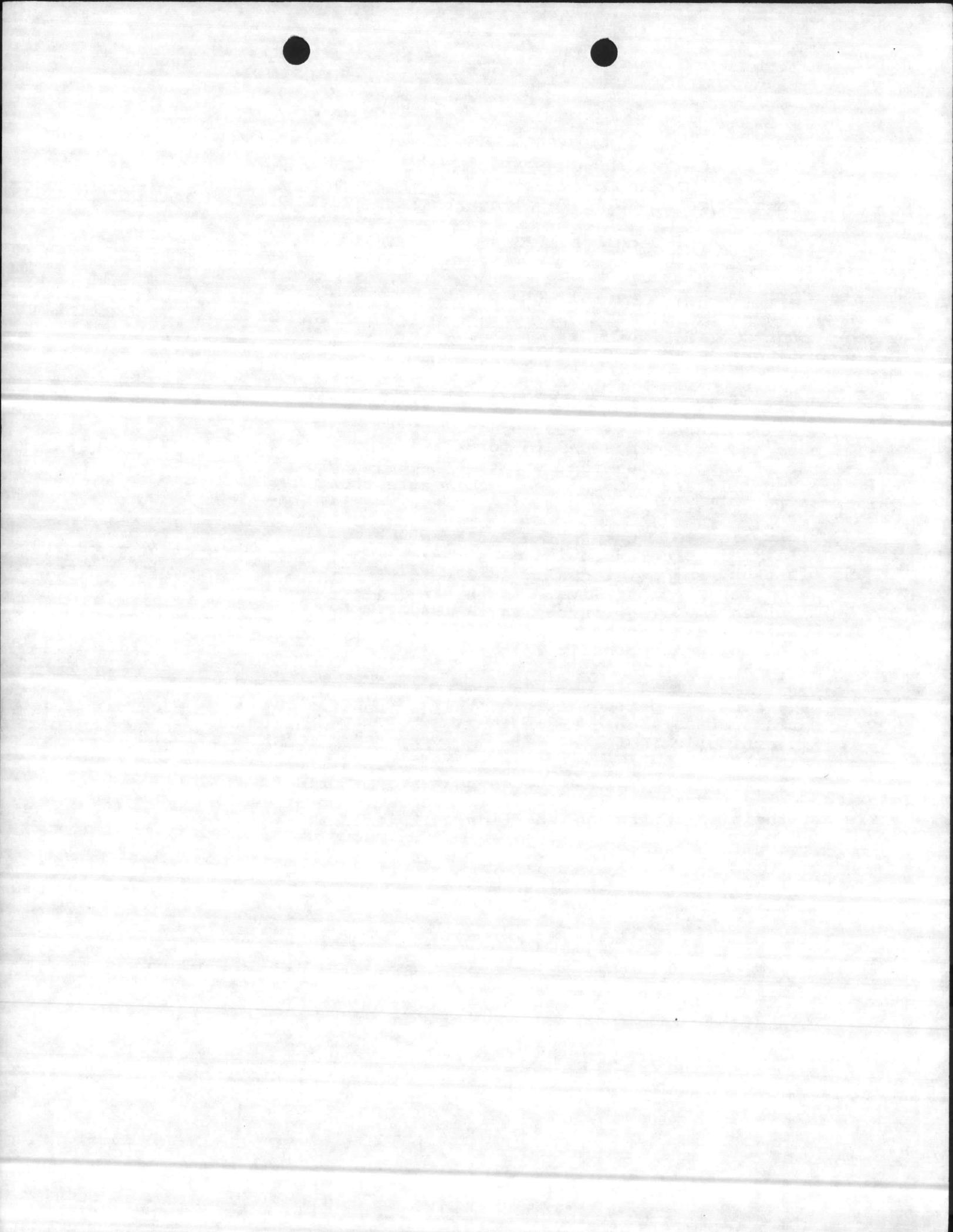
Having commanded Marine Corps Base for 17 months now, I have had many occasions to formally comment on the spirit of cooperation that exists between our local civilian and military communities. I am sure much of this results from your personal efforts.

Our campaign to reduce crime and drug abuse has made considerable progress during the past months, both on and off base, and is gradually leading to our mutual goal of a better place to live. In this spirit, there are still other important issues facing us which I believe collectively can be addressed so as to result in better planning and benefit to the entire Onslow community.

I have recently become aware of the Jacksonville City Council's discussion to seek approval to extend its city planning jurisdiction. As you know, I am interested in all of those places where our Marines live or go on liberty. Some of the areas that are my principal concerns are encompassed by this proposed two mile extraterritorial planning jurisdiction. It includes



REF (C)



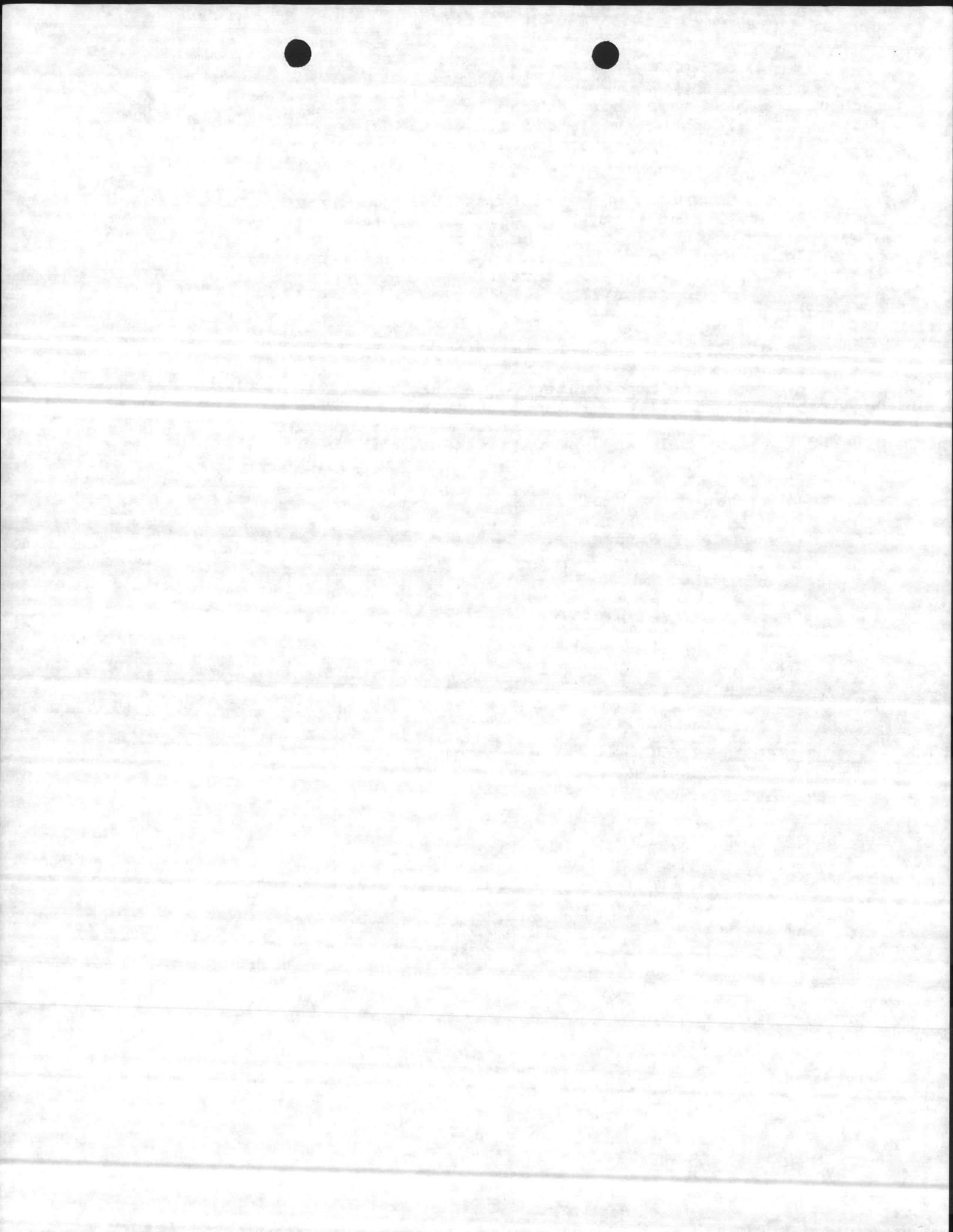
much of the land which borders the Base, as well as many of the places where historically our Marines have gotten into trouble and where much of the "War on Crime" efforts have been directed.

In my discussions with visitors and newcomers to Onslow County I find that these same areas have given a very negative impression of the community. An integrated long range plan with some legal status is necessary if the situation is to be improved. The Council's proposal seems to provide a logical vehicle to accomplish this goal.

Specifically, I earnestly solicit your support for this endeavor. I believe this proposed extension offers an excellent opportunity to enhance the living conditions for military personnel residing in this area and to eliminate some of those problems which have long plagued both the military and civilian community. It is with these thoughts in mind that I ask you to support this effort. I offer my unqualified personal support and that of my staff.

Sincerely,

D. J. FULHAM  
Major General, U. S. Marine Corps



COMMANDING GENERAL  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

6 December 1983

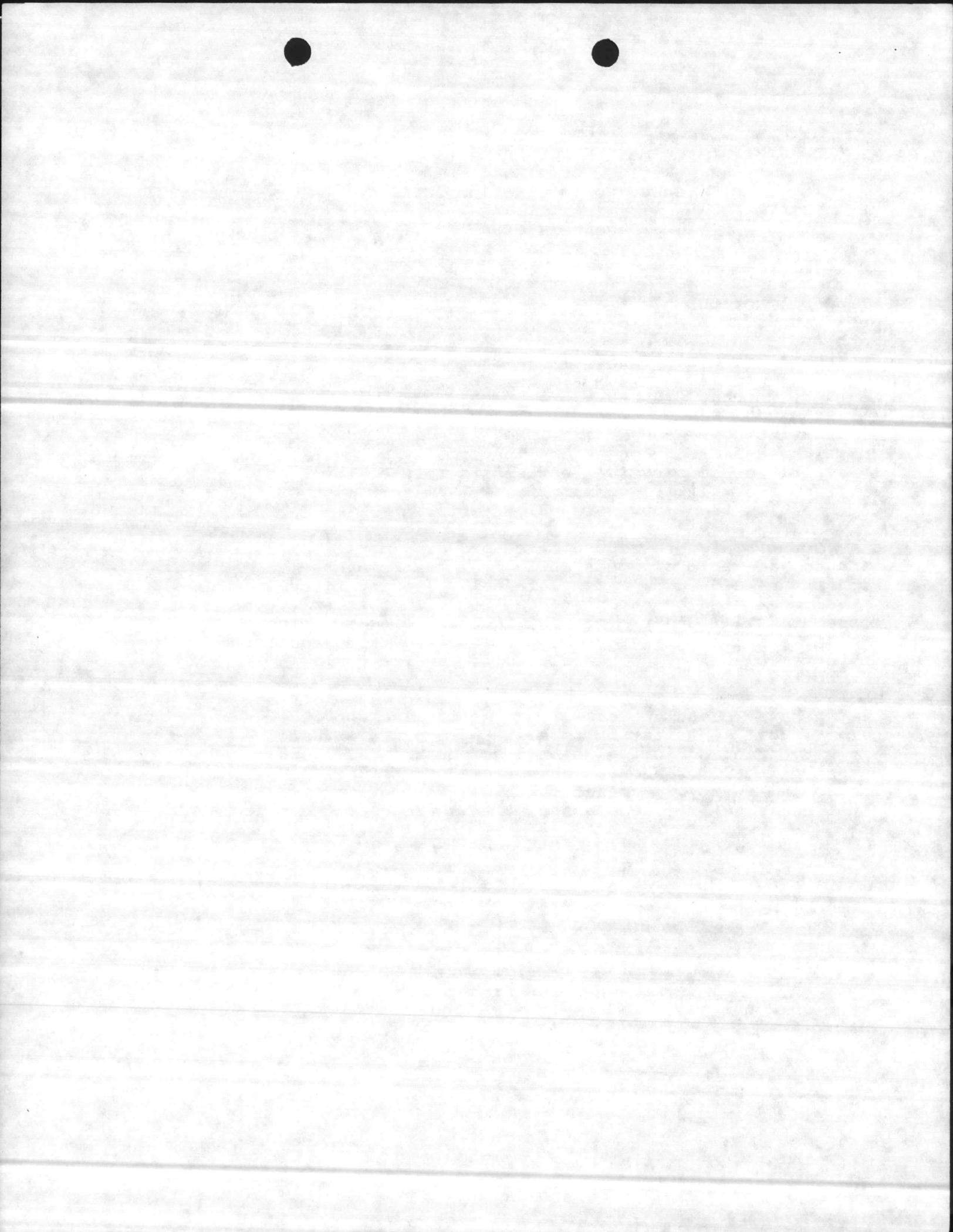
Mr. Cecil Morton  
Onslow County Commissioner  
Webb Apartments - RFD  
Jacksonville, North Carolina 28540

Dear Mr. Morton,

Having commanded Marine Corps Base for 17 months now, I have had many occasions to formally comment on the spirit of cooperation that exists between our local civilian and military communities. I am sure much of this results from your personal efforts.

Our campaign to reduce crime and drug abuse has made considerable progress during the past months, both on and off base, and is gradually leading to our mutual goal of a better place to live. In this spirit, there are still other important issues facing us which I believe collectively can be addressed so as to result in better planning and benefit to the entire Onslow community.

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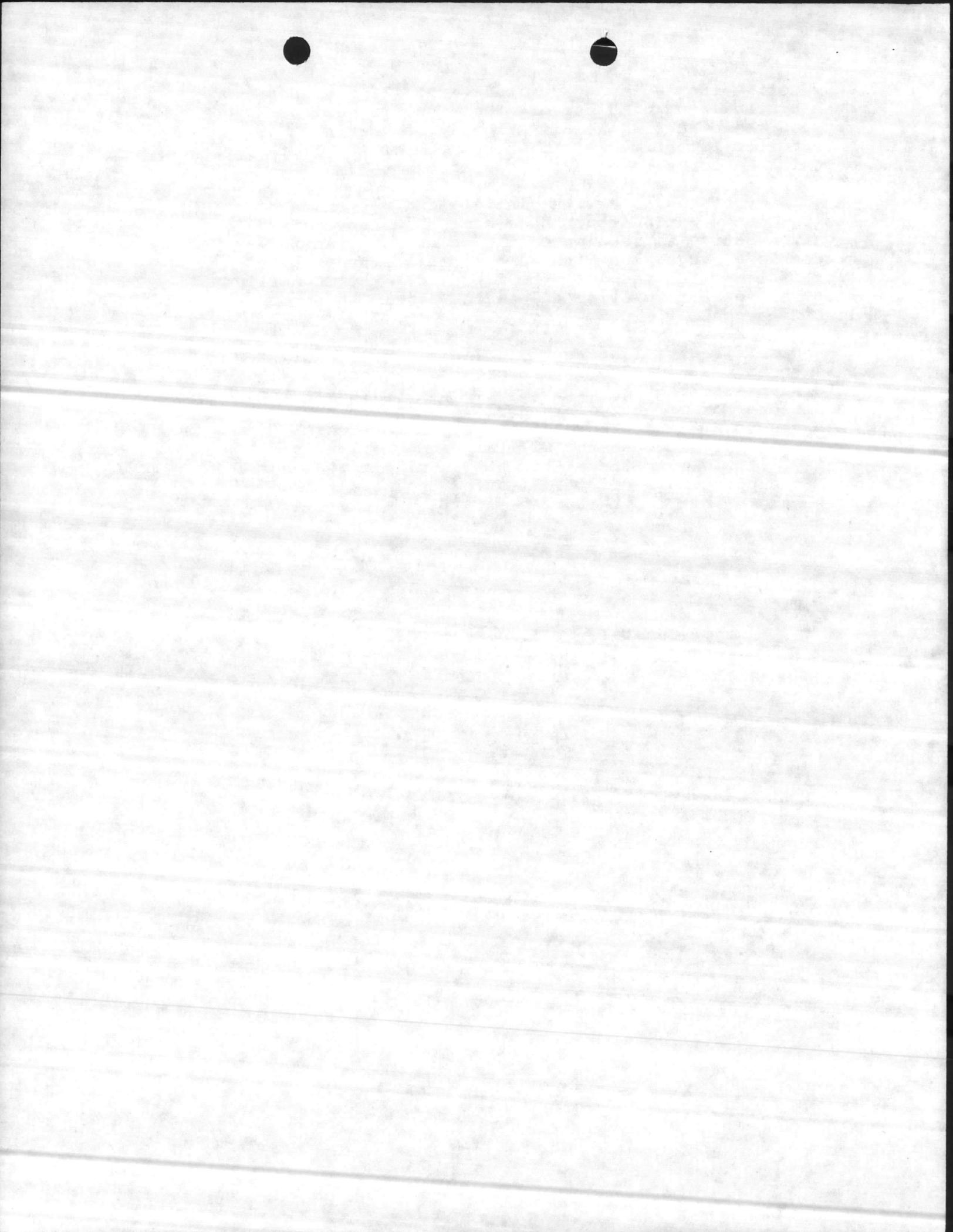
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D. J. FULHAM  
Major General, U. S. Marine Corps



COMMANDING GENERAL  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

6 December 1983

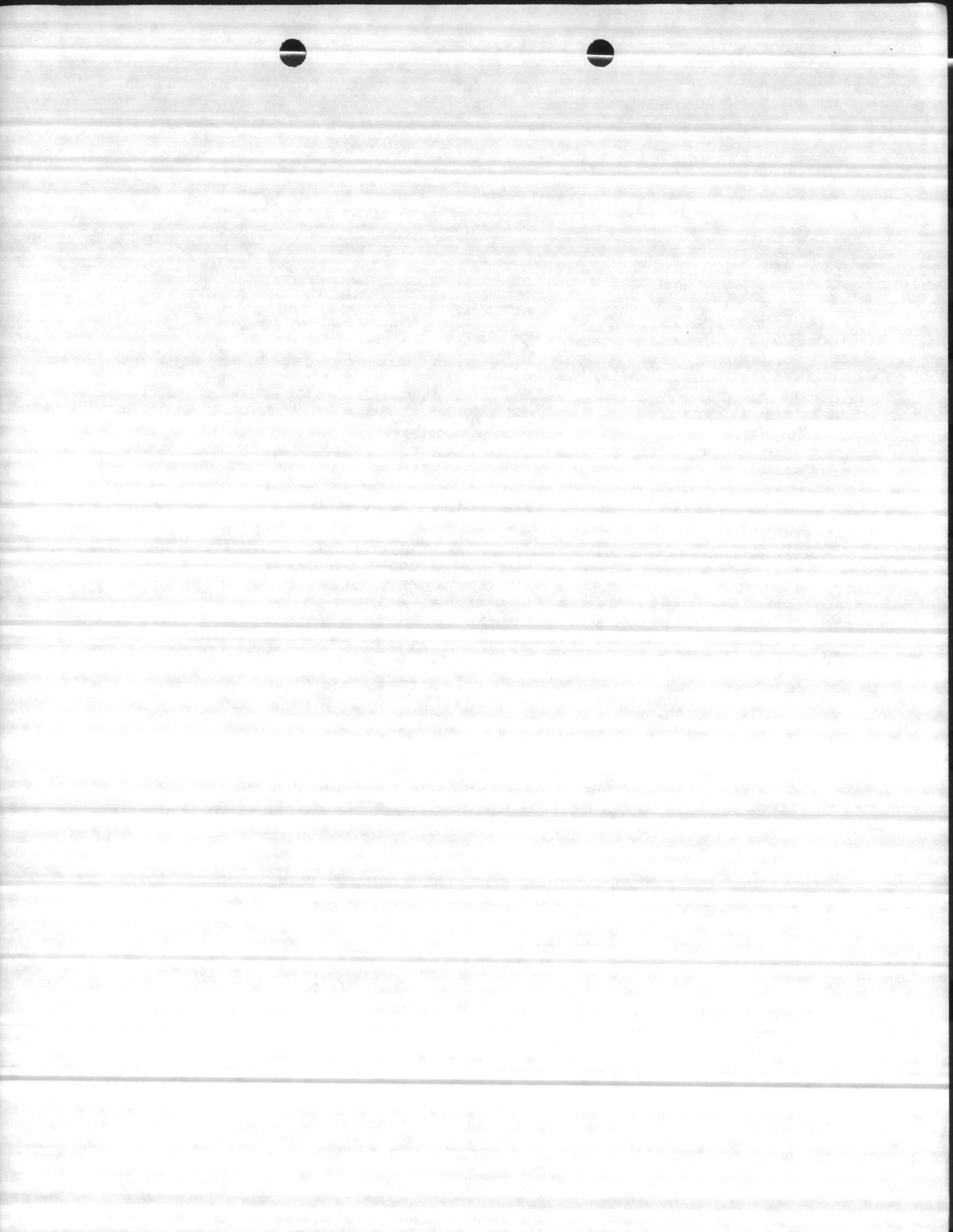
Mr. Paul Starzynski  
Onslow County Commissioner  
8 Carole Street  
Jacksonville, North Carolina 28540

Dear Mr. Starzynski,

Having commanded Marine Corps Base for 17 months now, I have had many occasions to formally comment on the spirit of cooperation that exists between our local civilian and military communities. I am sure much of this results from your personal efforts.

Our campaign to reduce crime and drug abuse has made considerable progress during the past months, both on and off base, and is gradually leading to our mutual goal of a better place to live. In this spirit, there are still other important issues facing us which I believe collectively can be addressed so as to result in better planning and benefit to the entire Onslow community.

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Sincerely,

D. J. FULHAM  
Major General, U. S. Marine Corps



COMMANDING GENERAL  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

6 December 1983

Mr. Starkey Shaw  
Onslow County Commissioner  
RFD 2  
Richlands, North Carolina 28574

Dear Mr. Shaw,

Having commanded Marine Corps Base for 17 months now, I have had many occasions to formally comment on the spirit of cooperation that exists between our local civilian and military communities. I am sure much of this results from your personal efforts.

Our campaign to reduce crime and drug abuse has made considerable progress during the past months, both on and off base, and is gradually leading to our mutual goal of a better place to live. In this spirit, there are still other important issues facing us which I believe collectively can be addressed so as to result in better planning and benefit to the entire Onslow community.

