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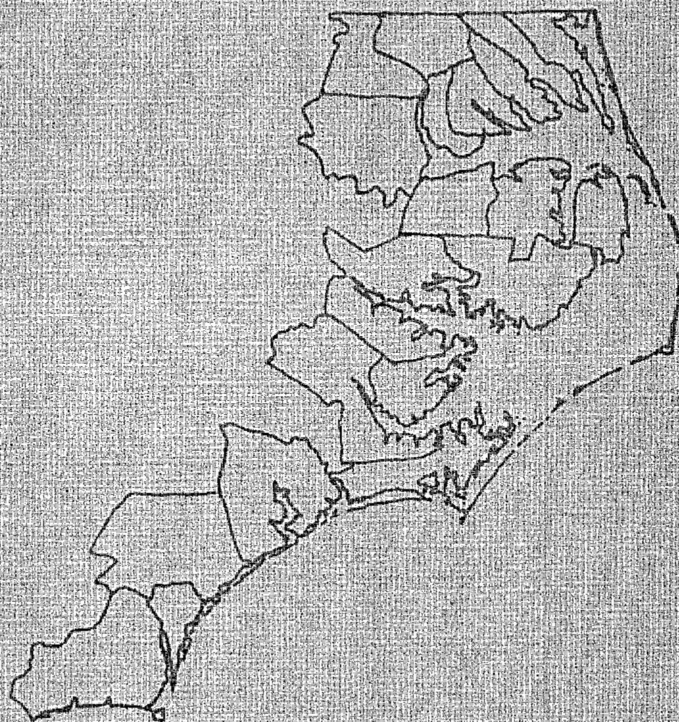
THE NORTH CAROLINA COASTAL PLAN



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PART I. PROGRAM DEVELOPMENT

CHAPTER 1 GENESIS OF COASTAL AREA MANAGEMENT

A. Introduction

From the earliest days of discovery and settlement by European colonists, North Carolina's growth and development have been intimately tied to the coastal region. The first permanent European settlement in North America was located on one of North Carolina's coastal islands. Throughout the colonial and revolutionary periods, the State's center of population was located near the coast,and its coastal sounds and rivers served as ports of entry and major routes of commerce. During the late 1800's and early 1900's the coastal area, although isolated from the slow industrial and agricultural growth of the inner coastal plain and piedmont, continued to support fishing and water-based commerce. As a result of the general national growth and prosperity that followed the second World War, tourism and recreation joined agriculture, forestry, and fishing as the major economic activities in the coastal region. In recent years, several localized areas of heavy industry have developed.

Because of the State's deep roots in its coastal area, North Carolinians have long had a special concern for the coast and for the proper management of its resources. Because of low population levels and the virtual absence of industry in the area prior to the 1950's, little need was perceived for any special legislation to deal with regional problems. The principal problem of the region was to achieve some degree of economic growth in order to allow its residents to attain the standards of living enjoyed by the residents of other regions of the State. This concern with economic growth, to a large extent, today pervades the thinking of local governments in

the region. Rapid increases in tourism, second home development and new industry during the 1960's created pressures on coastal marshland, estuarine water and fisheries populations and led to a growing realization that, without management, those resources might be jeopardized or destroyed. North Carolina's Coastal Area Management Act (CAMA), (Article 7, G.S. 113A) represents the culmination of 10 years of effort to develop a management system that would protect the State's coastal resources and yet permit their wise and orderly development. A copy of the CAMA, as amended, is attached as Appendix I.

In this regard, North Carolina and the nation have followed nearly parallel courses in developing their respective coastal management programs. Events at the state level reflect the slowly evolving national awareness of environmental issues in general and the special values and management problems associated with the nation's coastal zone. The policy formulation contained in CAMA, although influenced by national events, was motivated primarily by state issues and concerns, and proceeded largely independent of federal efforts. Although there was an awareness that federal legislation with sanctions for failure to comply might be passed, this concern never became a dominant issue in efforts to formulate a state program. Response to federal requirements, although certainly a strong motivating force, never became the sole reason for developing a state program.

B. Enactment of the North Carolina Coastal Area Management Act

1. Legislative History

The history of CAMA portrays the development in North Carolina of a public awareness of the need for protection of coastal resources and of a legislative (political) response to these needs.

Although there was an intimate relationship between inhabitants of the coast and the natural systems of the region, there was no clear understanding of the fact that the economic and social well-being of the region and of its citizens depended upon the protection and proper management of these systems. For example, ever since the mid-1800's it was state policy that non-navigable wetlands belonging to the State should be "reclaimed" and put to "productive" use. Such lands were, in fact, frequently sold in fee by the State with the proceeds going to the literary fund in the State Department of Public Instruction. Passage of the State Lands Act (G.S. 146) in 1959 began a shift away from this policy by limiting the conveyance of state-owned wetlands and declaring that the State's submerged lands should be preserved for the use of the people. In addition, several major conservation battles during the 1960's over preservation or development of coastal properties, most notably concerning Bald Head Island in Brunswick County and several disputes with the Corps of Engineers regarding spoil disposal on marshlands signaled a growing awareness of the value of North Carolina's coastal area and of the need for new strategies for its management.

As is frequently the case, legislative action lagged behind public concern. In 1965, an ownership registration statute (G.S. 113-205 to 206) was passed requiring persons claiming ownership of bottoms under navigable waters to register their claims of ownership to coastal submerged lands. The 1969 General Assembly enacted several pieces of legislation that provided the first real measure of state protection of its coastal zone. A dredge and fill act (G.S. 113-229) administered by the Department of Conservation and Development now administered by the Department of Natural and Economic Resources (DNER), provided protection for coastal marshes against destructive dredging, filling and other modifications. Amendments to

G.S. 104B strengthened the State's sand dune protection statutes and provided local governments of the counties bordering on the Atlantic Ocean with the power to protect sand dunes against destruction. Both of these pieces of legislation were strengthened in 1971 and a wetlands protection statute (G.S. 113-230) was added providing machinery for protection of coastal wetlands. In addition, a State Environmental Policy Act (Article 1, G.S. 113A) was passed in 1971, and in 1972 the voters approved an "environmental bill of rights" that provides constitutional protection (N.C. Const. art. XIV, Section 5) for coastal wetlands and shorelands.

The birth of CAMA can be traced directly to the 1969 General Assembly. After enacting the dredge and fill law, the General Assembly directed the Commissioner of Commercial and Sports Fisheries in the Department of Conservation and Development to make a long-term study "with a view to the preparation of a comprehensive and enforceable plan for the conservation of the resources of the estuaries, the development of their shorelines, and the use of the coastal zone of North Carolina (Ch. 1164, 1969 Session Laws). A report on this study was to be submitted to the Governor by November 1, 1973. Although consideration was given to preparation of legislation in the spring of 1971, the actual drafting of legislation began in December, 1971, when the Commissioner of Commercial and Sports Fisheries established a "Comprehensive Estuarine Plan Blue Ribbon Committee" composed of 25 members, including lawyers, academicians, state and local government officials, engineers and industry representatives.

Working through 1972, and with substantial input from the Inter-agency Committee on the Environment and from the Marine Science Council, the Committee prepared at least four major drafts of proposed legislation. Early versions vested major powers in state agencies and had wide-ranging permit and

regulatory authorities. These were refined to provide for more local input, but the final version of the bill introduced into the General Assembly on March 27, 1973, still was heavily oriented toward state initiatives. A public hearing held during the spring of 1973 revealed opposition to the bill, chiefly from local government interests who were concerned about their role under the bill. Thus, the bill was held over for action until 1974. Subsequent hearings during the summer of 1973 and visits to Florida, Maine, and Vermont helped to refine the bill. The five hearings held on the coast were particularly helpful, as they brought forth an impressive number of specific suggestions for refinements. The most tangible point made at these hearings was the strong expression by local governments of their desire for greater involvement in the program. There was a virtually unanimous feeling that local government should play a major role in the planning process and that it should have some say in the selection of the state-level board responsible for supervision of the program.

Based on this information, the 1973 bill was substantially re-written and introduced at the beginning of the 1974 legislative session. After almost endless hearings, committee meetings, proposed amendments, and hours of floor debate, the bill was ratified on April 12, 1974, one day before the end of the session. Despite the intensity of debate, the final version of the bill was basically similar to that which was introduced earlier in the session. The major changes involved the composition of the Coastal Resources Commission, to provide for greater input from local government, and a tightening of criteria for identification of areas of environmental concern and for denying permits. Most amendments were more of a corrective or refining nature, and many were frankly tactical and designed to damage or delay the bill.

2. General Policies

The policy of the State of North Carolina with respect to the conservation of its natural resources generally, and specifically of its coastal wetlands, estuaries, and beaches, is expressed in Article XIV, Section 5, of the State Constitution:

> "Sec. 5 Conservation of natural resources. It shall be the policy of this State to conserve and protect its lands and water for the benefit of all its citizenry and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty."
>
> "To accomplish the aforementioned public purposes, the State and its counties, cities, and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties of interests therein shall be dedicated for the aforementioned public purposes (1971, c.630, s.1.)."

This policy is further articulated in the State Environmental Policy Act (Article 1, G.S. 113A):

> §113A-3. Declaration of State Environmental Policy.- The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive, and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s.3.)

These two documents, read together, firmly establish that protection and wise management of North Carolina's natural resources are constitutional obligations and are to be regarded as policies of the State at all levels of government.

Specific policy guidance for North Carolina's coastal management program is provided in CAMA (G.S. 113A-102). The General Assembly's findings (102(a)) emphasize the value of the State's coastal resources, the need to manage them properly in the face of the increasing pressures arising from society's conflicting uses of the region, and the need to protect, to the maximum extent possible, the quality of the State's shorelines and coasts:

> "It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost 90 percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced."
>
> "In recent years the coastal area has been subjected to increasing pressures which are the result of the often conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.
>
> "In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States."

The legislative goals of the program (102(b)) are to create a management system for the coastal area, provide for the protection and orderly development of the region's resources, and provide general policies and standards to guide state and local governments in meeting these goals:

"(1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic, and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4) To establish policies, guidelines, and standards for:

(i) Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;

(ii) The economic development of the coastal area, including but not limited to construction, location, and design of industries, port facilities, commercial establishments and development;

(iii) Recreation and tourist facilities and parklands;

(iv) Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;

(v) Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;

(vi) Protection of present common law and statutory public rights in the lands and waters of the coastal area;

(vii) Any other purposes deemed necessary or appropriate to effectuate the policy of this Article."