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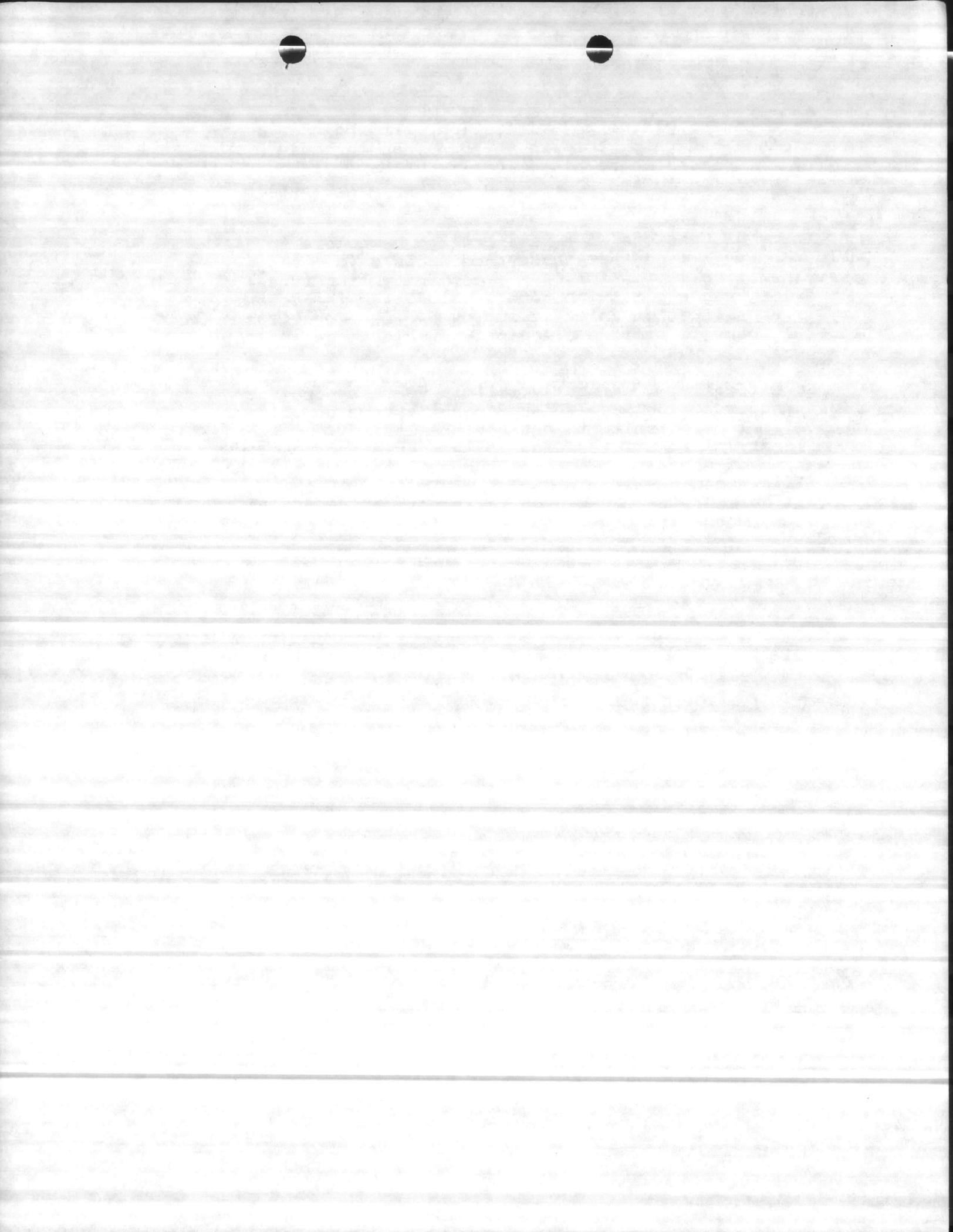
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Major General, U. S. Marine Corps



COMMANDING GENERAL  
Marine Corps Base  
Camp Lejeune, North Carolina 28542

6 December 1983

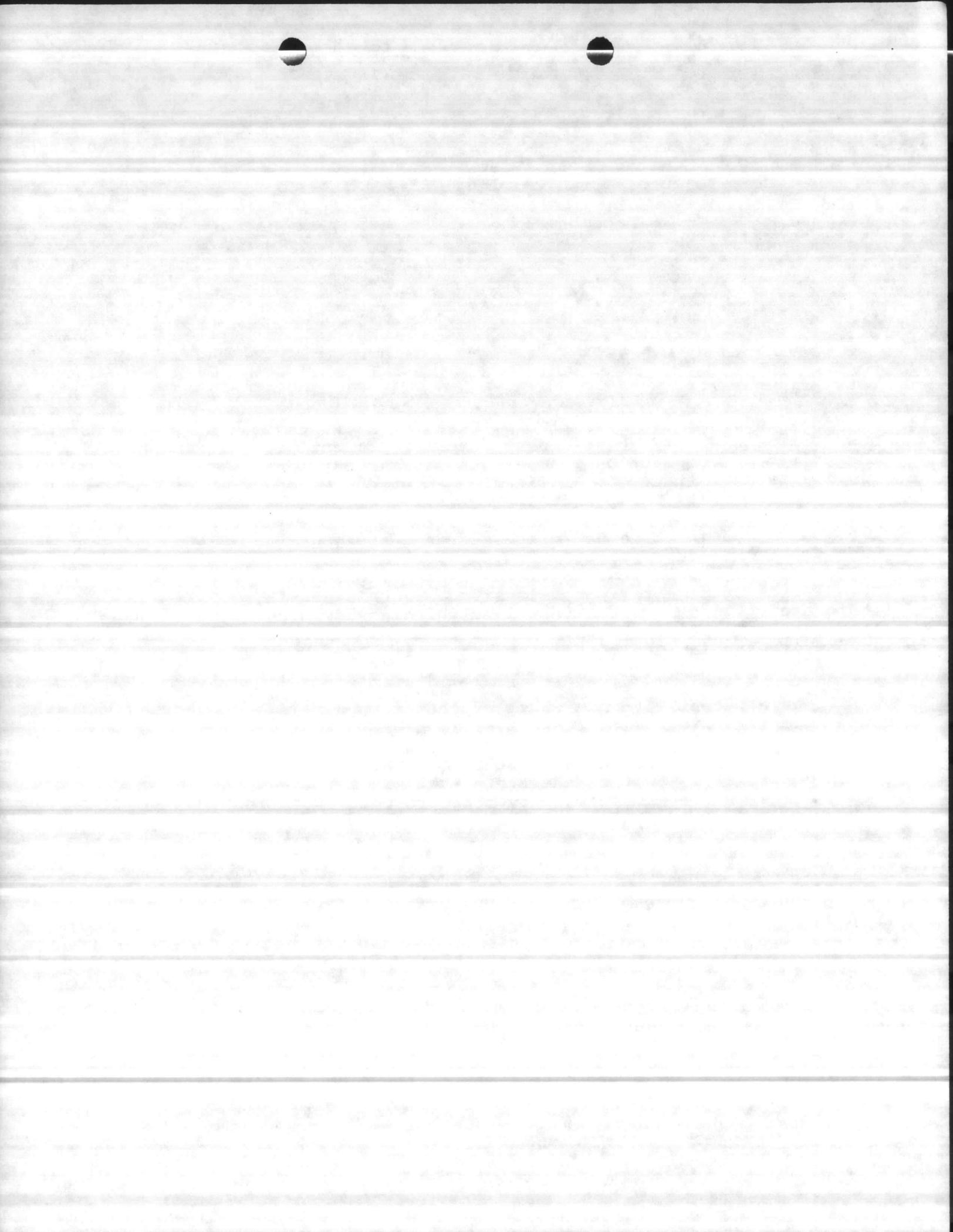
Mr. James E. Stewart  
Onslow County Commissioner  
306 New Bridge Street  
Jacksonville, North Carolina 28542

Dear Mr. Stewart,

Having commanded Marine Corps Base for 17 months now, I have had many occasions to formally comment on the spirit of cooperation that exists between our local civilian and military communities. I am sure much of this results from your personal efforts.

Our campaign to reduce crime and drug abuse has made considerable progress during the past months, both on and off base, and is gradually leading to our mutual goal of a better place to live. In this spirit, there are still other important issues facing us which I believe collectively can be addressed so as to result in better planning and benefit to the entire Onslow community.

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D. J. FULHAM  
Major General, U. S. Marine Corps





# City of Jacksonville

## REQUEST FOR CITY COUNCIL ACTION

To: The Honorable Mayor and City Council  
From: Patrick A. Thomas, City Manager   
Subject: Extraterritorial Planning Jurisdiction

11/08/83

Jacksonville currently exercises extraterritorial planning jurisdiction in areas outside our corporate limits for a distance of up to one mile, as permitted to- and exercised by most of the cities in the state (GS 160A-360(a)). Cities of our size (10,000-25,000 population) are permitted to exercise planning jurisdiction up to two miles from their corporate limits when the county does not exercise a full range of planning powers in the area and if the county governing board agrees. Jacksonville is eligible to request such authority because the County does not administer a zoning ordinance in the area bordering the City and its ETJ.

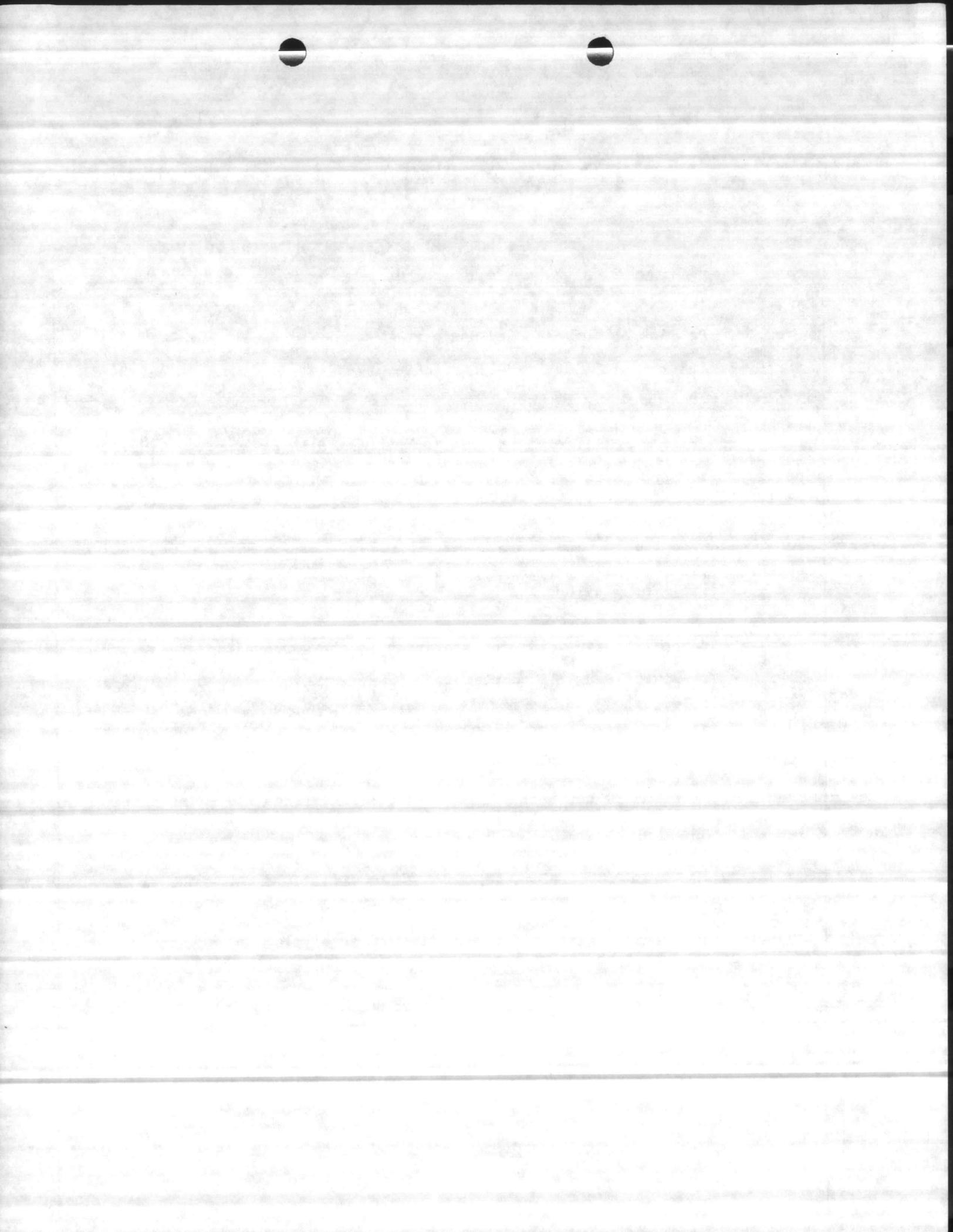
Because of the high rate of growth in the city and surrounding areas and the lack of comprehensive planning standards in the surrounding areas, urban growth has outstripped the City's ability to insure quality development and is resulting in an increasing number of land use problems. In recognition of this problem, the Planning Board has initiated and unanimously recommended that the City Council seek approval from the County Commissioners to extend the City's planning jurisdiction up to two miles. The City Planner also supports the recommendation.

A map (enclosed) has been prepared which illustrates the existing City limits, the existing planning jurisdiction, and the potential two-mile jurisdiction.

### Action Needed

If the Council desires to pursue the additional planning authority, a resolution must be adopted expressing the request.

REF (E)



A RESOLUTION REQUESTING APPROVAL OF  
TWO-MILE EXTRATERRITORIAL PLANNING JURISDICTION

WHEREAS Jacksonville is the county seat and urban center of Onslow County, a metropolitan statistical area with an urban area population of 72,000, a state-designated regional growth center, a population center containing 40% of the county's registered voters and 40% of the county's property valuation, and a retail center generating over 75% of the county's retail sales; and

WHEREAS Jacksonville has experienced a very high rate of growth and development, extending its area thirty-fold since 1940, expanding its corporate area over a mile every ten years, increasing its population 40% in the last decade, and ranking third state-wide in per capita construction in 1983 (with \$33.6 million in building permits); and

WHEREAS the primary purpose of municipal governments is to provide adequate protection of the public health, welfare, and safety in areas which are urban or are becoming urban, protecting the quality of life in areas of population concentration and preserving towns and cities as lively, healthy focal points for economic growth and public activity; and

WHEREAS G.S. 160A-360 grants all municipalities authority to plan and regulate development in an area up to one mile from their city limits and provides that cities over 10,000 population (such as Jacksonville) may conduct planning activities in an area up to two miles from their corporate limits; and

WHEREAS the City has identified numerous problems occurring in the urbanizing area outside its present planning jurisdiction, including land use conflicts, inadequate community facilities, and urban blight; and

WHEREAS sound and orderly planning can help arrest, correct, and prevent these problems, can protect and preserve the value of property and the quality of life, can insure the provision of adequate public facilities, can eliminate future, hidden financial burdens for citizens of the community, and can insure that Jacksonville is able to lead the way to sustained economic growth in Onslow County;

BE IT RESOLVED that the City Council of the City of Jacksonville, North Carolina, requests that the Board of County Commissioners of the County of Onslow approve, as provided by G.S. 160A-360, the extension of the City's planning jurisdiction up to two miles from the City's corporate limits; and

BE IT FURTHER RESOLVED that the City Council asks to be notified of those occasions on which this matter is scheduled for discussion by the County Board and offers to meet further with the County Commissioners to work toward comprehensive planning for sound, orderly growth in the city's urbanizing fringe area.

REF (F)



















RC

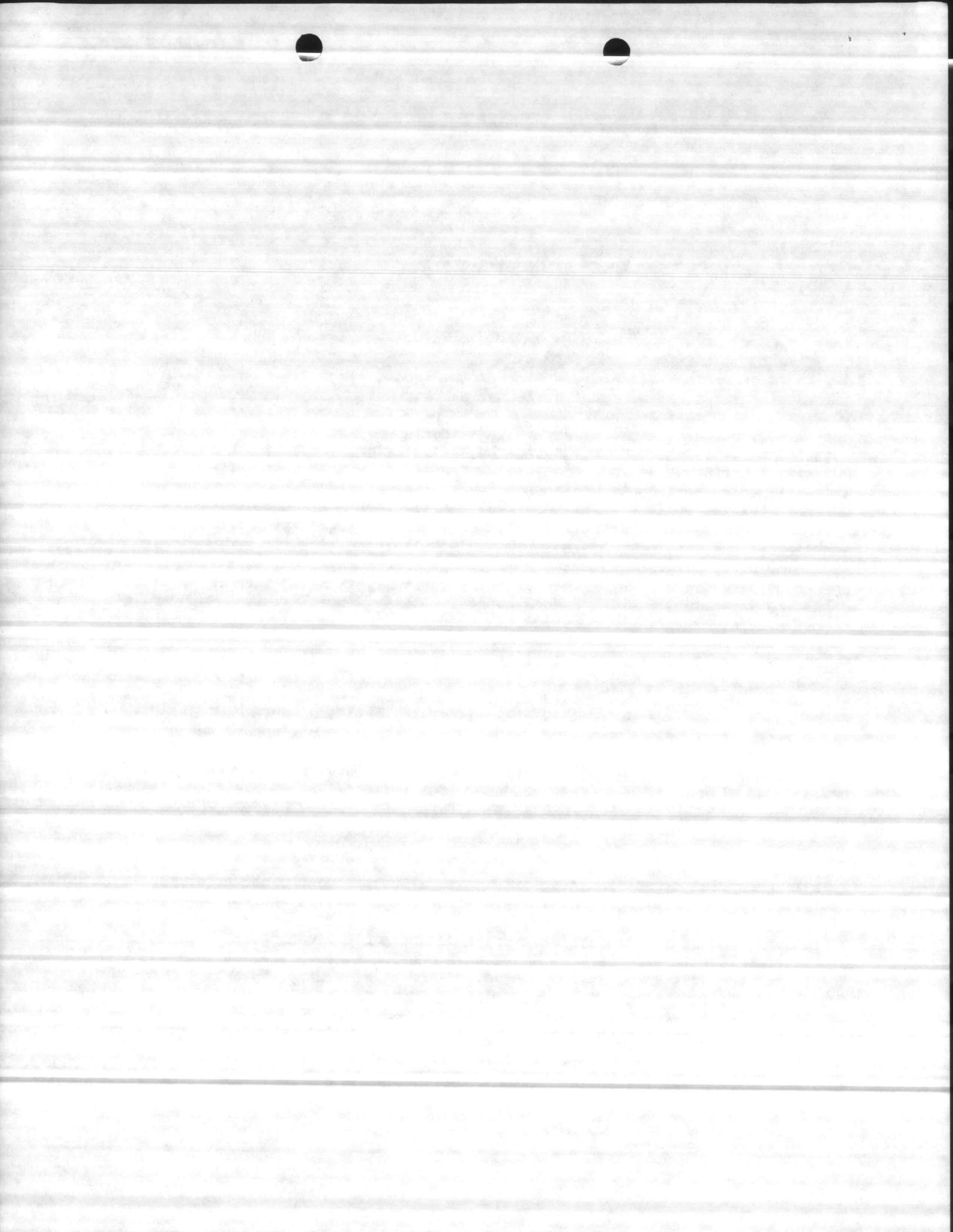
Mr. Cecil C. Morton  
Chairman, Onslow County Board of Commissioners  
109 Old Bridge Street  
Jacksonville, North Carolina 28540

Dear Mr. Morton:

I wish to express my sincere concern for the recent tragic loss of life in a fire during the night of January 18th at a Movie Mates establishment on Highway 17 South. My predecessors in command and I have for several years been concerned for the physical safety of individuals who patronize business establishments in the county, beyond the jurisdiction of the City Fire Prevention Officer. As you know, Onslow County has not adopted a fire prevention code, although such an ordinance is permitted by North Carolina General Statute, Section 153A-235. Additionally, the North Carolina State Building Code of 1978 currently applies only to new structures built after adoption of that code and to those pre-1978 buildings which are renovated in excess of fifty percent. Therefore, although fire hazards may exist in various commercial structures in the county, there currently is neither an inspection procedure in place to detect and to correct hazards nor an existing standard of compliance for many of these buildings.

A local newspaper has reported that access to the rear exit of the Movie Mates building which burned appeared to have been blocked by a large dresser with the body of the deceased woman employee having been found nearby. While it is not clear unobstructed access to the rear exit of the building would have saved a human life, the deceased's chances of surviving the fire would have been improved if she had access to the exit. A fire prevention code which required an accessible rear exit might have provided the impetus for the dresser to have been placed elsewhere. Another newspaper article concerning the fire suggested that the volunteer fire departments which responded did not have an adequate water supply to extinguish the blaze.

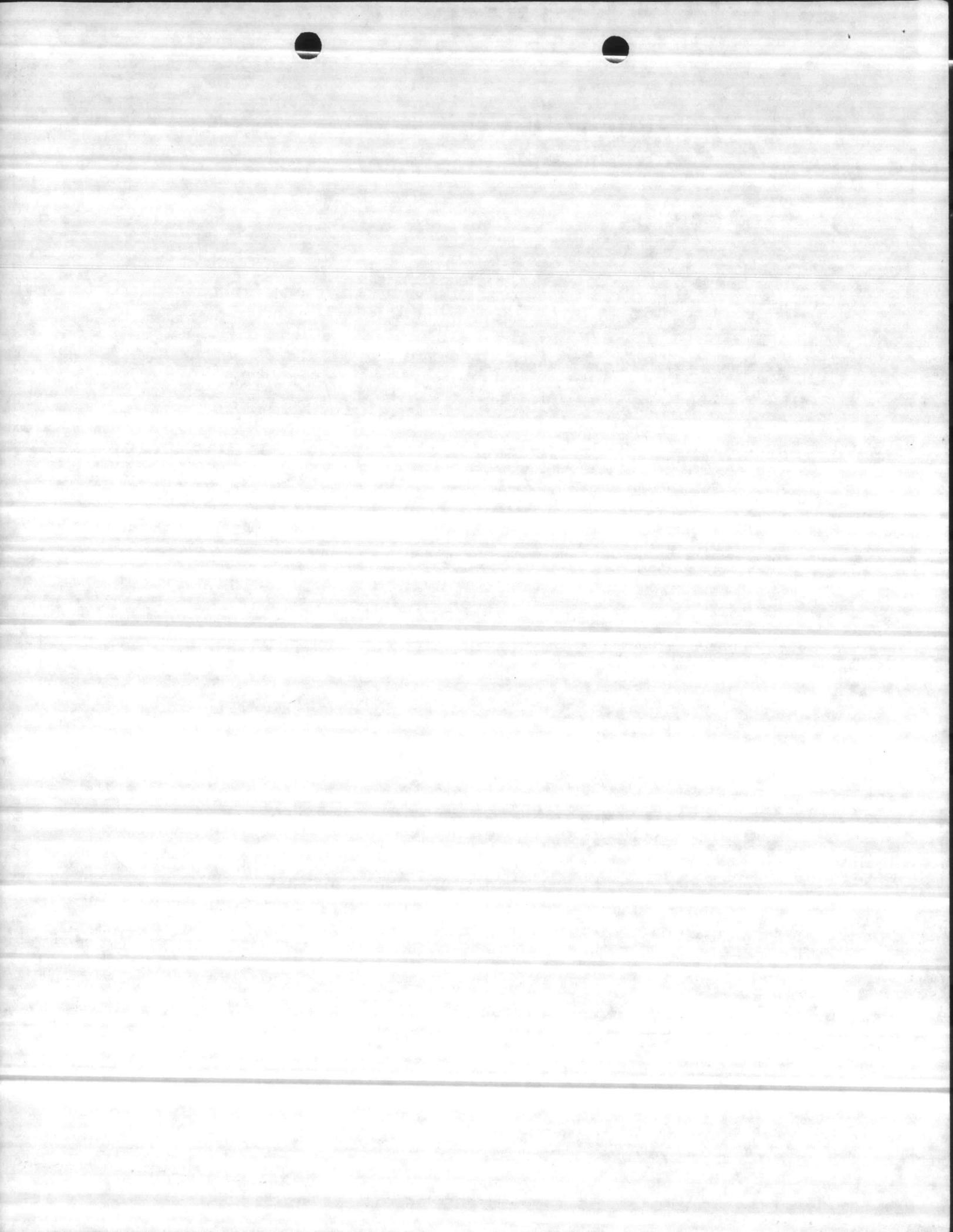
In my view, a properly enforced fire prevention code for the county applicable to all commercial establishments would materially improve the potential safety and welfare of Onslow County citizens, military and civilian alike. Moreover, I firmly believe that buildings constructed prior to 1978 should be included, albeit in a manner which does not require unreasonable structural modification or disproportionate expense, but which does provide a reasonable modicum of safety for the customers, without whose patronage, of course, no business could exist whatsoever. Although the cost of doing business in the county would increase to some extent, the concomitant improvement in the preservation of property and the physical well-being of patrons and employees alike should more than offset the expense.



I trust you share my belief the safety of its citizens is any governing body's primary responsibility, and I shall welcome the opportunity to render any assistance requested in implementing this proposal.

Sincerely,

L. H. BUEHL  
Brigadier General, U.S. Marine Corps  
Commanding General



§§ 153A-230 to 153A-232: Reserved for future codification purposes.

ARTICLE 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services.

A county may establish, organize, equip, support, and maintain a fire department; may prescribe the duties of the fire department; may provide financial assistance to incorporated volunteer fire departments; may contract for fire-fighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments; and may for these purposes appropriate funds not otherwise limited as to use by law. The county may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes. (1945, c. 244; 1973, c. 822, s. 1; 1977, c. 158.)

§ 153A-234. Fire marshal.

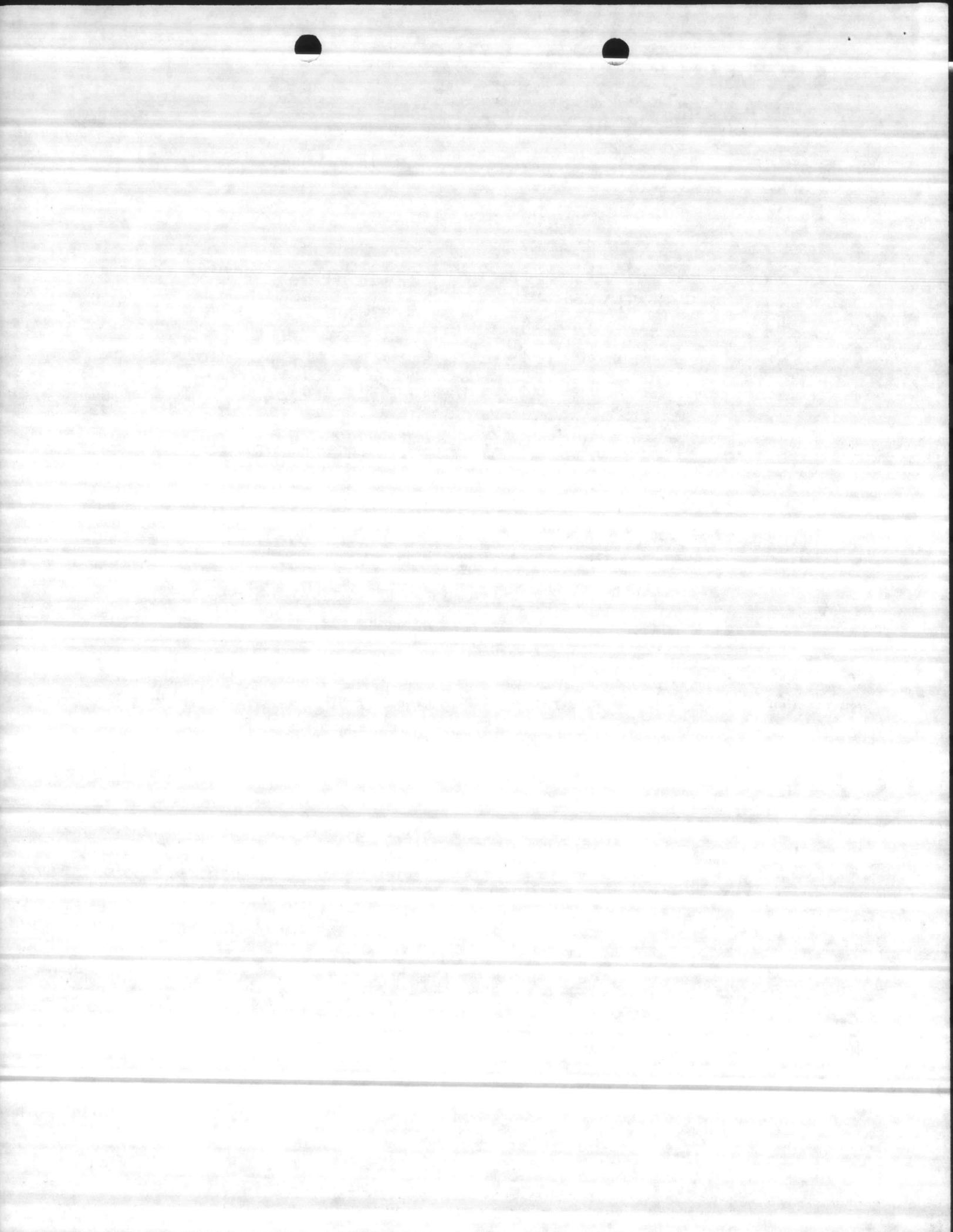
A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

- (1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.
- (2) Coordinating fire-fighting and training activities under the county's supervision or control.
- (3) Coordinating fire prevention activities under the county's supervision or control.
- (4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.
- (5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of day-care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351. (1959, c. 290; 1969, c. 1064, s. 2; 1973, c. 822, s. 1.)