These goals and legislative findings are compatible with and parallel to Section 302, parts (a) through (g) of the Federal Coastal Zone Management Act (FCZMA) which emphasize the value and fragility of the nation's coastal zone and the competing demands on it. Furthermore, they represent North Carolina's response to the declaration of policy in Sec. 303(a) of FCZMA that national policy is "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations." The management program described in CAMA represents an effort by North Carolina to exercise "its full authority over the lands and waters" in its coastal zone by "developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance in accordance with Section 302(h) of FCZMA." CAMA and the state management program described hereinafter represent North Carolina's effort at "development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development." (FCZMA, Section 303(b)).

A unique feature of CAMA and North Carolina's management program is the clearly expressed and integral role that local government is to play in the program. Recognizing that any program of land use planning and management must recognize the paramount position of local governments in this process,

the North Carolina General Assembly stated its intent with respect to local government involvement in G.S. 113A-101, the first substantive section of CAMA:

> "Cooperative State-local program. This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With regard to planning, State government shall act primarily in a supportive standards-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent State-local responsibility."

The program so described meets the policy mandate of FCZMA (Section 303(d)) "to encourage the participation of the public,... state, and local governments...in the development of coastal zone management programs." It also meets one of the criteria for management plan approval expressed in Section 306(e)(1)(A) of FCZMA in that it provides for "State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance" and for "State administrative review for consistency with the management program."

North Carolina will comply with the requirements of the FCZMA and with the regulations adopted for its implementation (15 CFR 923) by implementing CAMA and by coordinating other existing authorities and programs in management of the State's coastal area as appropriate and within the administrative and regulatory framework of CAMA. New administrative networks and responsibilities have been developed as necessary to implement the program.

C. Major Provisions of CAMA

The North Carolina Coastal Area Management Act (Article 7, G.S. 113A) combines a local government oriented program of land use planning with a more traditional program of regulating development in environmentally sensitive areas. The major provisions of the Act include the following:

1. A statement (Sec. 101) of policy articulating the cooperative (state-local government) nature of the program and statements (Sec. 102) of goals and policies.

2. A definition (Sec. 103(2)) of the coastal area.

3. Establishment within DNER of a 15-member quasi-legislative citizens commission, the Coastal Resources Commission (Sec. 104). The Commission is charged with approving the local government planning guidelines and the local government plans and is the body to which the General Assembly has delegated the state authority for granting permits to carry out development.

4. Establishment of the Coastal Resources Advisory Council (Sec. 105) consisting of local government, state agency, university, and interest group representatives to advise the Commission and the Secretaries of Natural and Economic Resources and Administration with regard to development and implementation of the program.

5. Development of planning guidelines, specifying objectives, policies, and standards to be followed in public and private use of land and water in the coastal area (Sec. 107). Ultimate approval and amendment of these guidelines is vested in the Commission.

6. Development of land use plans by local governments on a specified time schedule (Sec. 109). Originally, plans were due for submission on November 23, 1975. Amendments to the CAMA in the spring of 1975 changed the date for final submission to May 21, 1976. Plans were submitted to the Commission for preliminary review on November 23, 1975. As a result of this preliminary review, plans were revised prior to required public hearings and final submission on May 21, 1975.

7. Designation of areas of environmental concern (AECs) by the Commission (Secs. 113-115) according to criteria specified

in CAMA. The Commission may designate AECs in two steps, first as Interim AECs and then as final AECs. The Commission is also charged to insure that AECs, once defined, are adequately incorporated in local governments' plans and that the State Guidelines for planning give "particular attention to the nature of development which shall be appropriate" within AECs.

8. Development by the Commission and DNER of a coordinated program of implementation and enforcement of local land use plans in AECs (Secs. 116-117). Criteria for the implementation and enforcement program were adopted by the Commission on February 18, 1976, and transmitted to local governments. Local governments must submit letters by July 1, 1976, indicating their intent to administer their own implementation and enforcement programs should they choose to undertake this duty. Local implementation plans, including appropriate local ordinances, must be submitted to the Commission by local governments prior to July 1, 1977.

9. Development by the Commission and other state government agencies of a mechanism for coordinating permit activities (Sec. 125(d)) and planning efforts so that they are supportive of local land use plans. This program of coordination must be in effect no later than March 1, 1978.

10. Development by the Commission, DNER, and federal agencies of appropriate mechanisms for reflecting national and state interests and coordinating local, state, and federal programs so that they are mutually supportive.

11. Continued supervision of the program by the Commission, including approval of revisions in local government plans and review of AECs at least every two years.

CHAPTER 2 HISTORICAL PERSPECTIVE OF NORTH CAROLINA'S PROGRAM

A. The Coastal Resources Commission

The General Assembly established within the Department of Natural and Economic Resources the Coastal Resources Commission (G.S. 113A-104). The Commission is composed of 15 members that represent certain prescribed coastal interests (G.S. 113A-104(b)). Commercial fishing, wildlife or sports fishing, marine ecology, coastal agriculture, coastal forestry, coastal land development, marine related business, engineering, state or national conservation organizations, financing of coastal land development and local governments are all represented by at least one member of the Commission. This broad mix of interests and concerns provides the proper perspective for the comprehensive policy making tasks that the Commission has accepted.

The Coastal Area Management Act specified that the Commission would serve as a policy making body with various responsibilities for the administration of the Act -- most notably the designation of areas of environmental concern (G.S. 113A-115). The General Assembly thus recognized the need for a strong coordinative influence in order to effectively implement an encompassing resource management program. The Commission was charged with the task of implementing coastal area management primarily through the coordination of governmental policies and actions.

B. Program Development

The North Carolina coastal management program is being developed in two major phases, involving an integration of the requirements and authorities of the CAMA with existing state programs and the requirements of the Federal Coastal Zone

Management Act (FCZMA).

The first phase of the program is the planning phase, involving two major work programs. The first program, conducted primarily on the local governmental level, is preparation and adoption of land use plans for each local governmental unit in the coastal area; this program is now virtually complete. The second, conducted primarily on the state level but with the participation of the public and all levels of government, involves designation of AECs. The planning and research work to support his latter program has been underway for over a year and is expected to be completed in mid-1977; at this time (mid-1977), the Commission will designate AECs, thus setting in motion the second phase of the program.

Phase two is the implementation phase. The key feature of the implementation phase is the permit program established in CAMA; once AECs are declared, any person desiring to carry out development within them must obtain a permit. Also involved in the second phase is the implementation of the local land use plans.

1. The Planning Phase

The planning phase of the program was initiated under the requirements of the CAMA and has been underway since July 1, 1974. The planning phase has two major elements.

a. Preparation and adoption of local land use plans

Each county in the coastal area must have a land use plan that describes future desired land use patterns for the area under its legal jurisdiction (excluding, of course, federally-held lands). CAMA requires that each land use plan be developed consistent with the State Guidelines that have been designated by the CRC (G.S. 113A-107 and 108).

The State Guidelines require that the land use plans contain statements of local land use objectives, policies, and standards and that they also contain supporting data and a classification of land within the county. The CRC's planning guidelines defined a number of subject areas which were to be treated in all local plans:

Development of goals, objectives, policies, and standards for the community's growth;

Data regarding population and economic trends and factors;

Identification of areas which represent valuable resources, environmentally sensitive areas, and areas which are culturally valuable;

A land classification plan reflecting the desired short-term urbanization patterns for new development;

Recommended interim areas of environmental concern and applicable development standards.

In addition to specifying the proper format and information for the local plans, the Commission dictated in the Guidelines that a synopsis of summary of the plans be provided to all coastal residents. The synopsis is a condensation of the plan in non-technical language for broad public dissemination. The CRC directed that extensive attention be given to the development and distribution of the synopsis in an attempt to thoroughly educate local citizens and to expand their involvement in the planning process. DNER is responsible for printing a supply of each synopsis adequate for distribution to every household in each planning jurisdiction. (Since the local land use plans are an integral part of North Carolina's program, copies of the synopses will be available for OCZM.)

The planning process actively began at the local level in January of 1975 when the planning grants funded from

North Carolina's OCZM Program Development Grant were announced and contracts executed to provide funds to participating local governments. Localities were given a variety of options for securing professional support for the preparation of their plans. Local governments elected either to have their planning done by in-house staff in their own local planning departments, by planners in the multi-county planning regions, by private consulting firms, or by field office personnel of DNER's Local Planning and Management Services Section.

The General Assembly originally provided that the local land use plans should be submitted by November 23, 1975. This deadline was extended six months through a subsequent amendment to the CAMA. The Commission decided to take this opportunity to have drafts of the local land use plans submitted on the original submission date in order to improve the product. Review of these drafts by state and federal agencies as well as the CRC was organized in order to provide further guidance for local governments in developing acceptable land-use plans.

A review schedule designed to complete the plan review during late November and early December, 1975, was developed by DNER. Review criteria were prepared and arrangements were made for the participation of technical review staff from approximately 23 state office, divisions, and section. Detailed review criteria were extracted from the Planning Guidelines to define the content of the plan and synopsis. The review team was a truly inter-disciplinary task force, including expertise in community planning, economics and economic development, demography, water quality, recreation, geology, soils, wildlife, forestry, shellfishing, waste disposal, water resources planning, agriculture, transportation, marine fisheries, historic preservation and public participation.

Representatives from North Carolina League of Municipalities and the North Carolina Association of County Commissioners also participated in the reviews.

At its November 1975 meeting, the CRC Executive Committee directed the reviewers to conduct a rigorous technical examination, paying particular attention to content inadequacies, plans which were not in conformity with other plans, and to considerations relating to the state and national interest. The review team was assembled for a briefing on the review procedure and schedule and on the arrangements for subject area responsibility for each of the reviewers. Each participant was instructed to examine the plans and synopses, to evaluate them on selected criteria related to his own particular field of competence, to assess the contents as adequate, conditionally adequate, or not adequate, and to make comments as appropriate. Selected reviewers were also requested to examine local plan recommendations for designation of IAECs.

Local governments submitted initial drafts of their plans and synopses on or shortly after November 23, 1975. As technical reviews were completed, copies of the reviewer's comments were collected and discussed in conferences with the professional planners who were responsible for the plans. Summaries of the review comments and conferences were prepared by staff representatives and discussed in detail with one of three committees of the CRC at its December meeting. These three committees were composed of members both of the CRC and the Advisory Council. Following Commission review of the plans and of the staff comments on the plans, specific comments on each plan and general overview remarks dealing with deficiencies found generally among all plans were prepared

and sent to the local governments.