§ 153A-235. Fire prevention codes.

A county may by ordinance adopt a fire prevention code, to be effective in all areas of the county not governed by a city fire prevention code. Any published technical code or any standard or regulation promulgated by a public agency may be adopted in the ordinance by reference, and a technical code or standard the ordinance is effective. An official copy of a technical code or standard regulation adopted by reference shall be available for public inspection in the clerk's office. Before a fire prevention code may be adopted, it must be submitted to and approved by the State Building Code Council.

A county that adopts a fire prevention code shall appoint one or more fire prevention inspectors or designate one or more other county officers or employees to perform the duties of fire prevention inspector. The board of commissioners shall, subject to the approval of the State Building Code Council,



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§§ 153A-236 to 153A-238: Reserved for future codification purposes.

## ARTICLE 12.

### Roads and Bridges.

#### § 153A-239. Public road defined.

In this Article "public road" or "road" means any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public or in which the public has acquired rights by prescription, without regard to whether it is open for travel. (1973, c. 822, s. 1.)

**Local Modification.** — Brunswick: 1979, 2nd Sess., c. 1319; Cabarrus: 1981, c. 568, amending 1979, 2nd Sess., c. 1319.

#### § 153A-240. Naming roads and assigning street numbers in unincorporated areas.

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- (1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;
- (2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or
- (3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing, the board of commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the county courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in at least one newspaper of general circulation published in the county. After naming or renaming a public road, or assigning or reassigning street numbers on a public road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road.

This section does not repeal or modify Chapter 945 of the Session Laws of 1953, which pertains to naming streets in Kannapolis. (1957, c. 1068; 1973, c. 507, s. 5; c. 822, s. 1; 1981, cc. 112, 518.)

**Local Modification.** — Brunswick: 1979, 2nd Sess., c. 1319; Cabarrus: 1981, c. 568, amending 1979, 2nd Sess., c. 1319; Forsyth: 1981, c. 558; Guilford: 1979, c. 283.

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**Effect of Amendments.** — The first 1981 amendment substituted "at the County Courthouse, in at least two public places in the

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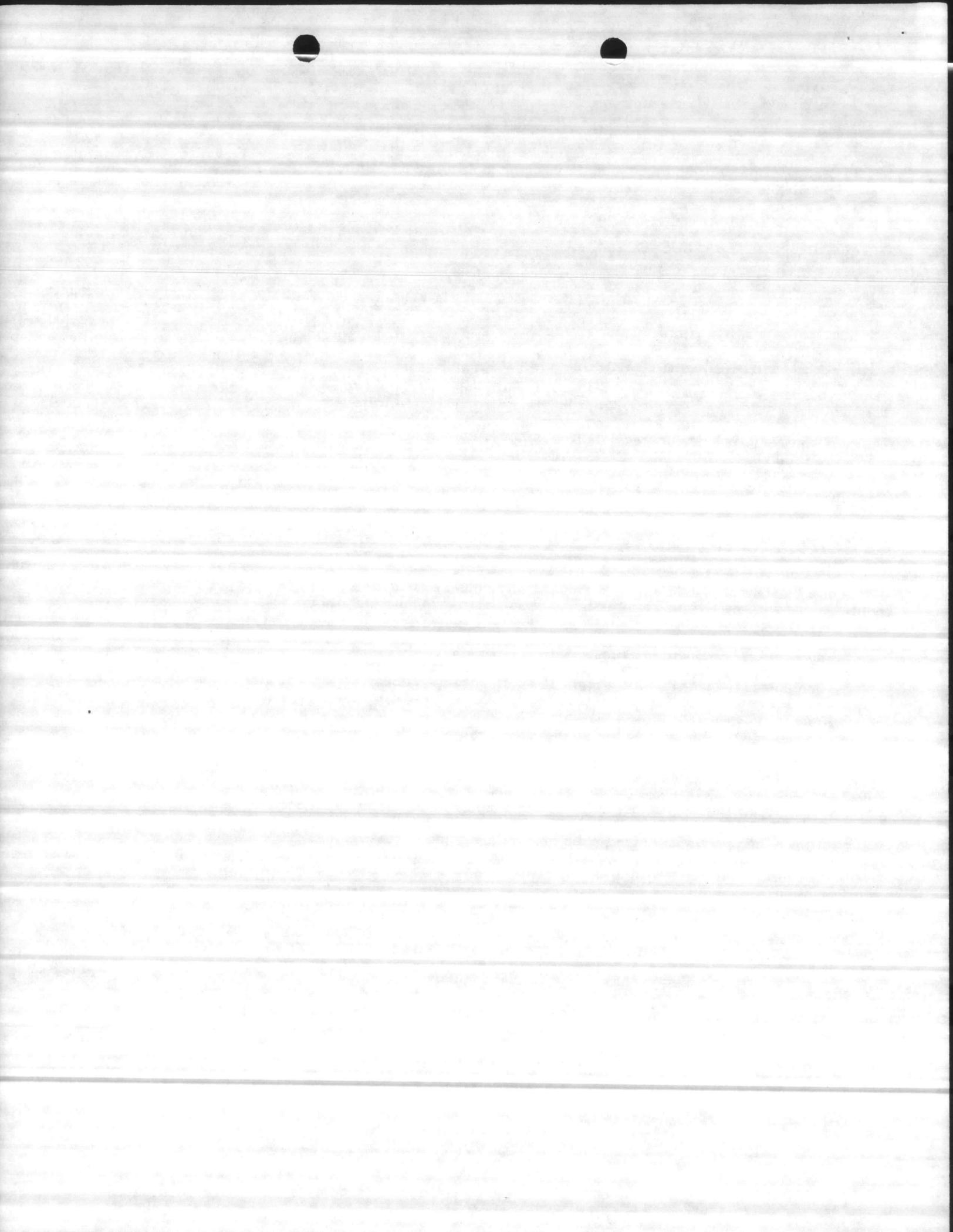
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SAUSA SECTION  
ROUTING SHEET

CG FIRE LTR

NAME

REPORT \_\_\_\_\_  
PNG \_\_\_\_\_  
OTHER X

DATE RECEIVED BY SAUSA SECTION: \_\_\_\_\_

SAUSA Clerk: \_\_\_\_\_ Date: \_\_\_\_\_ Remarks: \_\_\_\_\_

Action Officer: MAJ Conway Date: \_\_\_\_\_ Remarks: \_\_\_\_\_

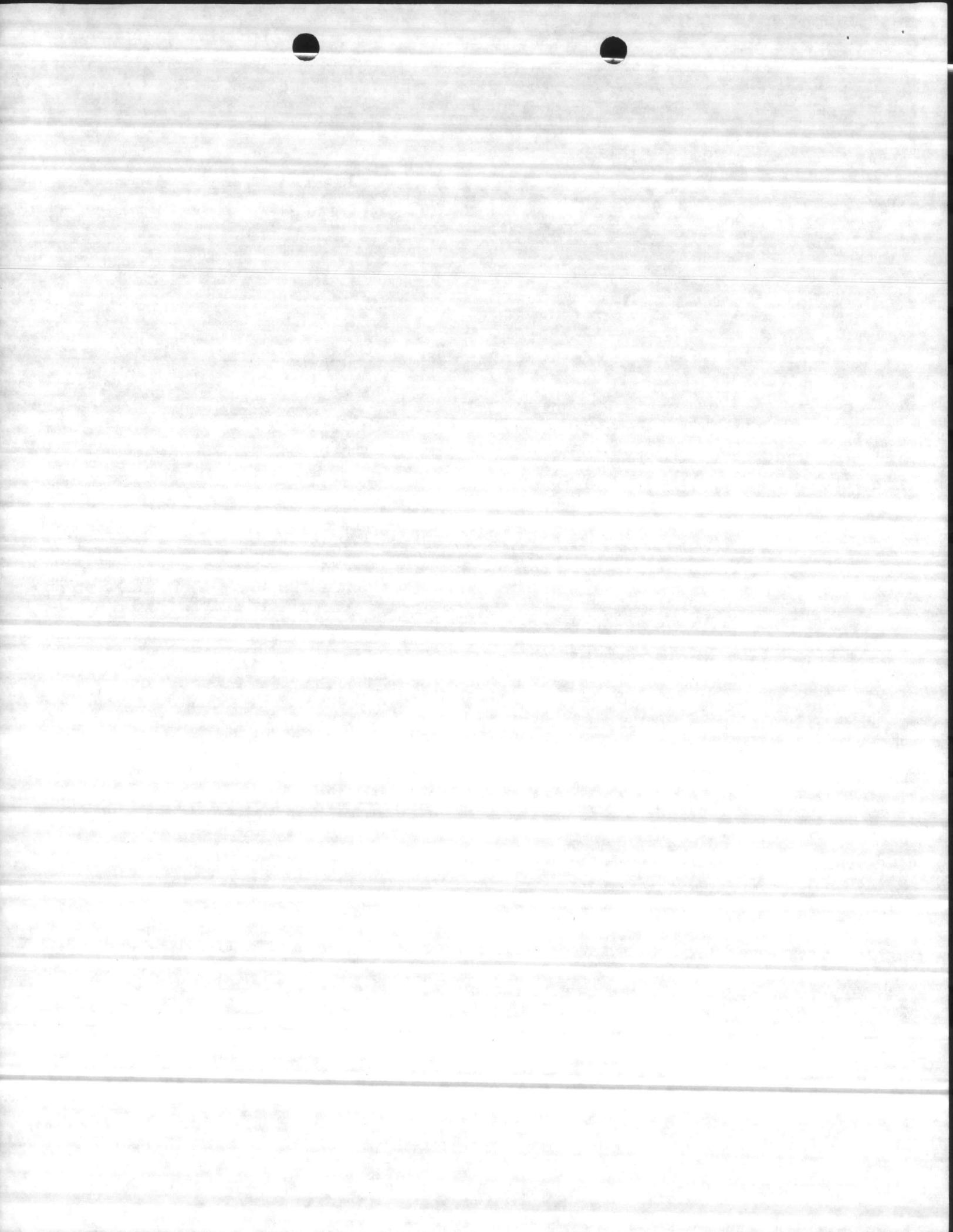
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Legal Chief: HCC Date: 29 Jan Remarks: \_\_\_\_\_

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ADDITIONAL REMARKS: \_\_\_\_\_



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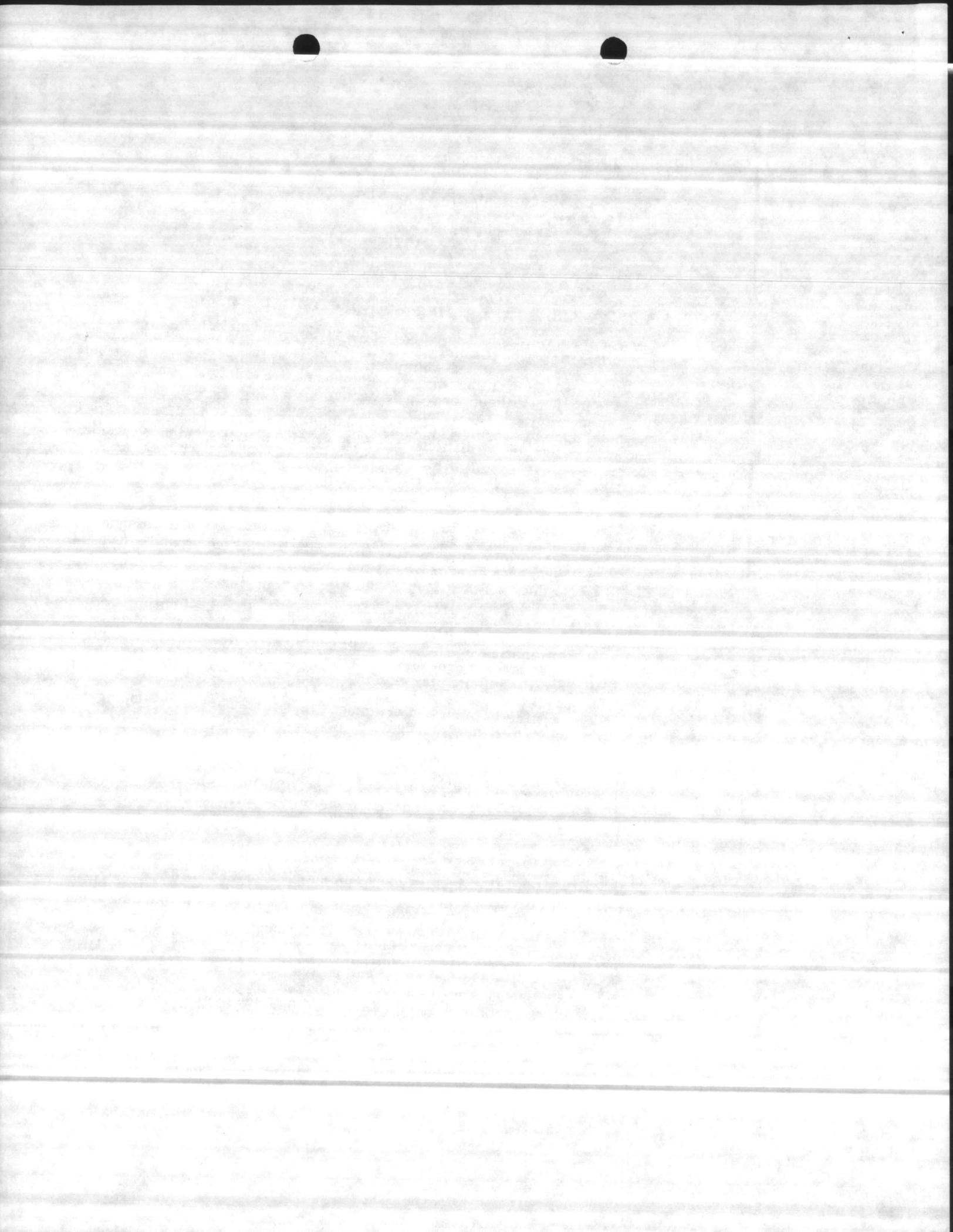
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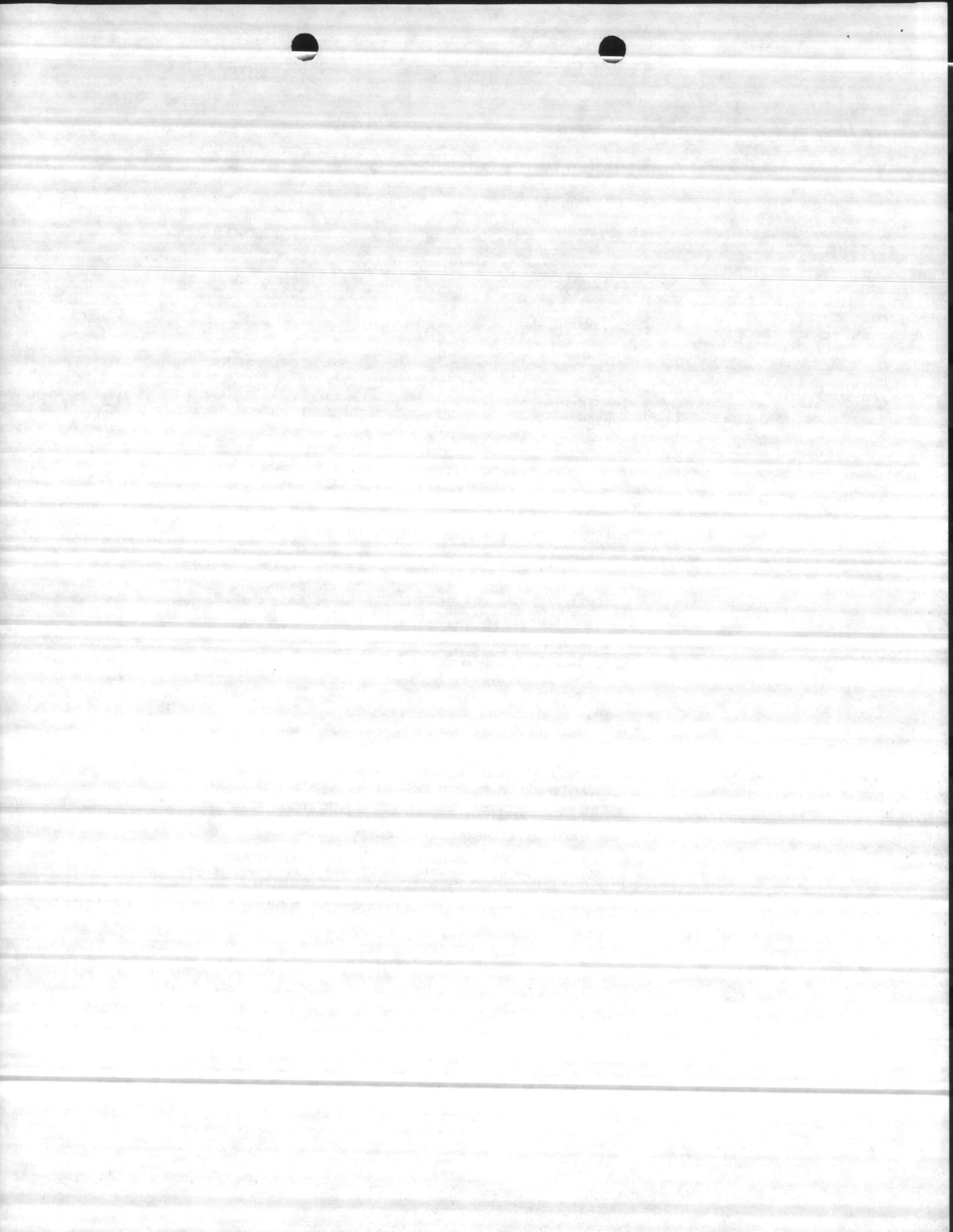
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connection with all the facts, be evidence bearing on its reasonableness.<sup>14</sup> The size of the municipality is also a factor to be considered.<sup>15</sup> A building regulation which may be entirely reasonable and proper in a large and densely populated city may be unreasonable and oppressive in a small and sparsely populated town.<sup>16</sup>

Building regulations are to be construed reasonably, and a construction which would lead to impractical or bizarre results will give way to a construction which will make the regulation effective and workable.<sup>17</sup>

§ 3. Validity of regulations requiring changes in existing buildings.

In the exercise of its police power, the state, or a municipality to which the power has been granted, may require reasonable changes in buildings previously erected in order to comply with new requirements and standards for the protection of health and safety, notwithstanding such buildings, at the time of erection, complied with the regulations then in effect.<sup>18</sup>

While pursuant to such power a statute may properly permit a city itself to make the changes in structure necessary for the public health and welfare, with the cost thereof becoming a lien against the property, it has been held that a provision giving such a lien priority over existing mortgages is unconstitutional as a violation of due process of law and an impairment of contract obligations.<sup>19</sup>

Difference of circumstances represented on the one hand by buildings thereafter to be erected and upon the other by buildings previously erected which comply with the regulations then in effect is an important factor in determin-

14. *Adamec v Post*, supra; *Tenement House Dept. v Moeschon*, 179 NY 325, 72 NE 231, affd 203 US 583, 51 L ed 328, 27 S Ct 781; *Bonnett v Vallier*, 136 Wis 193, 116 NW 885.

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16. *Kneedler v Norristown*, 100 Pa. 363.

17. *Parker-Quaker Corp. v Young*, 23 Conn Supp 461, 184 A2d 553.

18. *Perepletchikoff v Los Angeles*, 174 Cal App 2d 697, 345 P2d 261; *Louisville v Thompson (Ky)* 339 SW2d 869; *Commonwealth v Roberts*, 155 Mass 281, 29 NE 522; *St. Louis v Warren Com. & Invest. Co.* 226 Mo 148, 126 SW 166; *Health Dept. v Trinity Church*, 145 NY 32, 39 NE 833; *Richards v Columbia*, 227 SC 538, 88 SE2d 683; *Seattle v Hinckley*, 40 Wash 468, 82 P 747; *Boden v Milwaukee*, 8 Wis 2d 318, 99 NW2d 156.  
*Annotation:* 64 ALR 920; 109 ALR 1118.

Due process is not denied by a statute which prescribes higher standards of fire protection and sanitation for multiple-dwelling buildings erected prior to 1901 which conformed to the standards in effect at the time of their erection, as applied to a tenement house of 40 rooms erected before that date, the cost of making necessary changes being upward of \$5,000, although the property is assessed only in the total sum of \$13,500; \$8,500 of which is represented by the building.

*Adamec v Post*, 273 NY 250, 7 NE2d 120, 109 ALR 1110.

19. *Central Sav. Bank v New York*, 279 NY 266, 18 NE2d 151, 121 ALR 607, mod on reh on other grounds 280 NY 9, 19 NE2d 659, 121 ALR 615, cert den 306 US 661, 83 L ed 1058, 59 S Ct 790.

*Annotation:* 121 ALR 625, s. 141 ALR 68.

The unconstitutionality of such a provision is not avoided by charging such costs of alterations as "assessments" against the property, since the charges are optional with the owner and hence cannot have the nature of a tax, nor can the constitutionality rest upon the assumption that the property has been improved to the extent of the expenditures, especially where the mortgagee is afforded no opportunity to be heard in that regard. *Central Sav. Bank v New York*, supra.

However, a provision in a municipal administrative code giving the lien of a judgment by the city for its expenses in demolishing an unsafe building priority over a pre-existing mortgage has been upheld as not violating due process of law or impairing the obligation of a contract, where the statute pursuant to which the building on the mortgaged property was demolished was obviously a police power measure designed to abate a nuisance. *Thornton v Chase*, 175 Misc 748, 23 NYS2d 735, distinguishing *Central Sav. Bank v New York*, 279 NY 266, 18 NE2d 151, 121 ALR 607, mod on reh 280 NY 9, 19 NE2d 659, 121 ALR 615, cert den 306 US 661, 83 L ed 1058, 59 S Ct 790.

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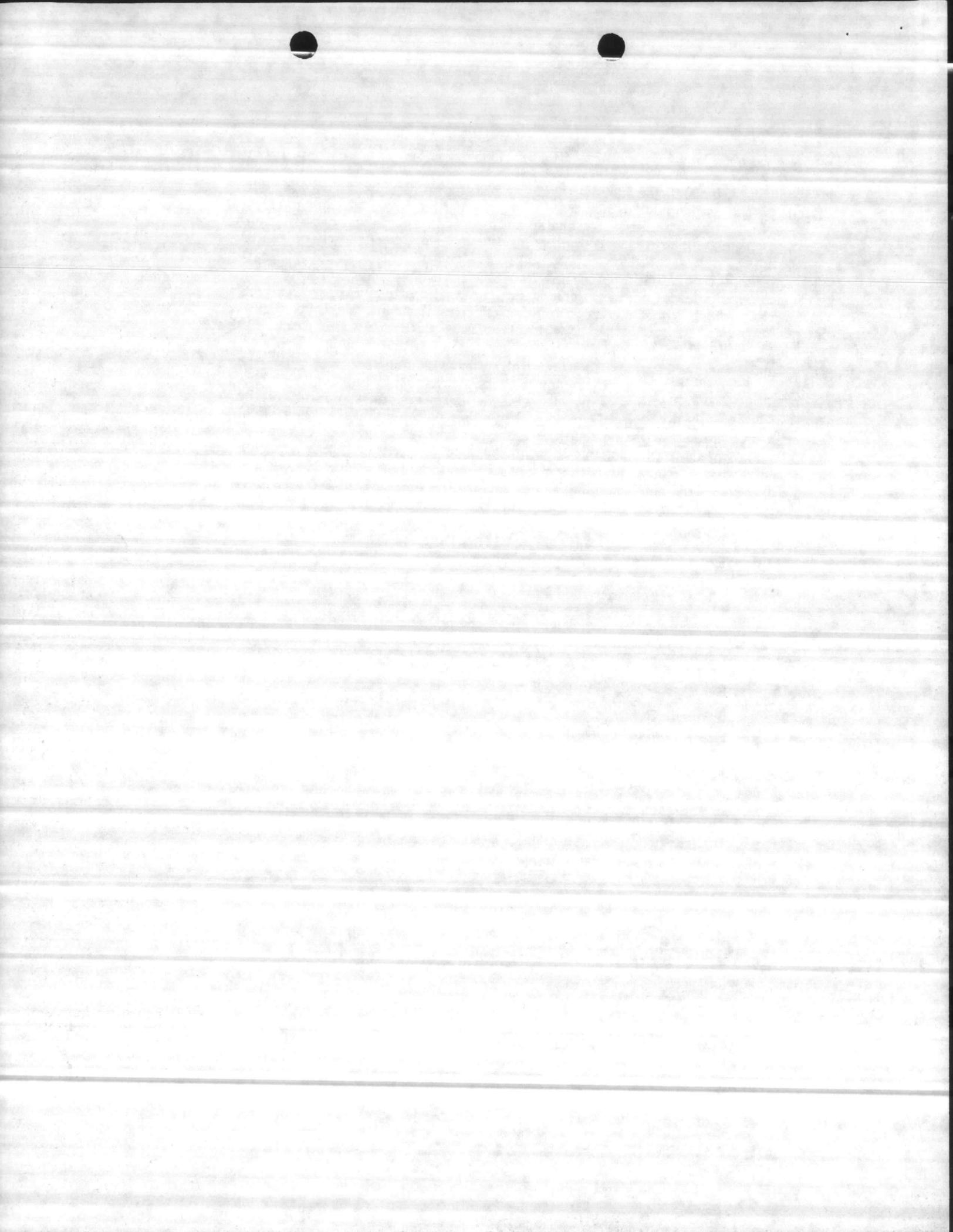
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ing whether a particular building regulation is reasonable as applied to buildings already in existence,<sup>20</sup> but the owner of a building does not acquire immunity against exercise of the police power in respect thereof because he constructed it in full compliance with the existing laws.<sup>1</sup>

#### § 4. Validity of regulations based on esthetic considerations.

It has generally been held that building regulations based solely on esthetic considerations cannot be supported under the police power.<sup>2</sup> Some decisions, however, while not expressly repudiating this rule, have nevertheless cast some doubt upon it, and it has been declared that the law on this point is undergoing development.<sup>3</sup> Where other elements are present, justifying a regulation as a proper exercise of the police power, it is not rendered invalid because it also serves esthetic purposes, and esthetic considerations may even be taken into account as ancillary to other purposes within the appropriate sphere of the police power.<sup>4</sup>

#### § 5. Delegation of power to make regulations.

The legislature may, under the well-settled rule which sustains the validity of a delegation of police power to a municipality,<sup>5</sup> delegate to a municipality the right to exercise the police power with respect to building regulations,<sup>6</sup> but the legislature must sufficiently lay down the general policy to be followed,

20. *Adamec v Post*, 273 NY 250, 7 NE2d 120, 109 ALR 1110.

1. *Queenside Hills Realty Co. v Saxl*, 328 US 80, 90 L ed 1096, 66 S Ct 850; *Engelsber v Jacobs*, 5 NY2d 370, 184 NYS2d 640, 157 NE2d 626, cert den 360 US 902, 3 L ed 2d 1255, 79 S Ct 1286.

2. *Willison v Cooke*, 54 Colo 320, 130 P 828; *People v Chicago*, 261 Ill 16, 103 NE 609; *Byrne v Maryland Realty Co.* 129 Md 202, 98 A 547; *State ex rel Lachtman v Houghton*, 134 Minn 226, 158 NW 1017; *St. Louis v Dreisoerner*, 243 Mo 217, 147 SW 998; *MacRae v Fayetteville*, 198 NC 51, 150 SE 810; *Fruth v Board of Affairs*, 75 W Va 456, 84 SE 105.

*Annotation*: 8 ALR2d 970, § 4; 40 ALR 345, s. 55 ALR 373, 84 ALR 1149; 57 ALR 958.

Generally, see also CONSTITUTIONAL LAW (1st ed § 280); MUNICIPAL CORPORATIONS, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS (1st ed § 289); ZONING AND PLANNING (1st ed § 30).

Ordinarily, the owner of land may build upon it according to his taste or inclination as to the style and character of building he will erect. *Crawford v Topeka*, 51 Kan 756, 33 P 476; *Bostock v Sams*, 95 Md 400, 52 A 665; *Quintini v Bay St. Louis*, 64 Miss 483, 1 So 625; *State v Whitlock*, 149 NC 542, 63 SE 123.

An owner's use of his property within a city cannot be limited merely to effect symmetry or ornamentation of the city, or a street or section thereof, otherwise than under the power of eminent domain, allowing compensation, if such limitation is allowable

at all. *State ex rel. Sale v Stahlman*, 81 W Va 335, 94 SE 497.

3. *Windsor v Whitney*, 95 Conn 357, 111 A 354, 12 ALR 669; *Blackman Health Resort v Atlanta*, 151 Ga 507, 107 SE 525, 17 ALR 516.

An ordinance requiring the exterior wood surfaces of a house to be protected by paint, as preventing the house from becoming an eyesore which would tend to depreciate adjoining property values, falls within the scope of promoting the general public welfare and does not violate due process. *Boden v Milwaukee*, 8 Wis 2d 318, 99 NW2d 156.

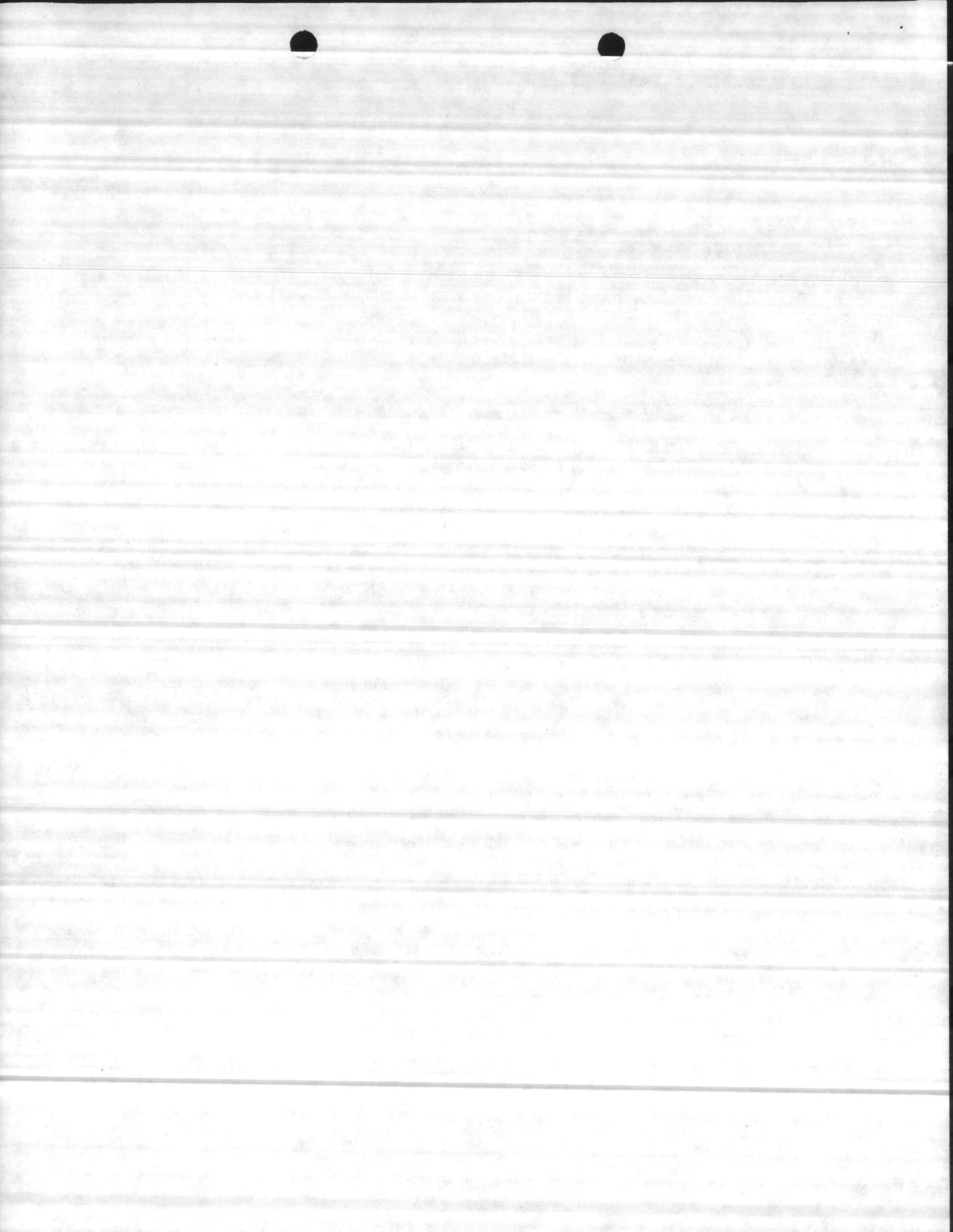
In *Sundeen v Rogers*, 83 NH 253, 141 A 142, 57 ALR 950, the court declined to express an opinion as to whether present or future conditions may lead to the conclusion that a purely esthetic regulation of the use of property is both reasonable and sufficiently promotive of the public welfare as to be within the scope of the police power.

4. *Welch v Swasey*, 214 US 91, 53 L ed 923, 29 S Ct 567; *Windsor v Whitney*, 95 Conn 357, 111 A 354, 12 ALR 669; *Sundeen v Rogers*, 83 NH 253, 141 A 142, 57 ALR 950; *Wulfshon v Burden*, 241 NY 288, 150 NE 120, 43 ALR 651.

5. See MUNICIPAL CORPORATIONS, COUNTIES AND OTHER POLITICAL SUBDIVISIONS (1st ed § 279).

6. *Cook County v Chicago*, 311 Ill 234, 142 NE 512, 31 ALR 442; *Tighe v Osborne*, 149 Md 349, 131 A 801, 43 ALR 819; *Fellows v Charleston*, 62 W Va 665, 59 SE 623.

*Annotation*: 40 ALR 343, s. 55 ALR 373, 84 ALR 1148 (regulation of garages).



# Care with ashes urged

By M.L. CHRISTENBURY  
Daily News Staff

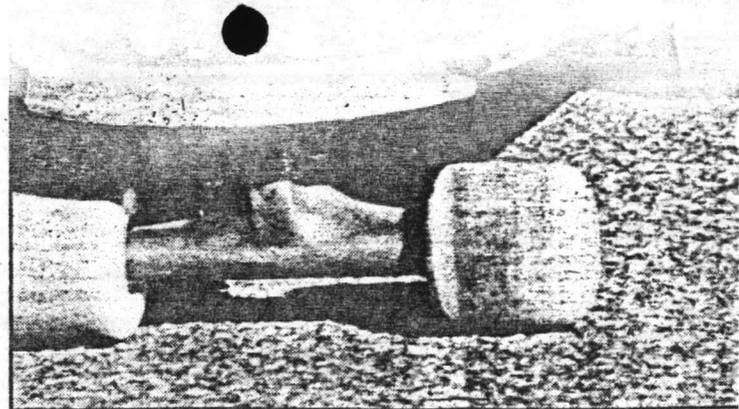
River Drive — all created by hot ashes, firefighters said.

"Because of the sub-freezing cold snap, people have had a constant mounting up of ashes from woodstoves and fireplaces," said Dexter Lanier, fire prevention inspector with the city Fire Department.

"The proper disposal of ashes is a big responsibility that people are taking too lightly," he said.

People should not assume the

See ASHES, 6B



Hot-dogging Staff photo by MI

One attention-seeking canine provoked a few stares in a display of agility. The Montclair community pet demon how to take to the streets when you can't hit the waves. A the sunshine was reminiscent of summertime antics.

# The Week in Review

## Fires kill woman, close Trexler; ar

### Woman killed in fire

Fire killed a 31-year-old woman Jan. 18 while gutting an adult-entertainment business on U.S. 17 south of Jacksonville.

The body of Nancy Ann Darch was found several feet from the rear door of a business identified by a sign outside that read, "Classy Ladies Move Mate Open 12-3." Investigators said a dresser blocked the back door of the brick and masonry building.

Onslow County Sheriff's Department detectives said the blaze was caused by a candle that was used to give the business "atmosphere."

Southwest and Verona volunteer fire department personnel responded to the Friday night blaze, but ran out of water before being able to extinguish the fire.

The business was one of several in Onslow County where patrons pay female employees to watch sexually oriented movies together.

### Abortion plea made

Nine Onslow County ministers pleaded for a national revival to stop abortion in the United States during a memorial service at Wilson Bay Park on Saturday for fetuses aborted since 1973.

The service, which was attended by about 30 people, was organized by the Jacksonville chapter of the Right to Life Organization. Organizer Tom Henderson described the gathering as a "memorial service for at least the 2,600-2,700 babies a year who have died in Onslow County."

The Supreme Court legalized abortion in its Roe vs. Wade decision on Jan. 22, 1973.

### Martin aide visits

The man who managed the campaign that landed Jim Martin in the Governor's Mansion visited Onslow County a week ago today.

Jack Hawke, who is now on Martin's staff as adviser on communications and policy, spoke to an afternoon gathering at Fisherman's Wharf restaurant and also at a meeting of the Jacksonville Jaycees Saturday night.

He spoke about Martin's plan to repeal the state inventory and intangibles tax and said that his boss seeks to attract new industry to North Carolina.

### Winter grips the area

Extreme cold weather, accompanied by a scattering of snow, gripped Onslow County Sunday and Monday.

Temperatures sank as low as -4 degrees Monday morning, while gusts as high as 28 mph — took the wind chill index to -18 degrees. While county schools and Onslow Superior Court were closed and scattered power outages were reported, no serious problems were noted as a result of the snow.

The bitter cold was caused by a brutal arctic storm that brought a record cold to much of the South.

### Fire damages school

RICHLANDS — Fire extensively damaged Trexler Middle School in Richlands early Tuesday morning, destroying the school's off-campus library and four classrooms.

Flames leaped 20 to 25 feet above the building, and units from five fire departments responded to the fire. School officials estimate damage at \$816,640.

Trexler students missed school Tuesday and Wednesday. Thursday, sixth-graders attended classes at Richlands Elementary School, while seventh- and eighth-graders were divided between Richlands High School and seven temporary buildings at Trexler.

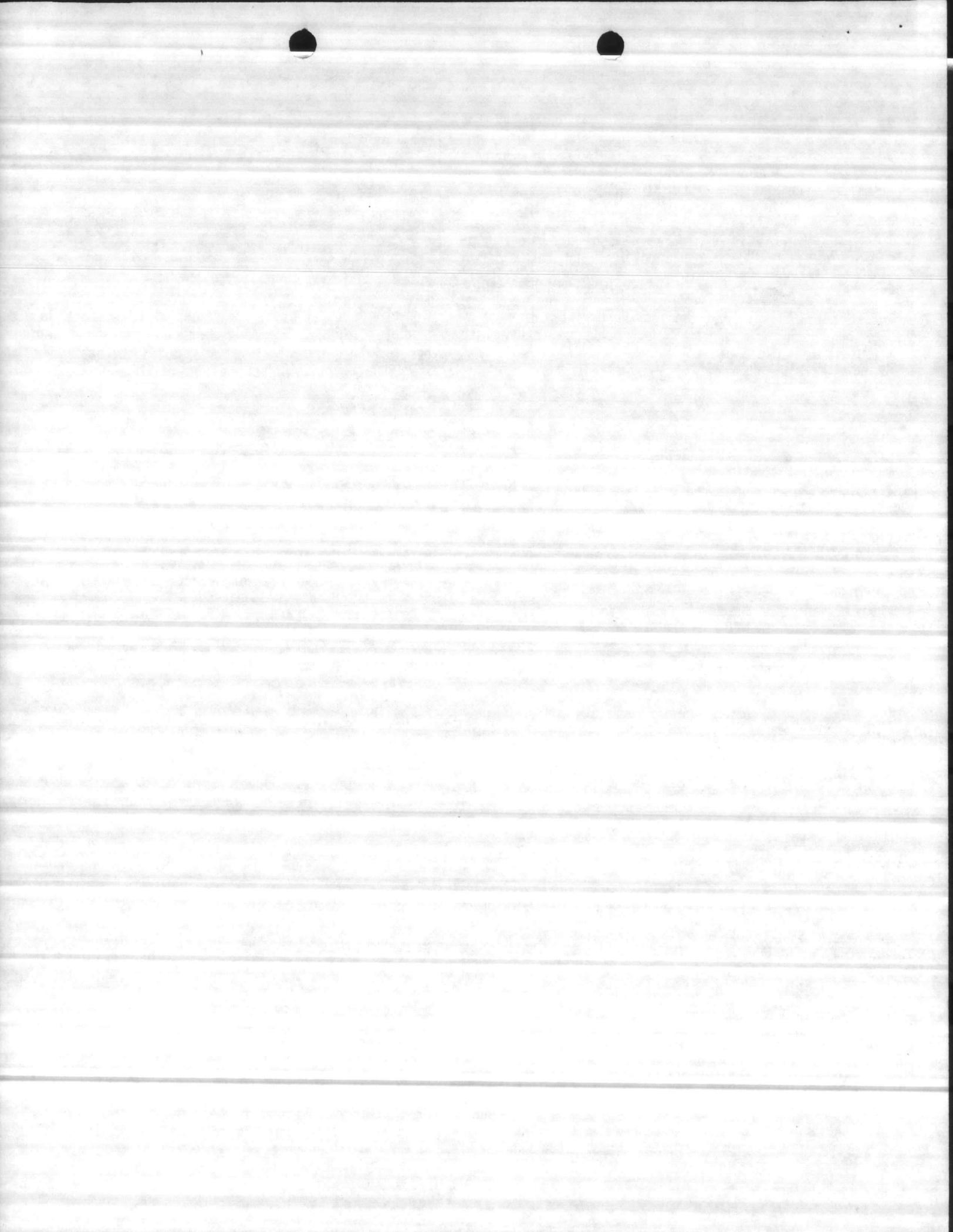
### Commissioners OK study

The Onslow County Board of Commissioners on Monday approved a five-man committee to study fire and rescue services on the western section of Topsail Island.

Board Chairman Cecil Morton, county Emergency Management Coordinator Don Herman, county Fire Commission Chairman Kellum, Sneads Ferry Fire Chief Sam Pierce and County Manager Leary were appointed to take up the matter.

The panel was created in response to a plea made during commissioners' meeting Monday. About 30 Old Settlers Beach and Ocean City residents attended the meeting.

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HERMAN

NFPA adopted by State Building Code  
voluntary basis

anyplace NFPA conflicted with  
St Building Code, SBC prevails

If county & city wants NFPA  
mandatory, SBC <sup>Code</sup> Council  
must approve

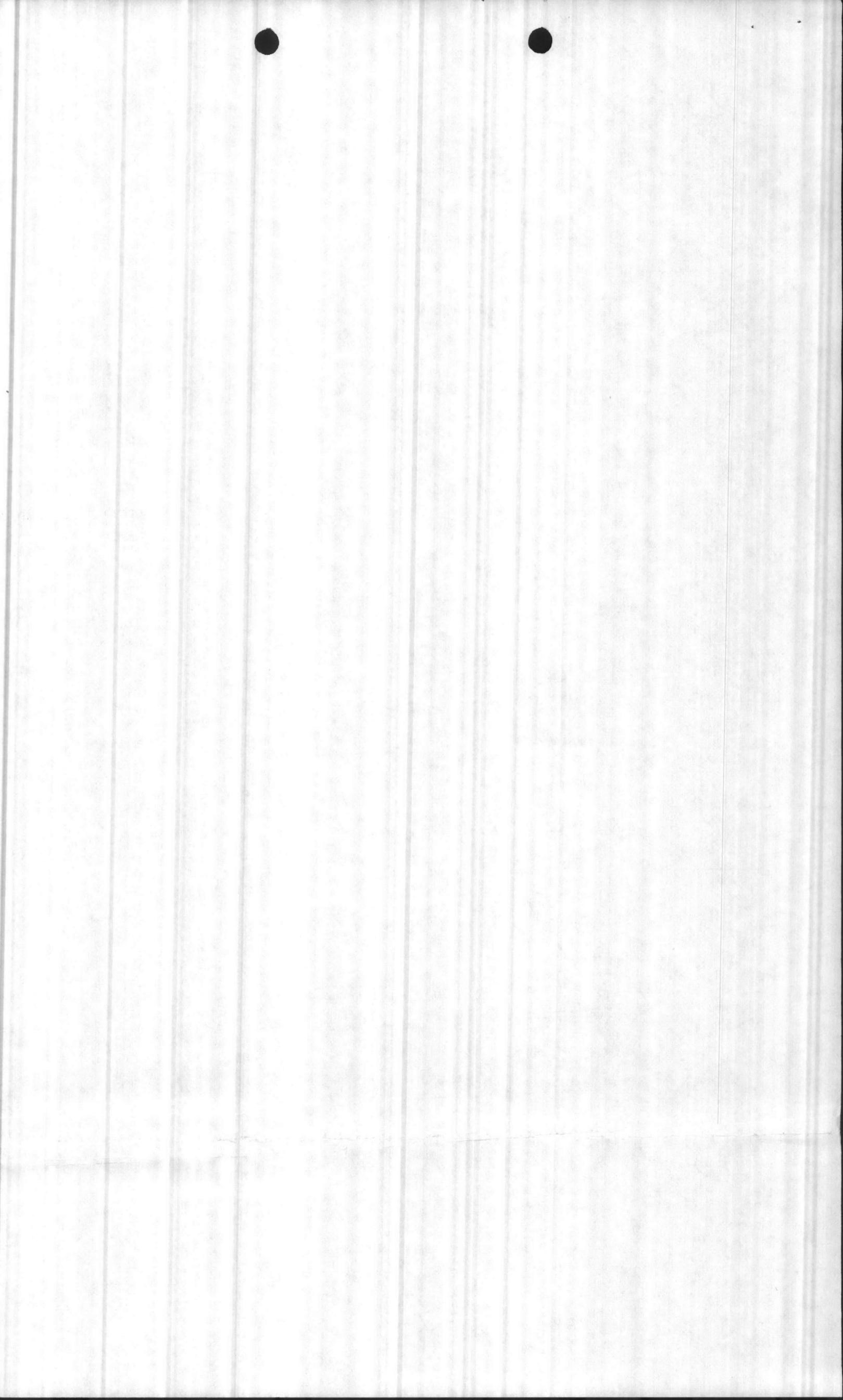
HERMAN is working toward NFPA  
adopted by county  
not confident about retroactivity  
inspector in training } NOT  
April last course

San Francisco

Swarthboro F.D. had voluntary program  
educational process  
~~ordinance oriented~~  
insurance lowering factor

LABBY - CONTRACTORS  
BUSINESS

S.F. - several hotels - of course  
Vegas -



FIRE LTR

Phew

delete

Neuro

We realize criticism - rule - vs. common sense safety concern -  
There are FIRE SAFETY ASPECTS in 78 Code

NOTE: no. 275 at all for pre 1978

Statute exists we provide for a retroactive

Rather than put in letter what

enumerate concerns for pre 78 buildings

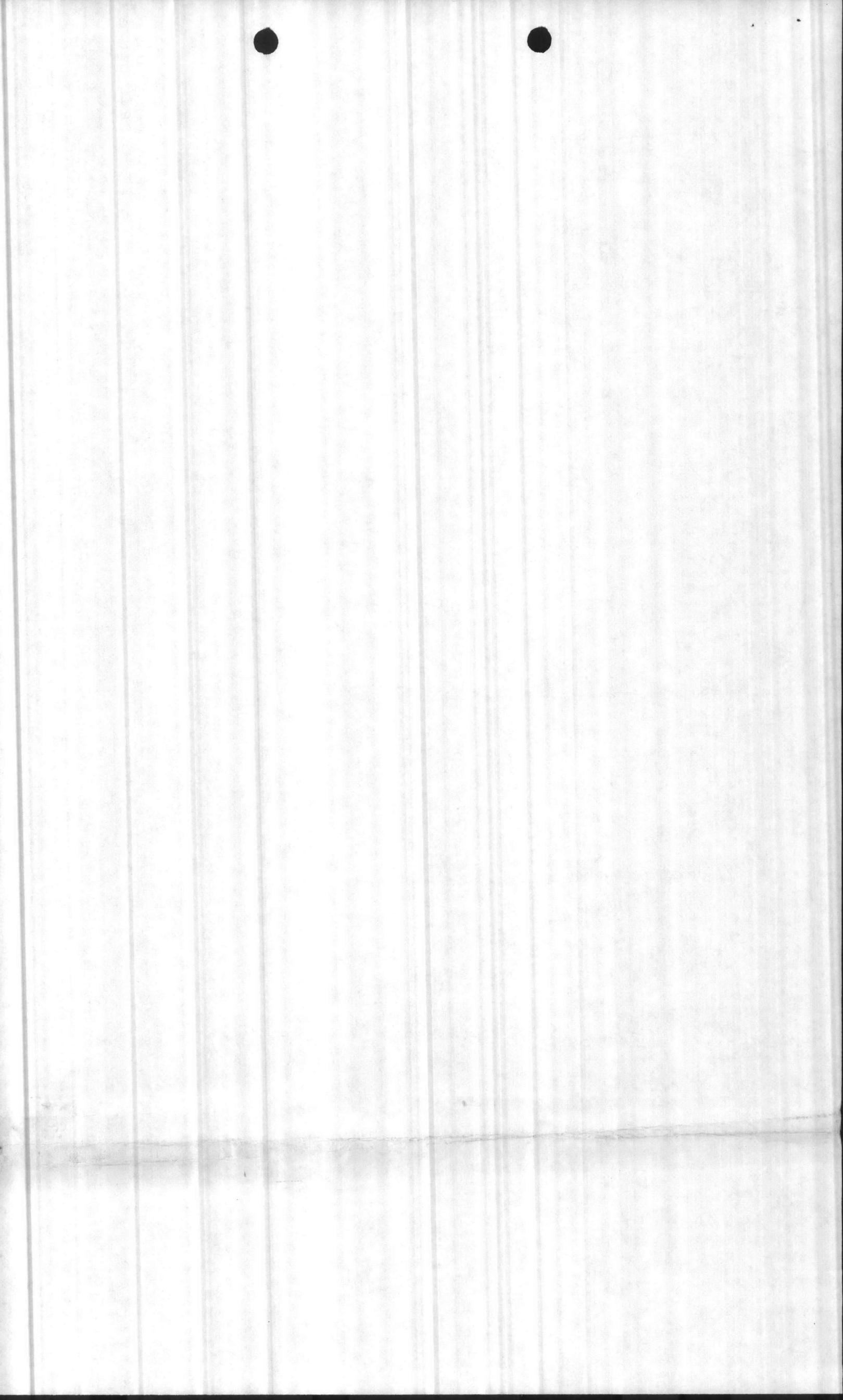
"commercial entertainment"

vigorous enforcement

ADLWE: 22 DSR

Smooth ltr

Call Fire Prevention Code pre 78



# Care with ashes urged

By M.L. CHRISTENBURY  
Daily News Staff

A surge in fires this past week caused by residents improperly disposing hot ashes has prompted Jacksonville fire prevention officers to remind people of the danger.