A number of inadequacies in the synopses were identified during the course of the December meeting, and subsequently, communities were requested to resubmit drafts of the synopses for review on March 31, 1976. Since that time, additional suggestions for synopsis preparation and staff sessions with local planners have provided further guidance for synopsis development. Synopses were reviewed by the Commission in early April 1976, and review comments were transmitted to local governments in mid-April.

Federal agencies were offered an opportunity to review the draft local plans. On Friday, November 21, 1975, a meeting was held in Raleigh, attended by representatives of many federal agencies including representatives of the National Oceanic and Atmospheric Administration, and state agency personnel, to discuss CAMA, the North Carolina coastal zone management plan, the relationship between the two, and to extend an invitation to federal agencies to participate in reviewing the draft local plans. Representatives of a number of federal agencies reviewed individual local land use plan drafts simultaneously with state reviewers.

Final plans were received for review and approval from 50 of the 52 participating counties and municipalities on May 21, 1976. One county and one municipality refused to adopt their plan. As required by statute, the Commission has begun to prepare the two remaining plans. 50 plans were reviewed by the state government review team and by a number of federal agencies during late May and early June. The CRC, at its June meeting, studied review team comments and evaluated the plans using the requirements of the CAMA, the State Guidelines and the "Generally Applicable Standards of Review."

All 50 plans were judged to be acceptable or acceptable with conditions for correction. Several plans were returned to local governments with certain suggestions for minor changes to improve them. All 50 of the local plans submitted have now been approved or are in the final stages of approval.

(b) Areas of Environmental Concern

The 1974 General Assembly, in attempting to provide the CRC with adequate "tools" to accomplish the ambitious goals of the CAMA, realized that local land use planning encouraged by the Act had to be synchronized with a coordinated program of critical areas protection administered at a higher level of government. Consequently, broad powers for critical areas regulation were entrusted to the CRC.

The CRC's powers with regard to regulation of areas of environmental concern include:

(i) the ability to designate geographic areas of the 20 counties as areas of environmental concern consistent with the identification criteria contained in G.S. 113A-113(b);

(ii) the power to recommend the purchase of areas of environmental concern under the State's condemnation provisions (G.S. 113A-124(c)(2));

(iii) the authority to designate geographic areas of the coast as interim areas of environmental concern and require developers to notify the CRC of their intentions to develop within the area 60 days prior to the action (G.S. 113A-114). (The IAEC designation process precedes designation of AECs and was designed to educate the coastal citizens, governmental agencies and the CRC regarding the implications of the final AEC program.)

(iv) the ability to review and revise designated areas of environmental concern periodically so that the regulatory program contains a flexibility uncharacteristic of the majority of existing governmental regulations (G.S. 113-115(c));

(v) the responsibility to administer a major development permit for development in areas of environmental concern (G.S. 113A-118); and

(vi) numerous additional powers and duties given the Secretary of Natural and Economic Resources and the CRC in order to achieve effective protection of areas of environmental concern (G.S. 113A-124).

Each aspect of the CRC's powers in areas of environmental concern is being amalgamated into an overall program that promises for the first time coordinated, comprehensive management of critical coastal resources. The effects desired from this management scheme include preservation as well as development of the environment of the coastal area, an increased awareness of the reasons for land use regulation by the citizens, a more responsive and responsible government, a coordinated approach to critical areas management that recognizes and can deal with trade-offs, and the establishment of the proper local-regional-state and federal prerogatives.

The Process of Areas of Environmental Concern Designation -

The CRC, having been provided with specific powers, duties, and directions by the CAMA, pursued a program capable of satisfying the goals of the legislation. The process included the formulation of descriptions of proposed areas of environmental concern in the State Guidelines, the designation of interim areas of environmental concern, the final designation of areas of environmental concern, and the development of appropriate policies and standards for each area of environmental concern. The details of the process are described in the following section of this chapter.

Areas of Environmental Concern Identification Criteria -

Guidance to the Commission as to what areas could be selected for special management as an area of environmental

concern was contained in the Act in the form of both general and precise identification criteria. The general criteria were derived from the Model Land Development Code of the American Law Institute and the National Land Use Bill. Usually included as subitems of these broad identification criteria are precise descriptions of possible areas of environmental concern. The criteria were structured in this manner in order to minimize the possibility of legal attacks on the basis of legislative delegation.

The following describes the identification criteria as found in the Act and utilized by the CRC in its areas of environmental concern designation process:

> "The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:
>
> Coastal wetlands as defined in G.S. 113-230(a);
>
> Estuarine waters as defined in G.S. 113-229(n)(2), that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Conservation and Development filed with the Secretary of State, entitled 'Boundary Lines, North Carolina Commercial Fishing - Inland Fishing Waters, Revised to March 1, 1965';
>
> Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food, or fiber requirements of more than local concern, which may include:
>
>> Watersheds or aquifers that are present sources of public water supply, as identified by the North Carolina Board of Health or Board of Water and Air Resources, or that are classified for water supply use pursuant to G.S. 143-214.1;
>>
>> Capacity use areas that have been declared by the Board of Water and Air Resources pursuant to G.S. 143-215.13(c) and areas wherein said Board (pursuant to G.S. 143-215.3(d) or G.S. 143-215.3(a)(8) has determined that a generalized condition of water depletion or water or air pollution exists;

Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the North Carolina Forest Service.

Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:

Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public areas; existing sites that have been acquired for any of the same, as identified by the Secretary of Natural and Economic Resources, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;

Present sections of the natural and scenic rivers system;

Stream segments that have been classified for scientific or research uses by the Board of Water and Air Resources, or that are proposed to be so classified in a proceeding that is pending before said Board pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;

Existing wildlife refuges, preserves and management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;

Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;

Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;

Areas containing unique geological formations, as identified by the State Geologist; and

Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to G.S. Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as Registered Natural Landmarks or as National Historic Landmarks;

Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Section 5 of the North Carolina Constitution;

Natural hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:

Sand dunes along the Outer Banks;

Ocean and estuarine beaches and shorelines;

Floodways and flood plains;

Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;

Areas with a significant potential for air inversions, as identified by the Board of Water and Air Resources;

Areas which are or may be impacted by key facilities."
(G.S. 113A-113(b))

Application of AEC Criteria

Criteria for the selection of AECs having been provided by the legislature, the CRC embarked upon a lengthy process culminating in AEC designation. The intermediate steps leading to designation were to a great extent dictated by the provisions of the CAMA (G.S. 113A-115). The first such step was the adoption of State Guidelines by the CRC that

included a comprehensive list of proposed AEC categories as well as policy objectives and appropriate uses for each. Developed pursuant to G.S. 113A-107, Chapter III of the original State Guidelines represented an attempt to include all the categories of AECs possible. From this initial grouping it was believed that a process of elimination could proceed that would finally result in the most critical areas being selected. Also, local land use planning occurring prior to final AEC selection could use this comprehensive description of possible AECs in considering the nature of development appropriate within various types of AECs.

Adoption of the State Guidelines on January 27, 1975 was followed by the submittal of the recommendations of the Secretary of the Department of Natural and Economic Resources relative to the designation of interim areas of environmental concern on February 7, 1975 pursuant to G.S. 113A-114(a)(b). The recommendations contained in the Secretary's document were based upon the suggestions of a task force of various state agency representatives and resource managers familiar with coastal problems. The recommendations of the Secretary slightly modified the task force's proposals, however, in light of the responses gathered at public hearings held in six coastal cities during September of 1974. The addition of public trust areas as a suggested IAEC category was the major modification of the original task force's proposal. Full transcripts of each hearing were attached to the Secretary's document in order that the CRC could consider simultaneously both the technical judgements of the experienced resource managers and the responses of the coastal citizens to these suggestions prior to designating interim areas of environmental concern.

It was obvious from the responses of the coastal citizens at these public hearings and from the reactions of the Commissioners

upon presentation of the IAEC proposals that some of the Secretary's recommendations were unacceptable. It was the Commission's decision that the staff should revise the Secretary's suggestions to reflect the concerns of the coastal citizens at the public hearing while the major energy of the Commission would be channeled into the process of completing the local land use planning phase of the program.

IAEC Designation

While the Commission proceeded with the development of local land use plans, a portion of the staff continued to refine the AEC categories contained in the Guidelines and the Secretary's document. The Commissioners throughout this period expressed serious disagreement with the Secretary's proposal to designate the entirety of the Outer Banks as an IAEC and also emphasized that coordination of existing permits was one of the major objectives of the CRC.

The staff developed in the early spring of 1976 a collection of IAECs along with their technical definitions that satisfied both the Commission and the technical personnel of state government. These suggestions were brought before the coastal citizens at a public hearing held in May of 1976. Subsequently, on May 20, 1976, IAECs were designated by the CRC and the provisions associated with their designation went into effect on August 1, 1976. (G.S. 113A-114(e))

AEC Designation

Having accomplished the designation of IAECs and the completion of the land use plans, the CRC doubled its efforts to formulate technical information to serve as the basis for AEC designation and land use standards development. The IAEC notices received during this period provided information on

the typical development types occurring in the candidate AECs and the volume of permits likely to be involved in the final AEC program. Both data items were important in assessing the desired form of land use standards and the administrative arrangements needed for AEC permit letting.

The staff increased their efforts at coordination of available expertise in each of the categories of AECs. Numerous contacts with governmental agencies and individuals within the university system assisted in the preparation of the final form of AECs. Legal as well as technical analysis of the material to be recommended to the CRC was critical since the adopted AEC description and use standards will serve as the basis for a permit program.

Following the submittal of staff recommendations to the CRC in January of 1977, the Commission proposed amendments to the existing State Guidelines that reflected the results of the staff's intensive study of land uses affecting coastal waters. These proposed amendments to Chapter III of the State Guidelines (see Chapter 4) refined the original AEC material and added greater specificity to the allowable uses within each AEC.

The discussion in Chapter 4 represents the important policies and use standards that will form the foundation for North Carolina's CAMA permit program. Explicit in nature, the standards in Chapter III of the State Guidelines serve as a valuable statement of policy. It is intended that this material should partially satisfy the need for a declaration of permissible uses within the coastal zone and for an expression of clear policies by which to judge the consistency of federal activities.