"We've had a number of fires that we've suspected were caused by hot ashes," Fire Chief Frank Barger said Friday.

This past week, firefighters have extinguished two dumpster fires, one garbage truck fire, at least one house fire and a woods fire on New

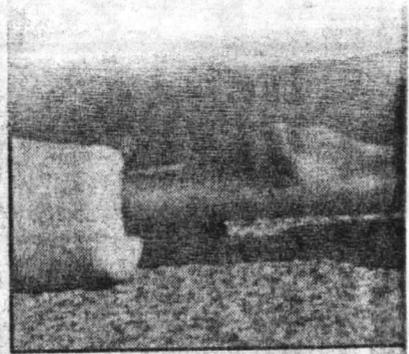
River Drive — all created by hot ashes, firefighters said.

"Because of the sub-freezing cold snap, people have had a constant mounting up of ashes from woodstoves and fireplaces," said Dexter Lanier, fire prevention inspector with the city Fire Department.

"The proper disposal of ashes is a big responsibility that people are taking too lightly," he said.

People should not assume the

See ASHES, 6B



## Hot-d

One attention-seeking canine pr display of agility. The Montclaire how to take to the streets when the sunshine was reminiscent of s

# The Week

## Fires kill woman, close Tre

### Woman killed in fire

Fire killed a 31-year-old woman Jan. 18 while gutting an adult-entertainment business on U.S. 17 south of Jacksonville.

The body of Nancy Ann Darch was found several feet from the rear door of a business identified by a sign outside that read, "Classy Ladies Move Mate Open 12-3." Investigators said a dresser blocked the back door of the brick and masonry building.

Onslow County Sheriff's Department detectives said the blaze was caused by a candle that was used to give the business "atmosphere."

Southwest and Verona volunteer fire department personnel responded to the Friday night blaze, but ran out of water before being able to extinguish the fire.

The business was one of several in Onslow County where patrons pay female employees to watch sexually oriented movies together.

### Abortion plea made

Nine Onslow County ministers pleaded for a national revival to stop abortion in the United States during a memorial service at Wilson Bay Park on Saturday for fetuses aborted since 1973.

The service, which was attended by about 30 people, was organized by the Jacksonville chapter of the Right to Life Organization. Organizer Tom Henderson described the gathering as a "memorial service for at least the 2,600-2,700 babies a year who have died in Onslow County."

The Supreme Court legalized abortion in its Roe vs. Wade decision on Jan. 22, 1973.

### Martin aide visits

The man who managed the campaign that landed Jim Martin in the Governor's Mansion visited Onslow County a week ago today.

Jack Hawke, who is now on Martin's staff as adviser on communications and policy, spoke to an afternoon gathering at Fisherman's Wharf restaurant and also at a meeting of the Jacksonville Jaycees Saturday night.

He spoke about Martin's plan to repeal the state inventory and intangibles tax and said that his boss seeks to attract new industry to North Carolina.

### Winter grips the area

Extreme cold weather, accompanied by snow, gripped Onslow County Sunday and Monday.

Temperatures sank as low as -4 degrees — which gusted as high as 28 mph — and scattered power outages were noted as a result of the snow.

The bitter cold was caused by a record cold to much of the South.

### Fire damages school

RICHLANDS — Fire extensively damaged Richlands early Tuesday morning library and four classrooms.

Flames leaped 20 to 25 feet above the school. Fire departments responded to the blaze at \$816,640.

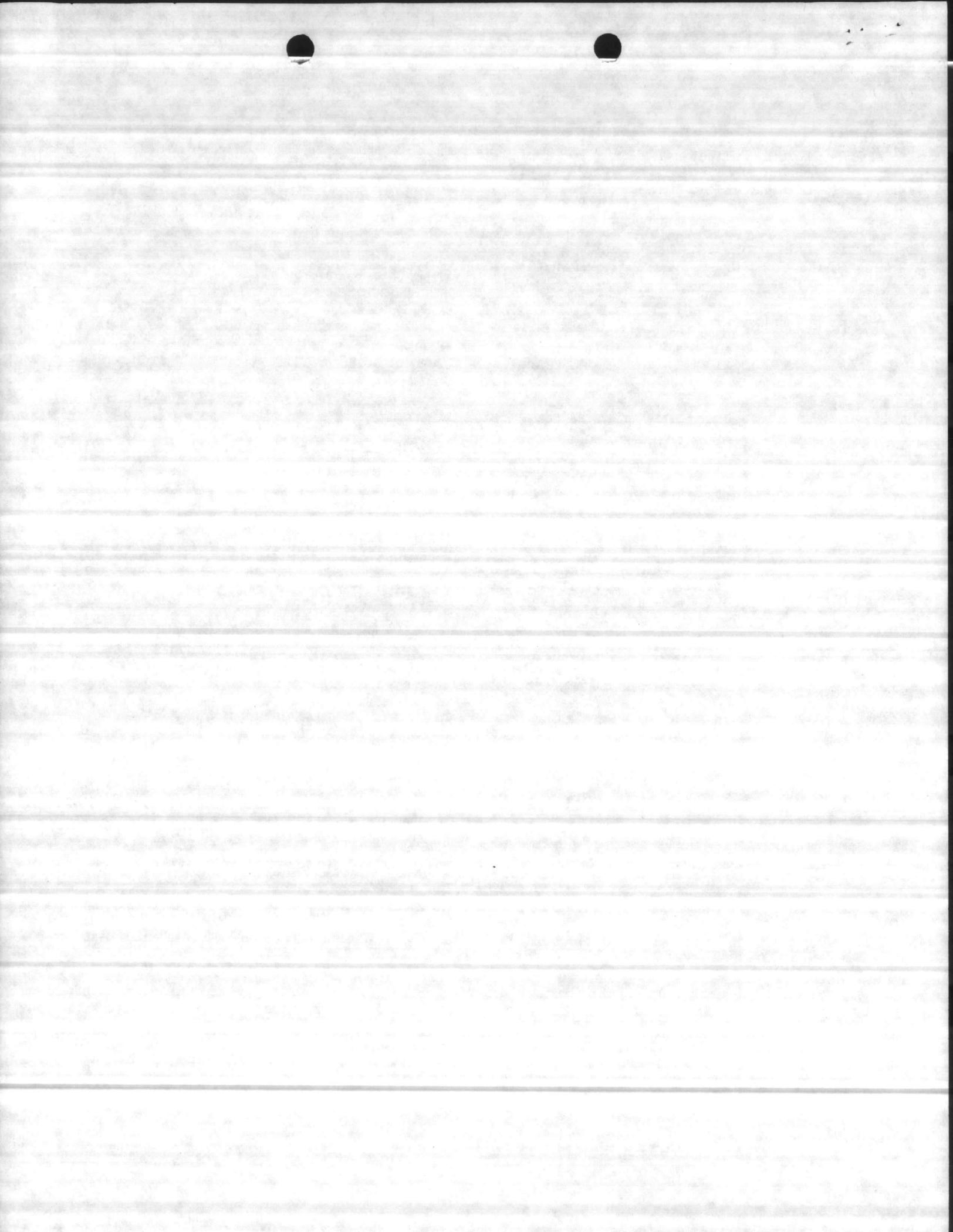
Trexler students missed school Thursday, sixth-graders attended school, while seventh- and eighth-graders attended Richlands High School and seven tenth-graders attended Trexler.

### Commissioners OK stud

The Onslow County Board of Commissioners created a five-man committee to study fire insurance rates in the section of Topsail Island.

Board Chairman Cecil Morton and Board Coordinator Don Herman, county Board members Cecil Kellum, Sneads Ferry Fire Chief Fred Leary were appointed to take up the study.

The panel was created in a meeting Monday. Ocean City residents attended the meeting.



Big hill road  
next to Ballie  
Mud

---

is it on our  
property ← →

---

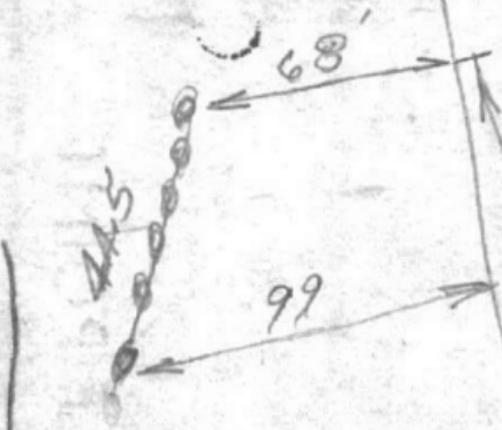
Major Bombinger

2321

309.



6-10" PILES



160'

235'

~~WEST BOUND LANE #2A~~  
Are on our property.













DEPARTMENT OF THE NAVY  
BUREAU OF YARDS AND DOCKS  
WASHINGTON 25, D. C.

*jurisdiction file*

IN REPLY REFER TO  
R-312/RJ/bp

MAY 27 1958

From: Chief of Civil Engineers  
To: District Public Works Officer, Thirteenth Naval District

Subj: U. S. Naval Facility, Pacific Beach, Washington; proposed permit from State of Washington purporting to grant the Government the right to install cables on off-shore lands

Ref: (a) DPWO 13ND ltr DE-200:HWA:hw ND13/NI-1 (400-64-B)  
Ser 67193 of 4 Apr 1958

Encl: (1) Copy of BUDDOCKS ltr R-312B/RJ/jc ND11/NI-1 ND11-Gen of 24 Mar 1958

1. Reference (a) forwarded subject proposed permit for appropriate action by this Bureau.
2. The permit is being retained in this office without further action. It has been determined that there is no necessity for the Department to accept the Permit from the State of Washington, Department of Natural Resources since by installing oceanographic cables, viewed as an aid to navigation, the Navy is exercising the Federal Government's paramount navigational servitude over submerged lands.
3. If State authorities inquire about the permit, they should be courteously informed that the United States already has authority to install the cables and that consequently no Federal agency has authority to accept the permit. The State should be further informed that the Navy Department wishes to express gratitude for the efforts of the Department of Natural Resources to be of assistance in the Government's cable installation project.
4. The District Public Works Officers, Eleventh and Twelfth Naval Districts have had instances where the State of California has offered to permit Navy Construction on off-shore lands of that State. At their request, the Bureau advised that a consistent policy should be adopted in dealing with the State of California in such cases. A copy of this letter is attached, enclosure (1), for your information. This approach should be likewise utilized where construction is contemplated off the coasts of Washington and Oregon.

*M. E. Scanlan*

M. E. SCANLAN  
By Direction ✓

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R-312B/RJ/jc  
ND11/N1-1  
ND11-Gen

off-shore lands -- where the facilities may be fairly construed as aids to navigation -- that no action be taken to evidence acceptance by the Government. Additionally, no action should be taken to procure further permits from the State for future off-shore construction. If, as a matter of public relations with the State, the District Public Works Officer deems it advisable to notify the State of prospective construction on submerged land in navigable waters, this Bureau and the Department of Justice will assist in the preparation of an acceptable form of letter.

4. References (c) and (d) forwarded information on certain proposed construction presently contemplated on tide and submerged lands of the State of California. This Bureau is preparing individual replies to these letters which will reflect the general policy evidenced herein. This procedure was adopted in reference (e) with respect to the request of reference (f).

Copy to:  
DPWO 12ND  
CO MCB CAMPEN  
CO NAS NORTH ISLAND  
CO NAVSTA SDIEGO  
CO&DIR NAVELECTLAB SDIEGO

/s/ F. M. MOSLEY  
ASST. CHIEF FOR REAL ESTATE

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R-312B/RJ/jc  
ND11/N1-1  
ND11-Gen

24 Mar 58

From: Chief of Civil Engineers  
To: District Public Works Officer, Eleventh Naval District

Subj: Construction of off-shore facilities affecting tide and submerged lands of the State of California; request for a policy determination concerning permits

Ref: (a) DPWO 11ND ltr Ser 16089/D-40 of 7 Nov 1957 to BUDOCKS  
(b) DPWO 12ND ltr DC205-ec/fh All/Centerville All/Pt. Sar NS/TI/Ser 830 of 3 Feb 1958 to BUDOCKS w/cy to DPWO 11ND  
(c) DPWO 11ND ltr Ser 15566/D-40 of 9 Oct 1957 to BUDOCKS  
(d) DPWO 11ND ltr Ser 14131/D-40 of 11 Sep 1957 to BUDOCKS  
(e) BUDOCKS ltr R-312/RJ/dkw ND11/N1-1 X5-40-SD-26 of 22 Nov 1957 to DPWO 11ND  
(f) DPWO 11ND ltr 14132/D-40 of 12 Sep 1957 to BUDOCKS

1. Reference (a) requested a policy determination with respect to the advisability of securing or accepting permits from the California State Lands Commission where the Department is constructing facilities on tide or submerged lands on the California Coast. Reference (a) further suggested the need for a consistent policy within the Department with respect to such permits throughout the State. Reference (b) concurred in this suggestion.

2. Where, in the construction of off-shore facilities, the Government is exercising its right of navigational servitude under the commerce clause of the Constitution, the Government is under no obligation to obtain a permit from the State. Accordingly, it has been determined that it be the permanent policy of the Navy Department in such cases to neither solicit nor accept the permission of the State in proceeding with such projects, since such action could be construed as recognition of a right in the State inconsistent with the exercise by the Federal Government of the navigational servitude. The Chief of Engineers, Department of the Army and the Department of Justice have informally advised that the construction of Navy facilities on submerged lands, where the Government is exercising its navigational servitude, should proceed on receipt of a permit from the U. S. Corps of Engineers, approving the construction in navigable waters.

3. Accordingly, it is requested that where the District Public Works Office is holding permits from the State purporting to grant the Government permission to proceed with the construction of facilities on

M. E. SCANLAN  
By Direction

**COPY**

ENCL (1)

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156

DE-200:HMA:mm  
ND13/N1-1(64-B)  
Ser 67352

JUN 18 1958

From: District Public Works Officer, Thirteenth Naval District  
To: Chief of Civil Engineers

Subj: U. S. Naval Facility, Pacific Beach, Washington; proposed permit from State of Washington purporting to grant the Government the right to install cables on off-shore lands

Ref: (a) GofCE ltr R-312/RJ/bp of 27 May 1958  
(b) DPWO 13ND ltr DE-200:HMA:hw ND13/N1-1(400-64-B) Ser 67193 of 4 Apr 1958  
(c) Assistant Secretary of the Navy ltr R-221/JD/cb ND13/N1-1 C38-106-CH of 21 Jun 1957 to Attorney General of United States

1. Reference (a) advised that the permit from the State of Washington, forwarded by reference (b), granting the Federal Government the right to install certain cables in State-owned off-shore lands at the subject facility, was being retained in the Bureau without further action. That it has been determined that there is no necessity to accept the permit from the State of Washington since, by installing the oceanographic cables, viewed as an aid to navigation, the Navy is exercising the Federal Government's paramount navigational servitude over submerged lands.

2. Reference (a) further advised that if State authorities inquired about the permit, they should be informed that the United States already has authority to install the cables and consequently no Federal agency has authority to accept the permit. That the same approach should be likewise utilized where construction is contemplated off the State of Oregon.

3. The Bureau's attention is invited to a similar installation in the State of Oregon where an easement in the State's off-shore lands was acquired under a Declaration of Taking filed 12 July 1957 in the District Court of the United States for the State of Oregon under Civil No. 9269 in condemnation proceedings entitled "United States of America, Plaintiff, vs. 36.36 1/2 acres of submerged land, more or less, adjacent to Coos County, Oregon, State of Oregon, Defendants", the filing of which was requested by reference (c).

4. Inquiry is made as to whether the policy expressed in reference (a) and enclosure (1) thereto is applicable only to off-coastal shorelands of the States or whether the same also applies to tidelands, lying between extreme high and low tide lines, and submerged lands on inland waters of the States such as the beds of Puget Sound and other navigable waters in the State of Washington which are connected to the Pacific Ocean.

- D-10
- D-11
- D-20
- D-21
- D-30
- D-40
- DA-200
- DA-210
- DA-220
- DA-230
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- DC-320
- DC-400
- DD-100
- DD-110
- DD-111
- DD-200
- DD-210
- DD-220
- DD-300
- DD-310
- DD-320
- DD-330
- DD-400
- DD-410
- DD-420
- DD-500
- DE-100
- DE-210

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August 16, 1956

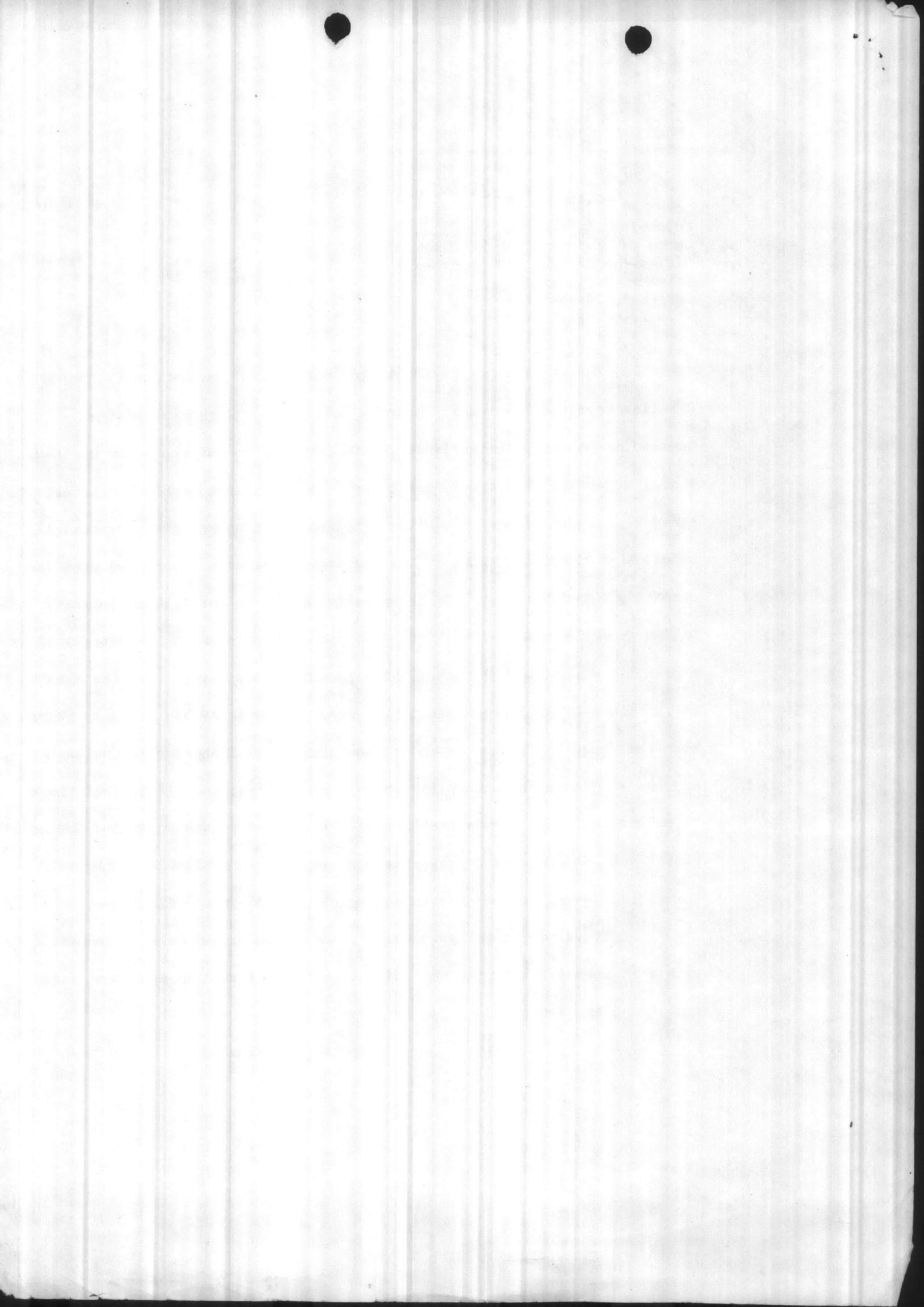
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21 21 21

Colonel H. C. Rowland, Jr.  
Corps of Engineers, U. S. Army  
Office of the District Engineer  
Wilmington District  
308 Custom House  
Wilmington, North Carolina

The undersigned residents and citizens of Onslow County, North Carolina respectfully submit their objections to the request of the Commanding General, Camp Lejeune, North Carolina to designate the northwest end of Stone Bay, New River, North Carolina as an area prohibited to privately owned boats. In support of their objections, the undersigned respectfully submit that the designation of the aforesaid area as a prohibited area for privately owned boats will do irreparable damage to the fishing industry in Onslow County because of the fact that the area proposed to be designated as a prohibited area is the best fishing ground in New River; that the area at the mouth of Mill Creek and in the head of Stone Bay has for many years been the favorite fishing ground of the commercial fishermen in Onslow County and the said area has always been highly productive; that it is felt there is no necessity for the designation of the area as requested by the Commanding General of Camp Lejeune because there is ample area available to the said Commanding General to be used as an impact area for the rifle range.

It is respectfully requested that a hearing be held in connection with this proposal and that the undersigned be afforded an opportunity to appear and be heard.

Respectfully submitted,





DEPARTMENT OF THE NAVY

BUREAU OF YARDS AND DOCKS

WASHINGTON 25, D. C.

IN REPLY REFER TO

R-312B/JFN/bas

JUL 29 1958

From: Chief of Civil Engineers  
To: District Public Works Officer, Thirteenth Naval District

Subj: U.S. Naval Facility, Pacific Beach, Washington; proposed permit from State of Washington purporting to grant the Government the right to install cables on off-shore lands

Ref: (a) DPWO 13ND ltr DE-220:HWA:mm ND13/N1-1 (64-B)  
Ser 46752 of 18 June 1958 to CHCIVENGRS

1. By paragraph 4 of reference (a) advice was requested as to whether the policy of refusing permits from the states in cases where the Federal Government exercises paramount navigational servitude applied to tidelands, lying between extreme high and low tide lines, and navigable inland waters as well as to off-costal shorelands.