2. The Implementation Phase

The implementation phase of the state program will begin in earnest upon the permit changeover date (G.S. 113A-125(a)) as designated by the Secretary of DNER (but not later than March 1, 1978). Implementation will involve a restructuring of the administration of DNER's regulatory authority, as it applies in the coastal area, so as to provide for better coordination of the regulatory effort. This machinery will be used to implement a permit program, involving both local and state government, regulating development in AECs. This program will be based on the authority contained in Part 4 of the CAMA and other existing state and local authorities. In addition, the Commission will assist local governments, upon request, in developing programs for implementation of land use plans outside AECs.

a. Implementation of Land Use Plans

The CAMA properly relies primarily upon local initiatives in enforcing their land use plans. The Commission is given the responsibility of reviewing local ordinances and regulations for consistency with the land use plans. If the regulations affect land uses outside AECs and are inconsistent with the land use plans, the CRC shall transmit recommendations for modifications to the local government. If, on the other hand, the regulations affect activities within AECs and are inconsistent with the land use plans, the Commission may take steps to ensure consistency (G.S. 113A-111).

weak.

Local governments are expected to develop strategies that will lead to implementation of land use plans. North Carolina local governments are authorized (G.S. 105-277.4) to tax agricultural, horticultural and forest land at its present use value rather than at a higher rate based upon surrounding land uses. Furthermore, the difference between

the two values is carried as a lien upon the property and such difference together with interest must be made for the immediately preceding five years if the property is sold to anyone other than an immediate family member. Use of such differential taxation is a tool whereby local governments can provide enticements to property owners to retain agricultural and forest land lying within lands classified as rural or conservation in a use compatible with such classification.

Although development of zoning regulations is not required under CAMA, many local governments have begun to develop county-wide zoning programs. DNER will provide financial and technical assistance to any local government as support for such an initiative. In addition, a number of local governments are developing capital investment plans for their jurisdictions. Such plans are, of course, an important method for guiding local growth and implementing local land use plans. DNER and the Commission will also provide assistance to aid these efforts when they are plainly aimed at implementing the local land use plans.

Finally, state agencies can play a major role in implementing local plans through a coordinated exercise of their investment and construction programs and regulatory powers throughout the coastal counties. The permit coordination machinery established in DNER and required by CAMA will provide a means to ensure that as many as possible of these sorts of decisions will be consistent with local plans and will aid in their implementation.

b. Permit-Letting in AECs

The enforcement of standards within AECs is a joint responsibility between local government and the State. Local government will, before the permit changeover date, develop the mechanisms necessary to implement the AEC "minor development" permit functions while the Commission

will assume the "major development" permitting responsibilities. The details of the permit process are discussed in Chapter 4 Section D.

C. Public Participation/Intergovernmental Involvement

Public participation and intergovernmental involvement in the State's coastal zone management program are closely related, since the primary purpose of both in the program is to ensure the full participation of "relevant federal agencies, state agencies, local governments, regional organizations, port authorities and other interested parties, public and private...", as required in Section 303(d) of the FCZMA. Section 303(d) also declares it national policy to encourage the participation of the public, of federal, state and local governments, and of regional agencies in the development of coastal zone management programs. Federal consultation and public hearings are specifically required in the FCZMA (Sections 307(b) and 308, respectively) in order "to assure that the state, in developing its management program, is aware of the full array of interests represented by such organizations, that opportunity for participation was provided, and that adequate consultation and cooperation with such bodies has taken place and will continue in the future." (15 CFR 923.30) The purpose of this section, therefore, is to demonstrate that, and in what way, the State has dealt "fully with the network of public, quasi-public and private bodies which can assist in the development process and which may be significantly impacted by the implementation of the program" as required in 15 CFR 923.30 9f the FCZMA.

1. Public Information/Participation

Public participation, as called for in the State Guidelines, is not an element; it is the very foundation of the planning process. It is not designed simply to provide

token compliance with any requirements of a federal contract, but is instead a planning process in itself, and one apparently unique to North Carolina's coastal zone management program. The basic goal is to extend the decision-making process in land use planning beyond the small number of professional planners, government technicians and officials who are usually involved. Because the 15 member CRC consists largely of persons nominated by local governments, and because the 47 member Advisory Council is nominated by representatives of county and municipal government, the bodies given statutory supervision over the program are in a unique position to bridge the gap between local and state government. Through their local orientation, they are able to create an atmosphere of trust with coastal residents that the traditional state agency can rarely attain.

From the begining, the public participation program was built on the belief that a fresh approach was absolutely necessary if tokenism was to be overcome. Old planning concepts have never really satisfied the people, because they did not really include them. That is why so many past land use plans have never really been implemented. There is a widely held theory that the only way one really gets public participation is to do something to somebody -- make him mad enough -- and then he will participate. That theory likely applies to land use planning, but there are also other ways. North Carolina's emphasis has been an effort to let the people make their own plans. The professional planner is used as a technician, a data collector and an advisor. Local citizens answer basic questions concerning future goals, ie, what do they want their county or city to be like in the future? What do they like about the area as it is now? What don't they like and feel should be changed? What do they lack and feel they need in the future? Once people know that these are their decisions to make, they seem to want to participate. Some of them even get excited about it.