2. The reply to your inquiry is in the affirmative. The Government's paramount navigational servitude applies to inland navigable waters and those areas between the high and low water marks, as well as to off-shore lands. Further, the ownership of land between high and low water marks and the riparian rights of access to the navigable waters both are subordinate to the Government's plenary authority over navigable water of the United States.

*M. E. Scanlon*

M. E. Scanlon

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U. S. ARMY ENGINEER DISTRICT, WILMINGTON  
CORPS OF ENGINEERS  
308 CUSTOMHOUSE  
WILMINGTON, NORTH CAROLINA

ADDRESS REPLY TO:  
DISTRICT ENGINEER  
U.S. ARMY ENG. DIST., WILMINGTON  
CORPS OF ENGINEERS  
P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA

10 December 1958

SAWOP

SUBJECT: Correspondence, Stone Bay Area

TO: Public Works Officer  
Marine Corps Base  
Camp Lejeune, North Carolina

ATTN: Code 4E-16

In accordance with verbal request of Mr. J. P. Sabella on 9 December 1958, there are inclosed copies of correspondence concerning a request for a prohibited area in the Stone Bay area of New River, North Carolina.

FOR THE DISTRICT ENGINEER:



W. K. SHAFFER  
Lt. Colonel, CE  
Deputy District Engineer

10 Incl

1. Ltr of Application fm  
Commanding General, dtd  
11 July 56
2. Ltr to Commanding General,  
dtd 17 July 56
3. Ltr fm Commanding General,  
dtd 30 July 56
4. P/N dtd 6 August 56
5. Petition dtd 16 August 56
6. Ltr to J. T. Gresham, dtd  
21 August 56
7. Ltr to Commanding General,  
dtd 27 August 56
8. Ltr to Commanding General,  
dtd 5 September 56
9. Ltr fm Commanding General,  
dtd 11 September 56
10. Ltr to J. T. Gresham, dtd  
14 September 56

10 January 1956

3400

24141: Correspondence, Stone for Lee

Mr. [Name]
[Address]
[City, State]
ATTN: [Name]

In accordance with verbal request of Mr. G. I. [Name] on
December 1955, there are enclosed copies of correspondence concerning
a request for a [Name] in the Stone for Lee area of New River,
North Carolina.

[Handwritten signature]

W. A. [Name]
[Address]

[Additional address information]

- 10. [Name] to [Name], dated [Date]
- 9. [Name] to [Name], dated [Date]
- 8. [Name] to [Name], dated [Date]
- 7. [Name] to [Name], dated [Date]
- 6. [Name] to [Name], dated [Date]
- 5. [Name] to [Name], dated [Date]
- 4. [Name] to [Name], dated [Date]
- 3. [Name] to [Name], dated [Date]
- 2. [Name] to [Name], dated [Date]
- 1. [Name] to [Name], dated [Date]

SAWOP

10 December 1958

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TO: Public Works Officer  
Marine Corps Base  
Camp Lejeune, North Carolina

ATTN: Code 4E-16

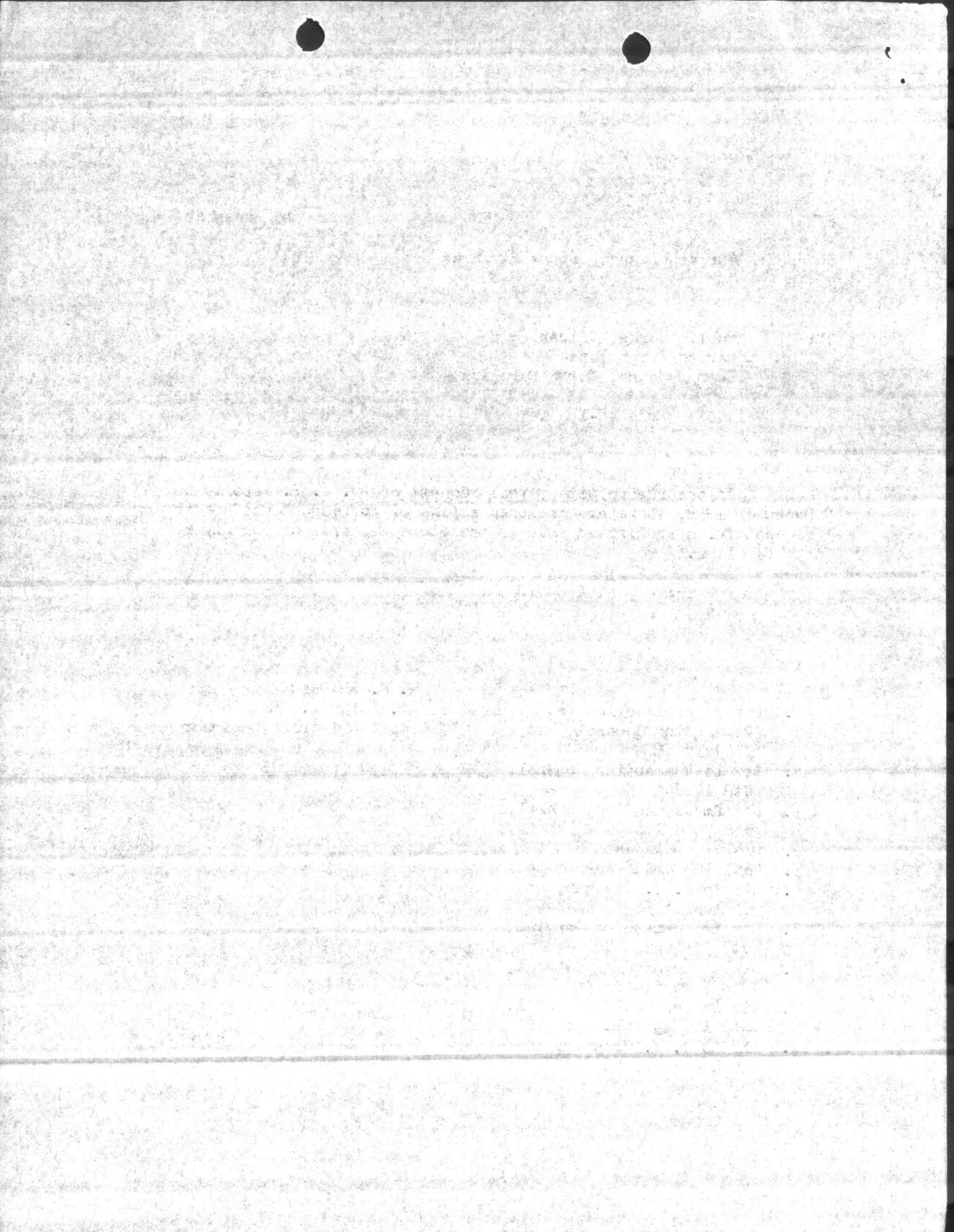
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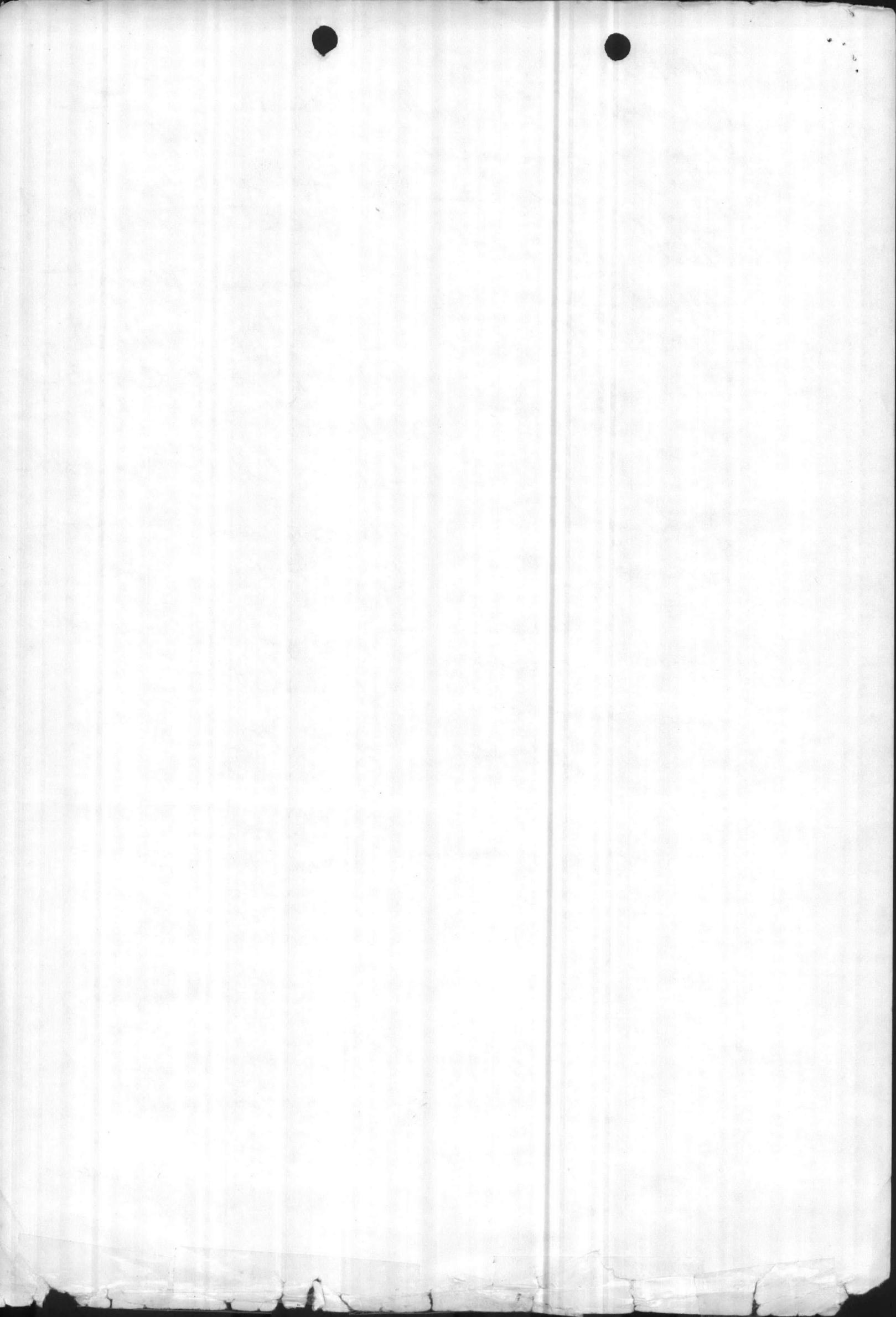
W. K. SHAFFER  
Lt. Colonel, CE  
Deputy District Engineer



Willie Jenkins  
George K. Shepard  
Cyrus Lewis  
W. L. Pickett  
All Quilico  
John W. Drent  
T. D. [unclear]  
R. H. Phoebe  
J. L. Foster  
Wingo Henderson  
J. L. Horne  
Thurgan & Davis  
Waldo Thompson  
Flourer Fulcher  
L. L. Taylor  
Lawrence & [unclear]  
Venore Davis  
Cecil Davis  
[unclear] Davis  
H. R. [unclear]  
[unclear] [unclear]  
James A. Davis  
L. Annis & Everett  
George W. Fulcher  
W. L. [unclear]  
L. B. Midgett

Ralph C. Boston  
C. L. Wood  
Louis [unclear]  
Lester Midgett  
Dennis Midgett  
Clifton Midgett  
Mrs. Edna Hill  
Mrs. Nettie Harris  
Harold Cornell  
Georgia Cornell  
G. J. Edens Sr  
Mrs. J. Edens Sr  
James [unclear]  
[unclear] [unclear]  
Joe Millis  
Mance Millis  
Jack Millis  
Dane Millis  
Sam Millis  
L. G. Millis  
Fannie Fulcher  
Mandy [unclear]  
[unclear] [unclear]  
B. F. Millis  
Joseph Millis  
James S. Russell  
Timm Millis  
J. W. [unclear]  
Wart Fulcher  
Joe C. Lewis

(OVER)



Arthur & Everett

Geo. Tucker

Charles T. Lockman

Willie Pierce

Lloyd Harris

A. C. Conahy

J. R. Woodsett Jr

F. J. Hill

Pray B. Jenkins

B. J. Lambry

L. B. Foster

Clifton Norris

D. J. Owens

E. B. Williams

Poland Edens

Robert Jarvis

Delpha T. Thompson

J. F. Redd

Noble Cappe

D. T. Hobbs

Theron Davis

Sammy Davis

Beulah Davis

J. J. Fulcher

C. C. Lucas

R. P. Lucas

W. J. Lucas

W. J. Lucas Jr

C. J. Jones Jr

Walter Jones

John F. Jones

Alphonse T. Everett

Lee B. Skaype

Lee Skaype Jr

Ray Jones

J. B. Blackburn

Willard Jester

Nellie Jester

Kirby Hardison

Raymond Melton

Alvin Melton

Thomas Carl Hill Jr

Mrs. Clara M. Everett

Mrs. Gertrude Miller

Devald Edens

Gerardine Edens

J. B. Edens

Billy Midget

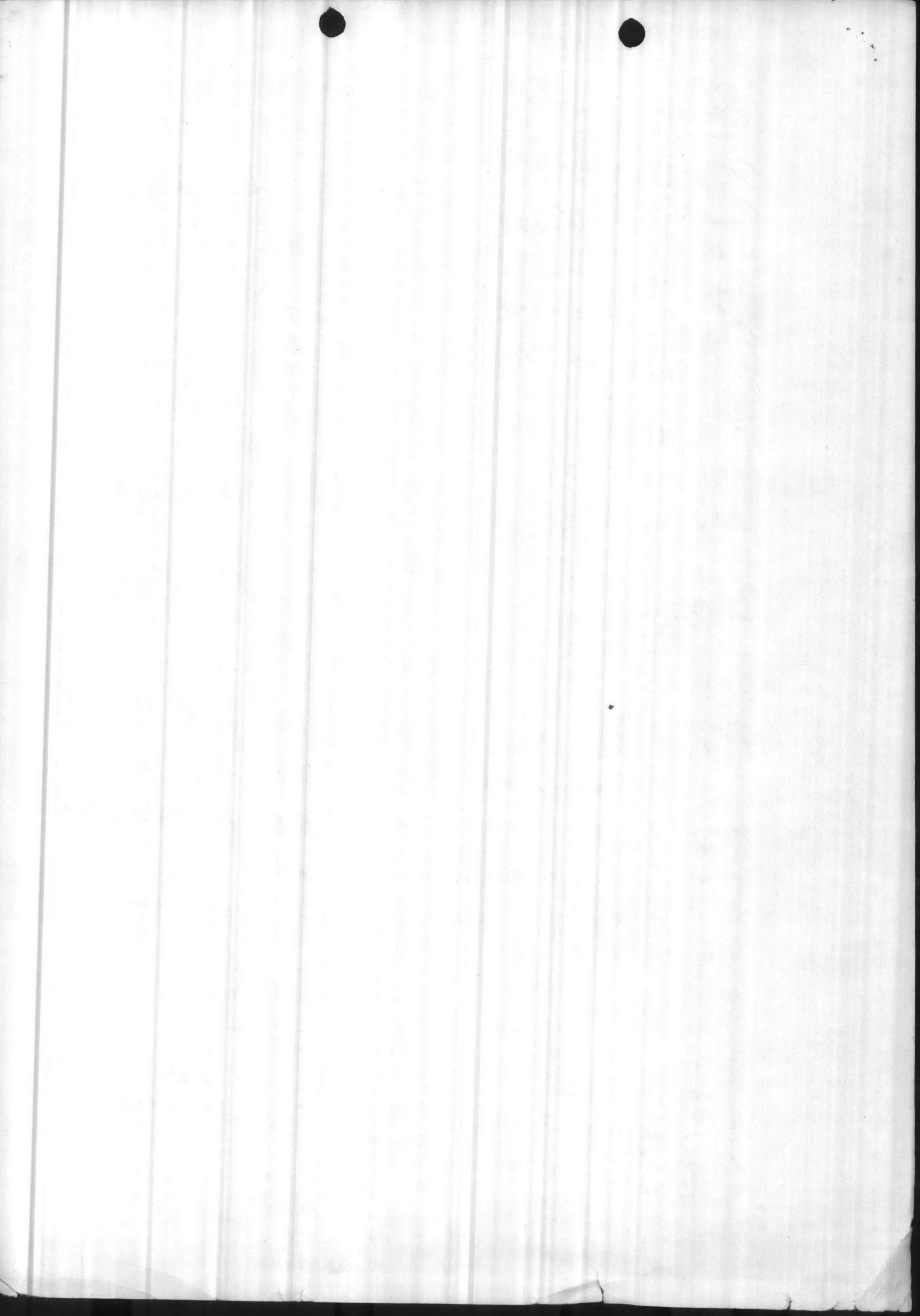
O. J. Johnson

Mrs. D. E. Johnson

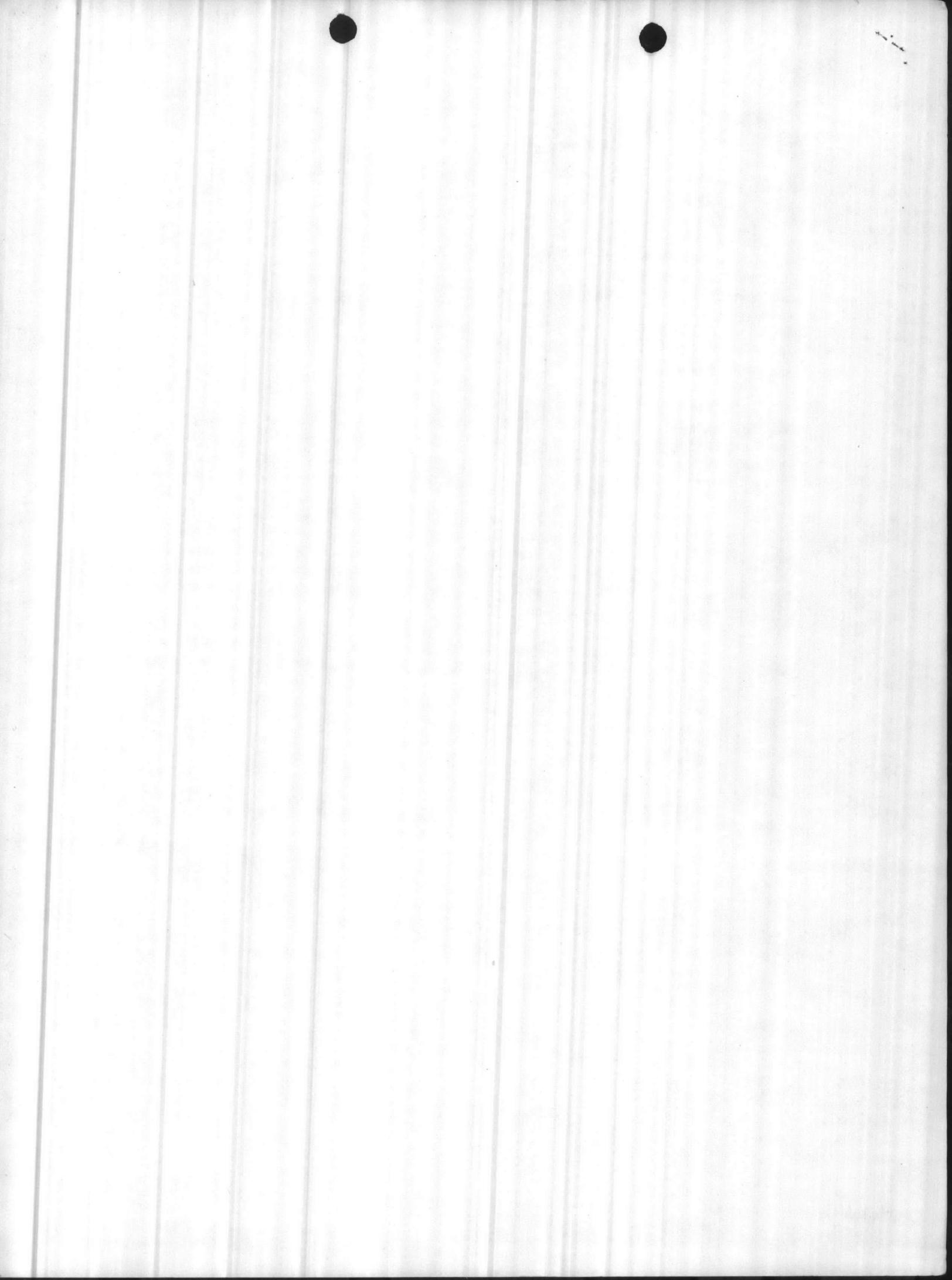
Yarnal Dennis

Willie R. Lewis

Bobby J. Lucas



Luke Shepard  
Jessie Shepard  
Willie West Sr.  
Colon Jones



384.4  
Civil Patrol  
(New River)

SAWKO

21 August 1956

Mr. J. T. Gresham, Jr.  
Attorney at Law  
Jacksonville, North Carolina

Dear Mr. Gresham:

Receipt is acknowledged of a petition delivered in person by Colonel George W. Gillette, signed by residents of Onslow County, North Carolina, outlining their objections to the request of the United States Marine Corps to designate the northwest end of Stone Bay, New River, North Carolina, as an area prohibited to privately owned boats.

Further study of this matter is being made by this office regarding the establishment of the proposed prohibited area and the necessity for holding a public hearing. If it is determined that a public hearing will serve a useful purpose in reaching a decision on this matter, public notice advising the time and place of the hearing will be issued by this office.

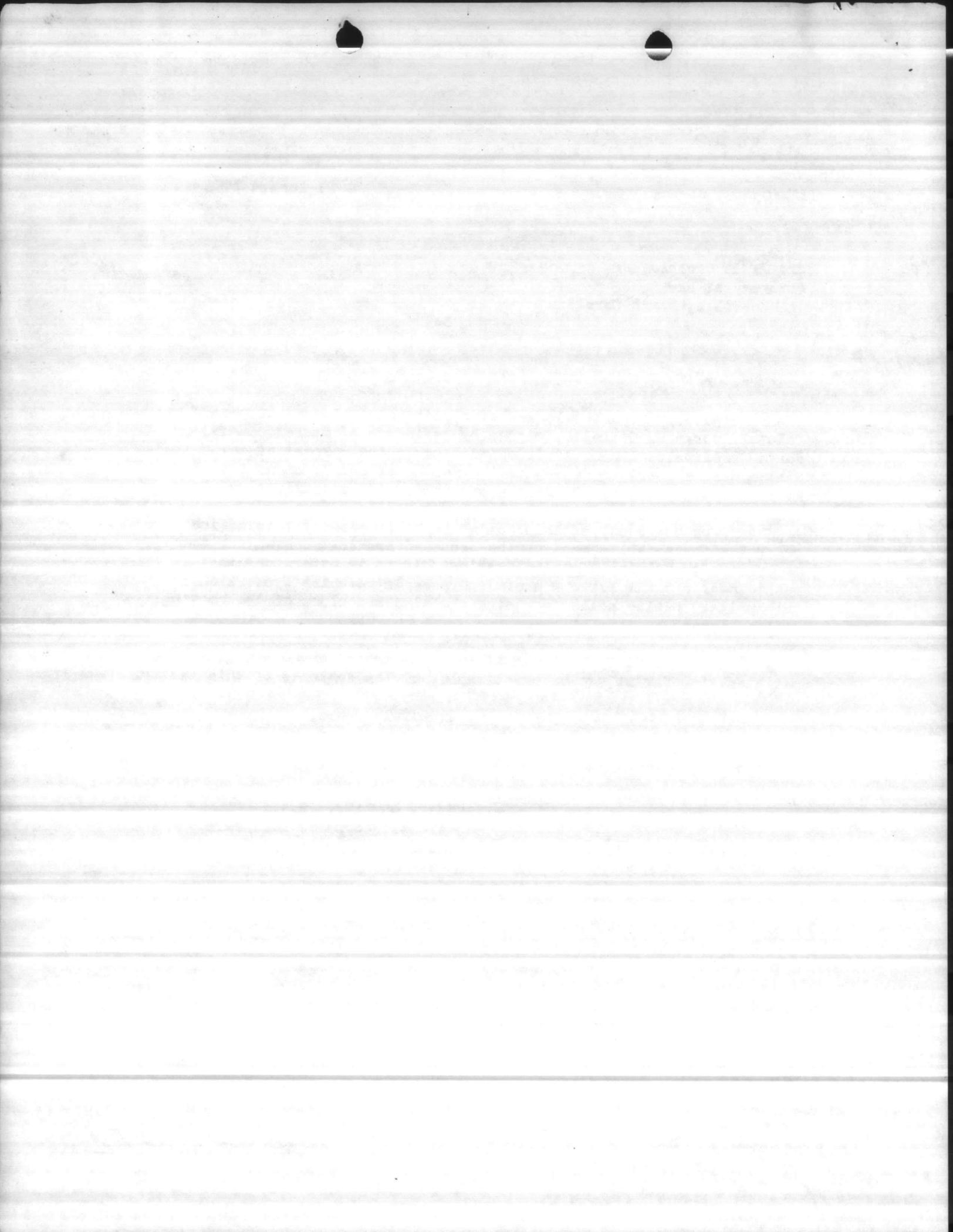
It will be appreciated if you will advise signers of the petition, insofar as may be practicable, of the contents of this letter.

Sincerely yours,

H. C. ROWLAND, JR.  
Colonel, Corps of Engineers  
District Engineer

D. E.	_____
ExO	_____
CAD	_____
COD	_____
CED	_____
Dict	_____
Type	_____
Ckd	_____

Incl 6



SAWOP

27 August 1956

SUBJECT: Prohibited Area in Stone Bay, Request for

TO: Commanding General  
Headquarters, Marine Corps Base  
Camp Lejeune, North Carolina

1. Reference is made to your letter dated 11 July 1956, file 3/GBB/rnk, and our letter dated 17 July 1956, both on the above subject.

2. In response to public notice issued by this office concerning the proposed prohibited area, a letter was received from Congressman Graham A. Barden, representative of third congressional district of North Carolina, expressing concern over the riparian rights of land owners whose property adjoins any of the waters affected. Our records indicate that all of the property adjoining the proposed prohibited area, including the creeks leading into the area, is within the Marine Corps reservation, and the riparian rights of others are not involved. On 20 August 1956, I received a petition from a group of citizens of Onslow County, North Carolina, protesting the proposed action and requesting a public hearing.

3. It is my opinion that a public hearing is not justified. However, in view of the interest by Congressman Barden and the citizens signing the petition, it is possible that a public hearing may be necessary. In the event that Congressman Barden insists on a public hearing, you will be advised promptly.

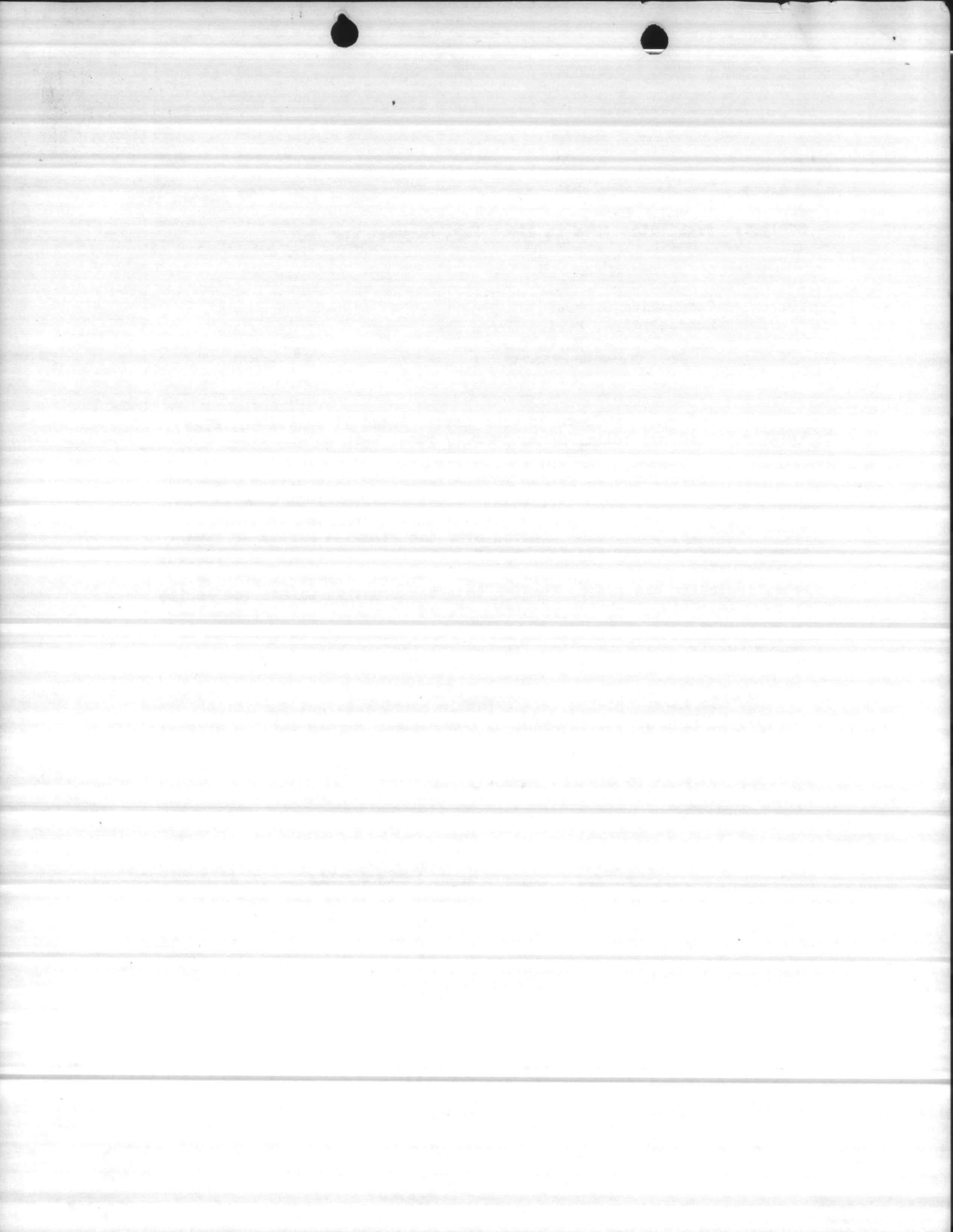
H. C. ROWLAND, JR.  
Colonel, Corps of Engineers  
District Engineer

*Pms*

*Jm*

*ep*

*JM*



SAWVK/1

5 September 1956

SUBJECT: Prohibited Area in Stone Bay, Request for

TO: Commanding General  
Headquarters, Marine Corps Base  
Camp Lejeune, North Carolina

1. Subsequent to our letter of 27 August 1956, above subject, I have received a letter from Congressman Graham A. Barden, dated 30 August 1956, strongly protesting the proposed closure of the Stone Bay Area. In view of the continuing interest of Congressman Barden and local citizens, it is suggested that you may determine to withdraw your request for full time closure of the Stone Bay Area, and to maintain closure of the area as required on the basis of forty-eight (48) hours notice.

2. If you determine that complete prohibition of the area to private use is in the public interest, it will be necessary to hold a public hearing to obtain the views of all who may have an interest in the area involved. The record of the hearing then will be forwarded to the Chief of Engineers for decision in this matter.

3. It is requested that you advise this office of your decision as soon as practicable.

H. C. ROWLAND, JR.  
Colonel, Corps of Engineers  
District Engineer

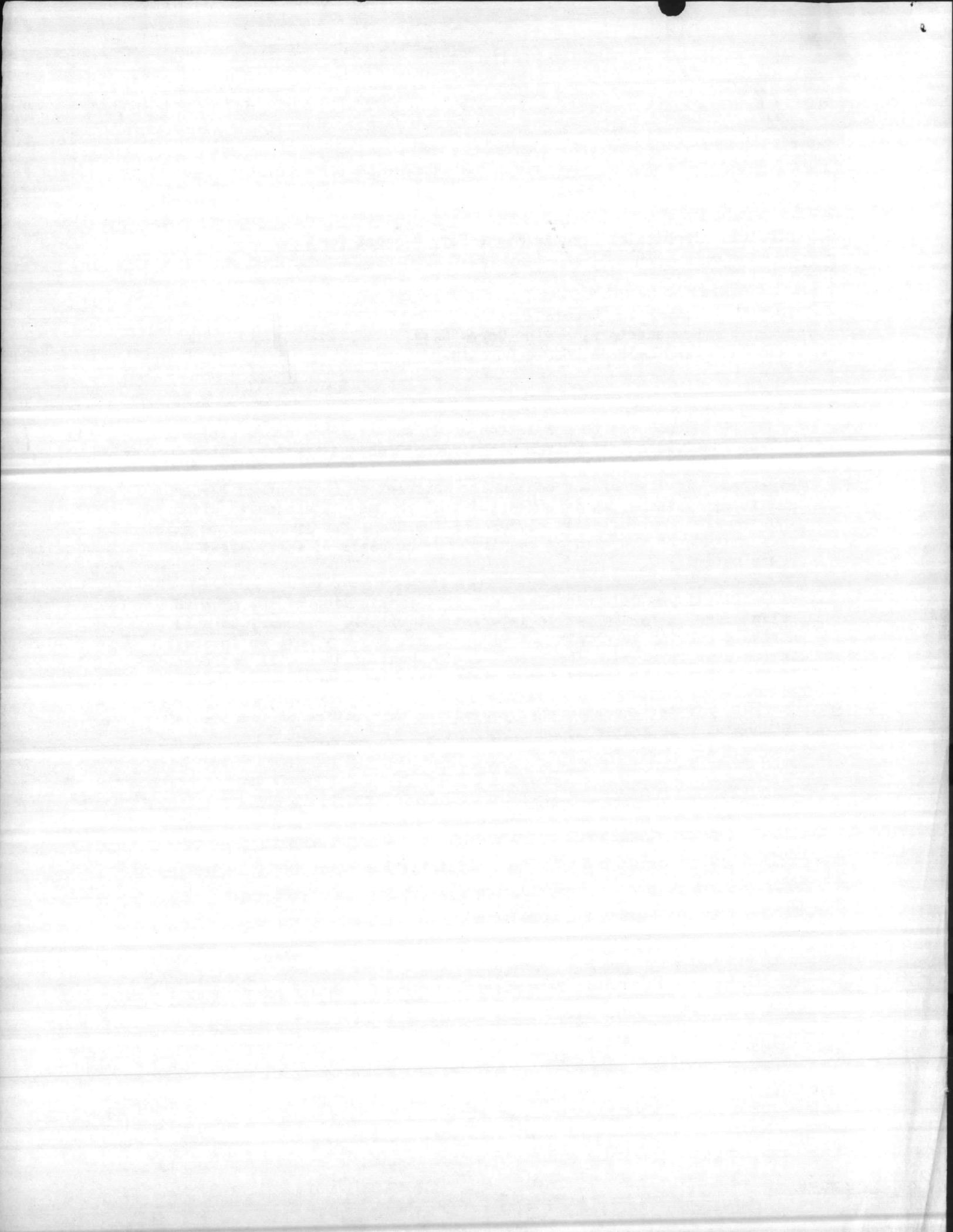
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*Incl 8*





UNITED STATES MARINE CORPS  
MARINE CORPS BASE  
CAMP LEJEUNE, NORTH CAROLINA

3844  
Civil Policy  
(New River)

IN REPLY REFER TO  
3/CJM/mhc

11 SEP 1956

From: Commanding General  
To: Office of the District Engineer, Wilmington District, Wilmington,  
North Carolina

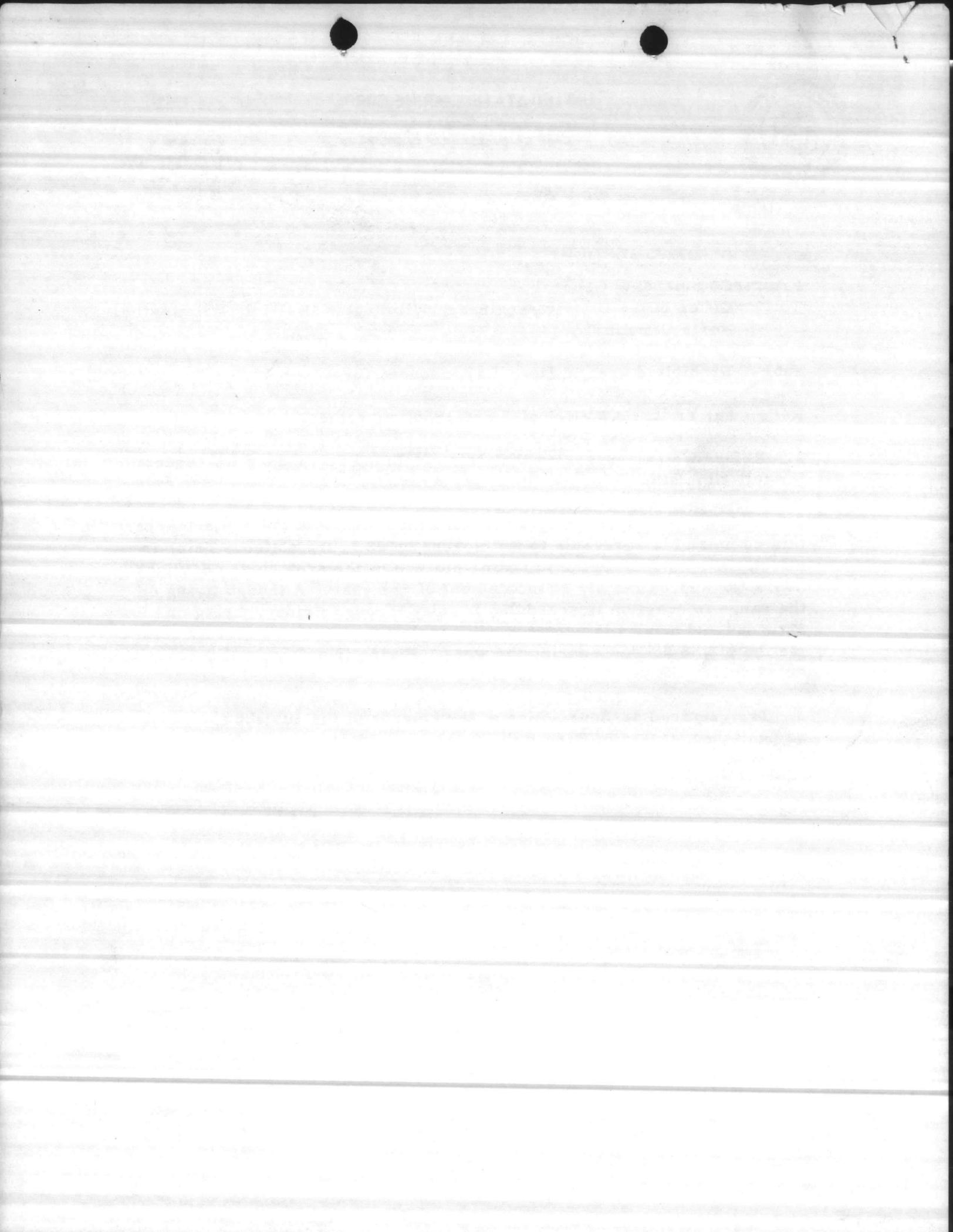
Subj: Prohibited area in Stone Bay; request for

Ref: (a) Yr ltr SAWVK/1 of 5 Sep 1956, re subject

1. Reference (a) suggested that this command reconsider its request for full time closure of the Stone Bay Area.
2. In view of the opposition to the full time closure of the subject area, this command is agreeable to its closure on 48 hours notice. This, in effect, will amount to the full time closure of the area during daylight hours for approximately 11 months out of the year. Although firing on the range in question is scheduled Monday through Friday, firing on Saturday and Sunday is required when inclement weather prevents completion of the schedule during the week. Firing is not normally scheduled during the month of December.
3. The required 48-hour notice of the closure of the subject area will be published weekly in Base Bulletin 3550, Subject: Assignment of Base Firing Areas.

*George B. Bell*

GEORGE B. BELL  
By direction



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HEADQUARTERS, MARINE CORPS BASE  
CAMP LEJEWNE, NORTH CAROLINA

3/GBB/rmk  
11 July 1956

From: Commanding General  
To: District Engineer, Corps of Engineers, U. S. Army, Office of  
the District Engineer, Wilmington District, 308 Customhouse,  
Wilmington, North Carolina

Subj: Prohibited Area in Stone Bay, Request for

1. It is requested that part of Stone Bay, north and west of a line extending from grid coordinate 764-312 to grid coordinate 779-333, map HO Misc 15,042-50-1A, be designated as an area prohibited to privately owned boats.
2. The reason for this request is that rifle fire from this command's rifle range located at Stone Bay partially impacts into the above described area.
3. It is further requested that permission be granted to place suitable warning signs along the above described line.

GEORGE B. BELL  
By direction

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HEADQUARTERS, ARMY OF THE UNITED STATES  
WASHINGTON, D. C.

OFFICE OF THE  
ADJUTANT GENERAL

From: Adjutant General, Office of the  
To: District Engineer, Corps of Engineers, Office of  
The District Engineer, Office of the  
Washington, D. C.

Subject: Proposed...

1. The proposed...
2. The proposed...
3. The proposed...

Very truly yours,  
Adjutant General

3844  
Final Review  
(7/11/56)

SAVED

17 July 1956

SUBJECT: Prohibited Area in Stone Bay, Request for

TO: Commanding General  
Headquarters, Marine Corps Base  
Camp Lejeune, North Carolina

1. Reference is made to your letter dated 11 July 1956, file 3/GHB/rnk, same subject.

2. There is inclosed draft of proposed amendment to Section 204.56 of Danger Zone Regulations to establish an area prohibited to privately owned boats as requested in referenced letter. It is requested that you advise this office if you concur in the inclosed draft.

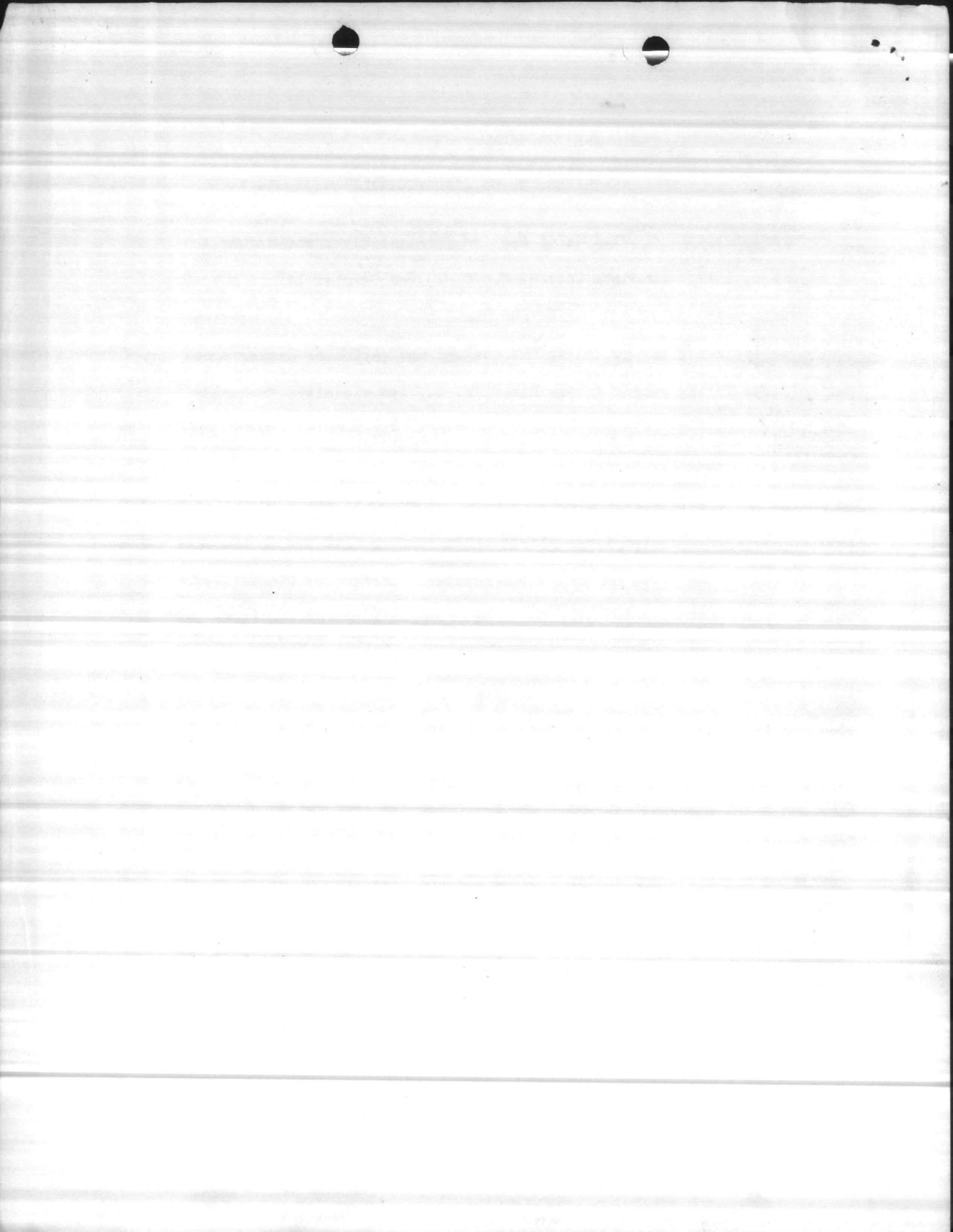
3. It will be necessary that a public notice be issued concerning the proposed changes in the regulations. If no objections are received in response to the public notice, the proposed amendment will be forwarded to the Chief of Engineers for final action.

✓ Incl  
1. Draft  
2. Sec. 204.56,  
Danger Zone Reg.  
JCS

R. L. HILL  
Colonel, Corps of Engineers  
District Engineer

D. E. ...  
E. O. ...  
L. ...  
P. ...  
T. ...  
C. ...  
JCS

Incl 2



D-R-A-F-T

PART 204.-DANGER ZONE REGULATIONS  
NEW RIVER, N. C., AND VICINITY

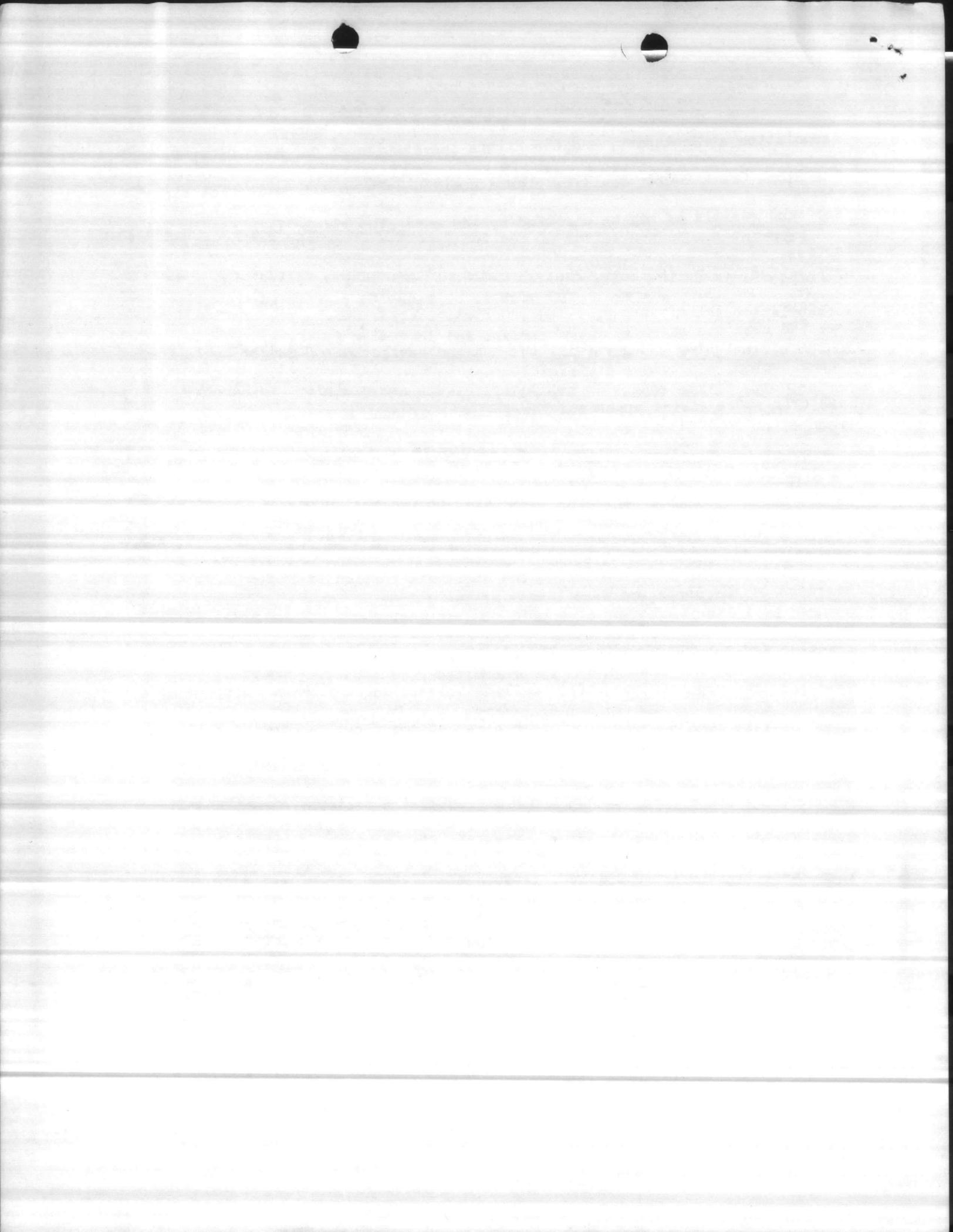
Pursuant to the provisions of Section 7 of the River and Harbor Act of August 8, 1917, (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriation Act of July 9, 1918, (40 Stat. 892; 33 U.S.C. 3), Section 204.56 establishing and governing the use and navigation of danger zones for Marine Corps firing ranges in New River, N. C., and vicinity, is hereby amended, as follows:

(b)(3) Stone Bay Sector. - Bounded on the east by Sneads Ferry Bridge; and on the north by a line beginning at a point on the west shore of the river at latitude  $34^{\circ} 36' 07''$ , longitude  $77^{\circ} 26' 17''$ , running  $111^{\circ} 30'$  to the east shore.

(b)(4) Stone Creek Sector. - The northwest portion of Stones Bay, bounded by a line beginning at a point on the west shore of the river at latitude  $34^{\circ} 36' 07''$ , longitude  $77^{\circ} 26' 17''$ , running  $55^{\circ} 0'$  to the north shore.

(c) The regulations. - (1) Sailing vessels and any watercraft having a speed of less than 5 knots shall keep clear of any closed sector at all times after notice of firing therein has been given. Vessels propelled by mechanical power at a speed greater than 5 knots may enter the sectors, except the Stone Creek Sector, without restriction unless the firing signals are being displayed. When these signals are displayed, vessels shall clear the closed sectors immediately and no vessels shall enter such sectors until the signals indicate that firing has ceased.

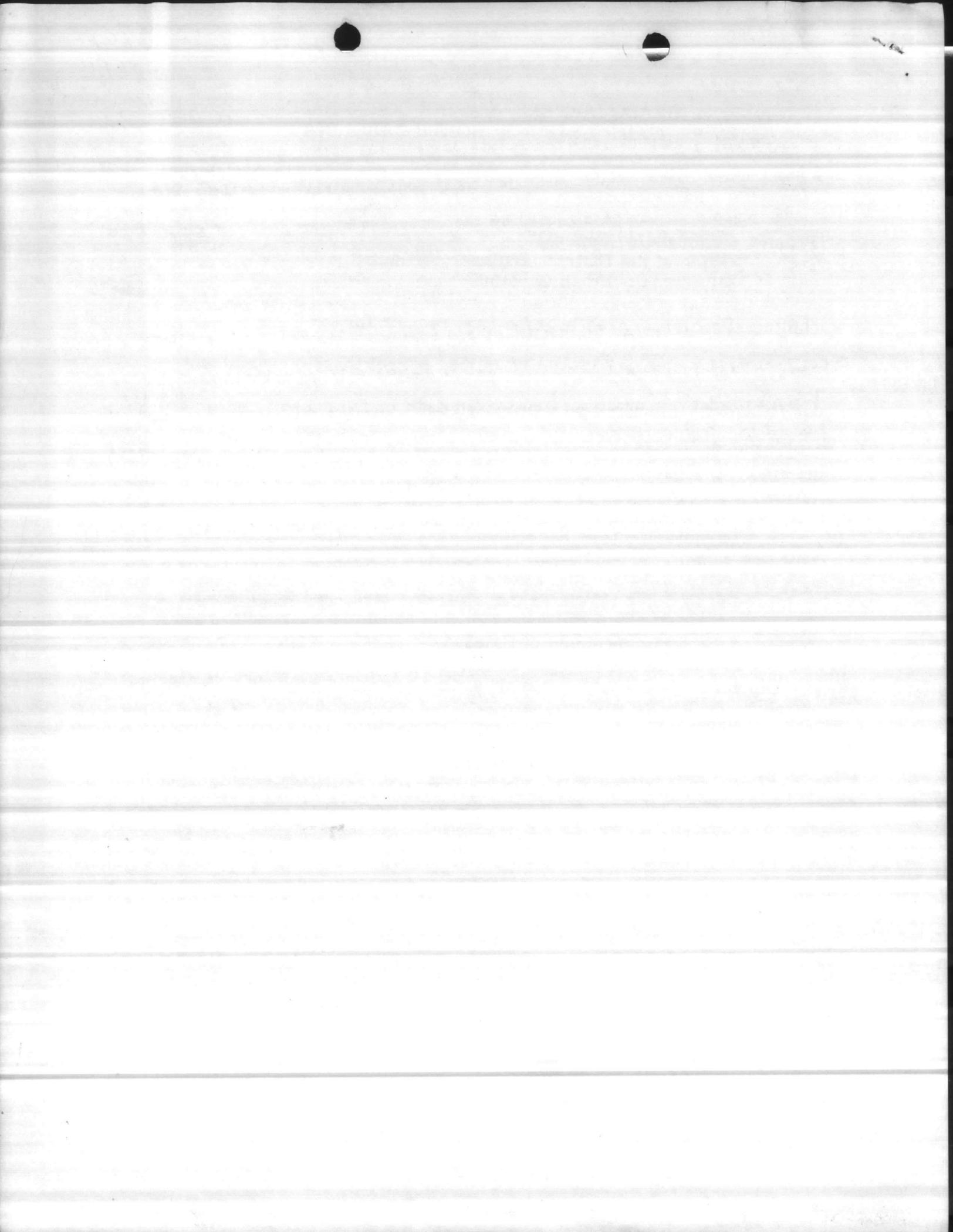
(3) Two days in advance of the day when firing in any sector except the Stone Creek Sector is scheduled to begin, the enforcing agency will warn the public of the contemplated firing, stating the sector or sectors to be closed, through the public press and the United States Coast Guard and, in the case of the Atlantic Ocean Sector, the Cape Fear Pilots



Association at Southport, and the Pilots Association at Morehead City, N. C. The Stone Creek Sector shall be closed continuously to all navigation except for such vessels as may be directed by the enforcing agency to enter on assigned duties.

(4) Towers at least 50 feet in height will be erected near the shore at the northeast and southwest limits of the Atlantic Ocean Sector, and towers at least 25 feet in height will be erected near the easterly shore at the upper and lower limits of each New River Sector, except the Stone Creek Sector. On days when firing is to take place, a red flag will be displayed on each of the towers marking the sector or sectors to be closed. These flags will be displayed by 8:00 a.m., and will be removed when firing ceases for the day. Suitable range markers will be erected indicating the bearings of the north and west limits of the Atlantic Ocean Sector. Suitable warning signs shall be erected along the eastern boundary of the Stone Creek Sector advising that navigation is prohibited from entering, unless permission has been granted by the enforcing agency.

(6) The regulations in this section shall be enforced by the Commanding General, Marine Corps Base, Camp Lejeune, N. C., and such agencies as he may designate.



HEADQUARTERS, MARINE CORPS BASE  
CAMP LEJEUNE, NORTH CAROLINA

384.4  
Civil Policy  
(New River)

3/CJM/paj  
30 July 1956

From: Commanding General  
To: Office of the District Engineer, Wilmington District,  
Wilmington, North Carolina

Subj: Prohibited Area in Stone Bay; request for

Ref: (a) Yr ltr SAWKO dtd 17 Jul 56, w/encl thereto, same subj

1. Reference (a) submitted a proposed draft on the subject matter and requested concurrence.

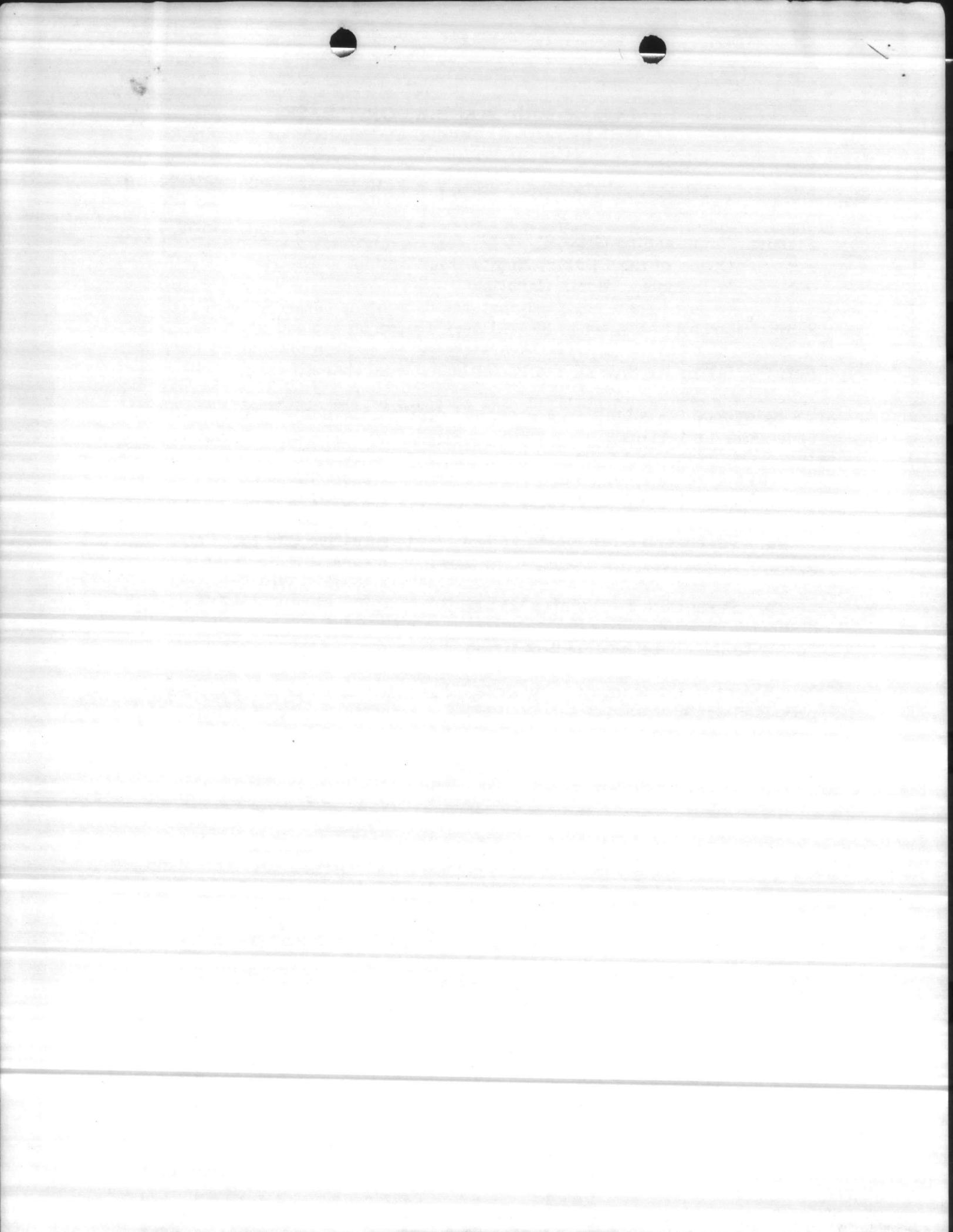
2. The following changes are recommended to the draft prior to your office forwarding same to Chief of Engineers for final action.

a. Paragraph c (4): Recommend that twenty-five (25) foot flag poles be substituted for twenty-five (25) foot towers.

b. Paragraph c (4) states that on firing days, red flags will be displayed by 0800. It is believed that this should be changed to read "prior to the commencement of firing."

3. Subject to the foregoing remarks, this command concurs with the proposed draft.

*George B. Bell*  
GEORGE B. BELL  
By direction



CORPS OF ENGINEERS, U. S. ARMY  
OFFICE OF THE DISTRICT ENGINEER  
WILMINGTON DISTRICT  
308 CUSTOMHOUSE  
WILMINGTON, NORTH CAROLINA

384.0  
final policy  
(New York)

SAWOP

6 August 1956

PUBLIC NOTICE

You are hereby notified that the Commanding General, Camp Lejeune, North Carolina, has requested that the northwest end of Stone Bay, New River, North Carolina, be designated as an area prohibited to privately-owned boats.

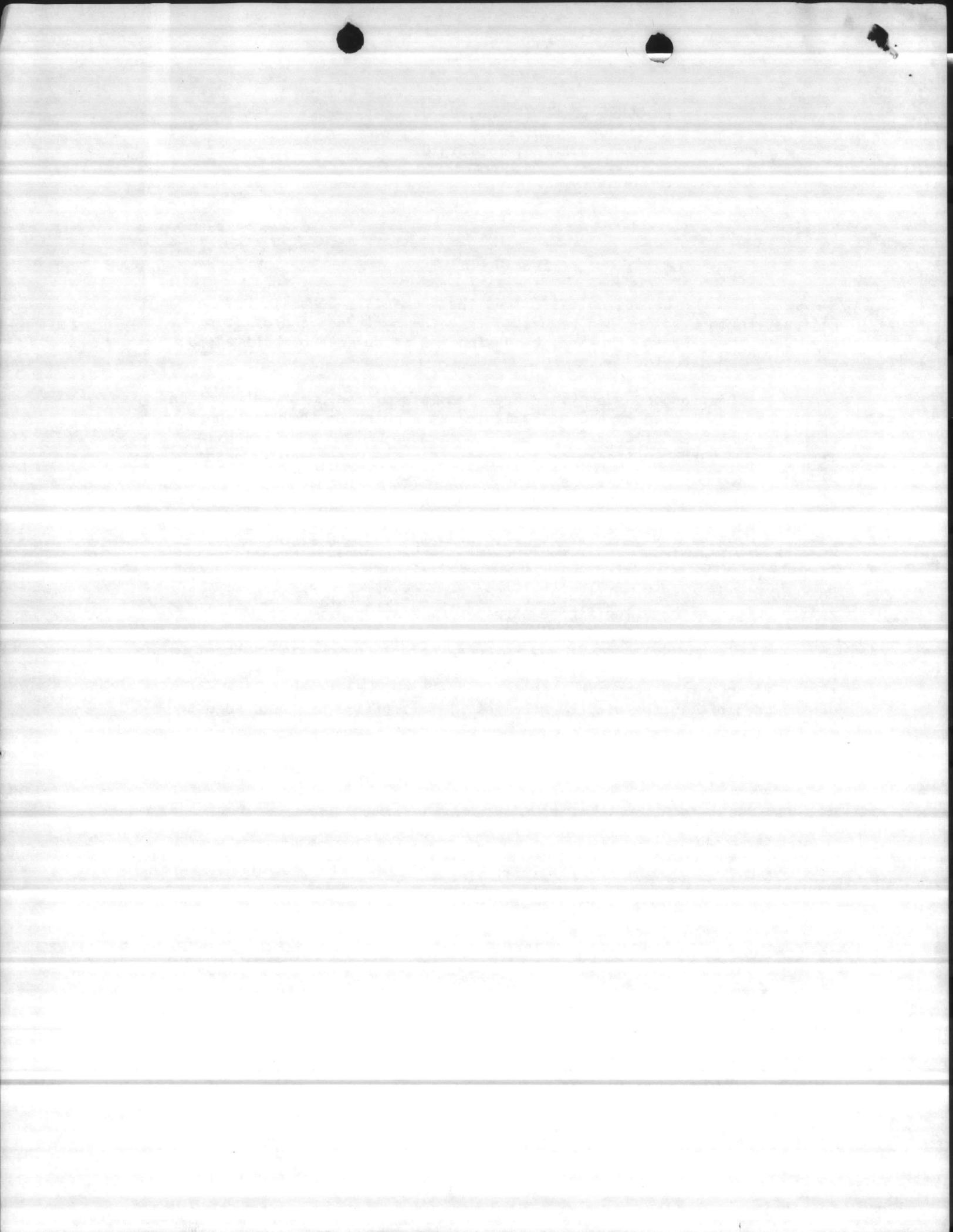
The proposed prohibited area consists of the northwest portion of Stone Bay, bounded by a line beginning at a point on the west shore of the river at latitude  $34^{\circ} 36' 07''$ , longitude  $77^{\circ} 26' 17''$ , approximately 1,325 yards southeast of the mouth of Stone Creek, and running  $55^{\circ} 0'$  to the north shore, approximately 500 yards east of the mouth of Mill Creek. See map on reverse side of this sheet.

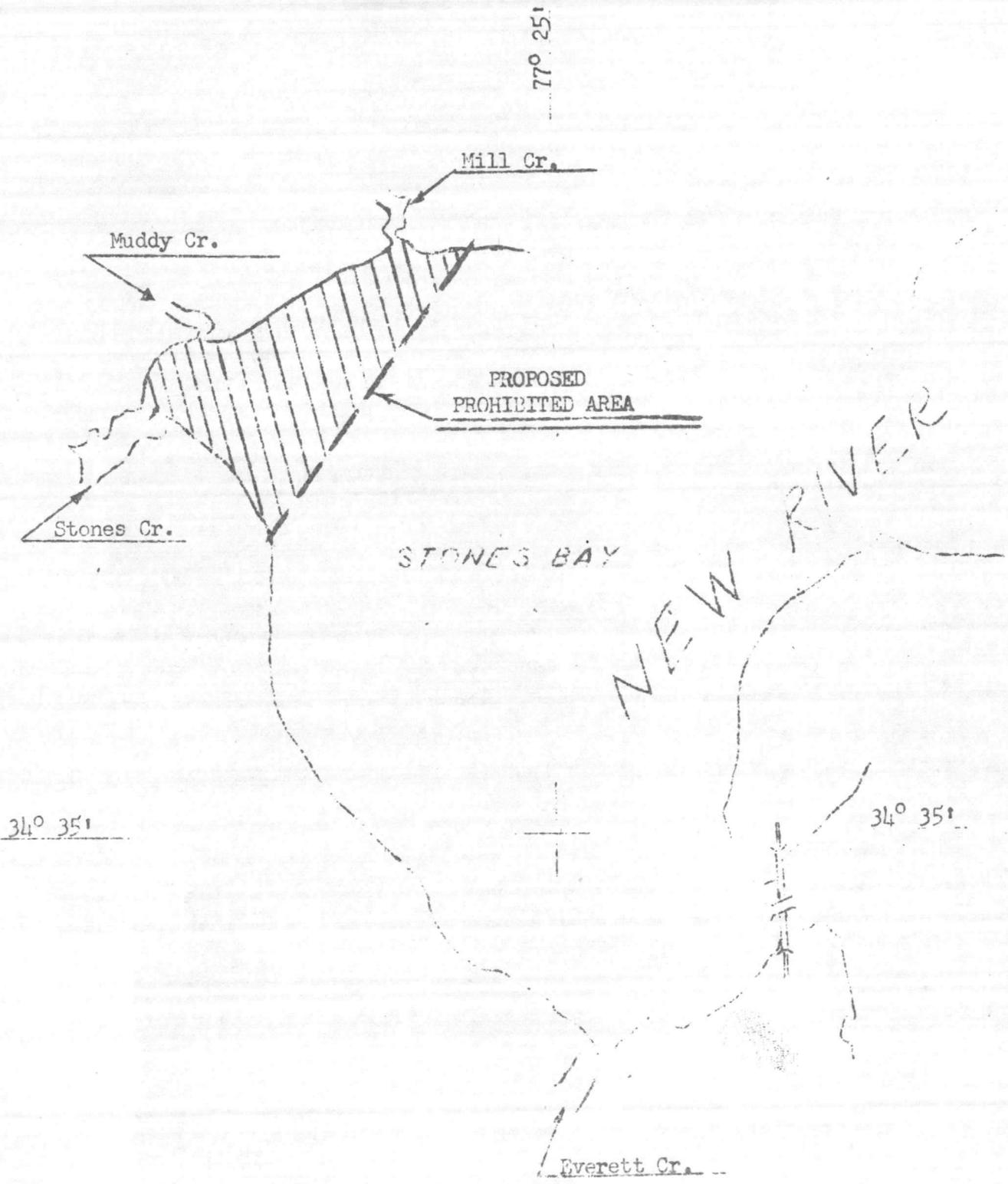
The area will be marked with suitable warning signs along the above described line. The area is extremely hazardous to vessels as rifle fire from an existing rifle range partially impacts into the area. Present Danger Zone Regulations provide that the area be closed to navigation only when red flag firing signals are displayed.

Please advise me if you have any objection to establishment of this prohibited area or if you know of any person, firm or association which may be opposed to this action. Objections to establishment of the prohibited area will be received at this office until 20 August 1956.

*H. C. Rowland, Jr.*  
H. C. ROWLAND, JR.  
Colonel, Corps of Engineers  
District Engineer

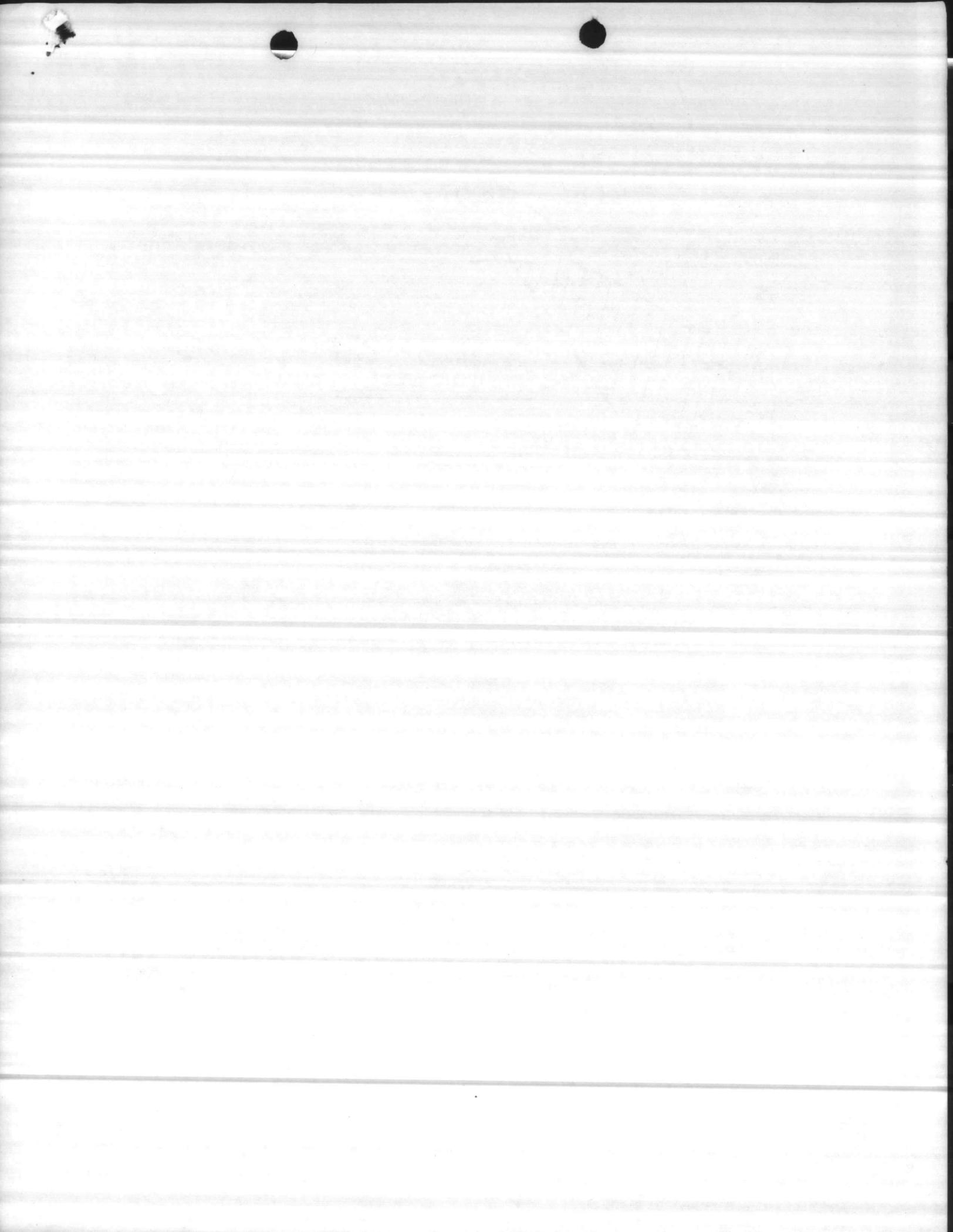
*List of names to whom  
sent in Const Div*





From U.S. Coast & Geodetic Chart No. 777  
Scale  $\frac{1}{10,000}$

77° 25'



*Jurisdiction  
file*

*MAR  
384 d  
Civil Code  
New River*

SAWOP

14 September 1956

Mr. J. T. Cresham, Jr.  
Attorney at Law  
Jacksonville, North Carolina

Dear Mr. Cresham:

Reference is made to our letter dated 21 August 1956 and your letter dated August 27, 1956 concerning designation of Stone Bay, New River, North Carolina, as an area prohibited to privately-owned boats.

The Commanding General, Camp Lajeune, North Carolina has advised that in view of the opposition of civilian interests to the proposed action, he desires that his request for full time closure of the area be withdrawn.

The existing danger zone regulations for part time closure of this area on forth-eight (48) hours notice remain in full force and effect.

It will be appreciated if you will advise signers of the petition, insofar as may be practicable, of the contents of this letter.

FOR THE DISTRICT ENGINEER:

J. H. JACKSON  
Lt. Colonel, Corps of Engineers  
Assistant District Engineer

D. E.	<i>[Signature]</i>
ExO	<i>[Signature]</i>
CAD	<i>[Signature]</i>
COD	<i>[Signature]</i>
CED	<i>[Signature]</i>
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