Public participation in the coastal area management program has been based on local governments generating grass roots participation in the planning process. This joint state-local effort has been handled independently by each county and municipality with each choosing the particular style it would use to bring the maximum number of citizens into the process. In general, however, each planning effort involved three major elements - notification of the planning process, planning activities, and public hearings.

a. Notification

In order to involve interested parties in the planning process, the interested parties had first to be notified of the program's existence. An extensive "Handbook on Public Participation," outlining numerous proven methods of activity involving large numbers of citizens in this kind of project, was developed. Copies were made available to everyone in the coastal area who had an interest in CAMA. A general outline brochure of the CAMA received mass distribution.

The following list of activities covers the major outputs of the notification effort as required in 15 CFR 923.31:

Have we been receiving this?

(i) Publication of a bi-monthly newsletter, "The Coastline," featuring an update on "where we are now," was mailed to 10,000 coastal homes. When one considers that the population of the entire coastal area is 500,000, it is evident that this constitutes good exposure.

(ii) A "Coastline" card giving citizens a toll-free hotline telephone number for questions and suggestions on CAMA received mass distribution throughout the coast. Large posters giving this same number and pertinent local information were made available and placed in store windows, motels, and other appropriate places.

(iii) A "Summary" to the State Guidelines for Local Planning established by the CRC was made available to all citizens who wished it.

(iv) The public participation director, with a Commission member, visited every radio and television station and newspaper in coastal North Carolina. Thus, a network was set up for regular feedback of information from a Commission member to local media. This step accomplished a great deal in informing the public. Coastal North Carolina is basically rural, with a few large newspapers. These small newspapers are usually read from cover to cover. The program has thus enjoyed excellent media coverage. News media know CRC members and expect regular calls from them on coastal area management.

(v) CRC members and staff have appeared regularly on public service programs carried by coastal television stations. In April, 1975, coastal stations received the first batch of a number of public service announcements made possible through a grant from the Coastal Plains Regional Commission urging involvement in the planning process. The spots featured local residents talking about coastal problems and are currently being seen in the coastal area. Radio stations were also provided with the audio part of these spots.

(vi) Newspapers have run a series of articles addressed to the people of the coast from their local CRC members explaining the CAMA process in simple terms and asking for help and involvement. This was followed up by other letters to the editor. Local planners, citizens, and officials were urged to submit articles on their own for publication.

(vii) A Commission member and a staff person visited each county in an attempt to iron out any problems concerning CAMA with local county commissioners and citizens groups.

(viii) A 20-minute slide-tape summary of the CAMA program was developed by DNER staff and made available to anyone along the coast wanting to use it as a tool in further developing an understanding of the program. Ten copies were spread about the coastal area.

(ix) A speakers' bureau is in operation offering Commission members, Advisory Council members, and staff experts to speak to any group requesting a presentation. Presidents of every club and organization in coastal North Carolina were advised of this service and response has been excellent.

(x) A hotline directly to the coastal staff in Raleigh has been in operation since inception of the program and is used heavily by Commission members, Advisory Council members, and other involved with the CAMA program.

(xi) All the materials published for the program were made available to each library in the coastal area and most of them displayed CAMA materials.

(xii) A program to get CAMA information into the school system was undertaken. In some areas, questionnaires were provided to parents through school age children and special presentations on the program were made in the classroom.

(xiii) Workshops that seek to work out solutions to hard coastal questions have been conducted and more are anticipated in the future.

The CAMA program has enjoyed a wide degree of support from other agencies. Special mention should be made of the North Carolina State University Agricultural Extension Service which did much of the in-depth and grass roots work, such as providing a slide presentation on CAMA, informing agents on CAMA activities and distributing information through county agents. The Sea Grant Program at the University of North Carolina has added much needed assistance through newsletters and background leaflets. A film on CAMA has been developed

through the Sea Grant Program. The Coastal Plains Regional Commission has provided two grants that have enhanced the program in essential ways. The Division of Continuing Education at East Carolina University and the Soil Conservation Service have been very generous in allowing staff personnel to carry on support programs that were vital to the public participation effort.

b. Public Planning Activities

Most counties or towns handled public participation in the following general way. The county commissioners, with ultimate responsibility for drawing up the plan and submitting it to the CRC, usually gave the responsibility for public participation to the planning board, which in many communities were formed for the first time for the coastal management porgram. Generally, most areas used questionnaires distributed through the mail, delivered by Boy Scouts and other groups, or carried to households by a neighbor interested in CAMA. The number of returns varied greatly, usually depending on the degree of public information generated about CAMA before the questionnaire was sent out. Public meetings were held, usually with the planner in charge, to solicit additional input beyond that which could be gathered from a questionnaire The number of meetings, and the response of the people varied from very poor to excellent.

2. Additional Roles of Local Governments

In addition to generating grass roots involvement in the planning program, local governments served as the spokesmen for the citizens in their respective jurisdictions in meetings with the CRC and DNER personnel and in submitting the plans which incorporated public views.

The officials of local governments were invited to meet with the Commission at its March 1976 session for the purpose of discussing areas of mutual concern in the development of the program. This meeting focused attention on several issues (eg., septic tank pollution) and resulted in a beneficial exchange of ideas between the large numbers of local government officials that were in attendance and the CRC.

One issue of major concern to citizens and governmental bodies alike in the coastal area was designation of AECs, their extent and the policies concerning them. The tendency evidenced in the draft land use plans was to define more extensive IAEC areas than were defined in the Guidelines' minimum standards, and the local recommendations reflected both an understanding of the environmentally sensitive character of the coastal region and a desire to ensure that effective protection measures be established. Several plans recommended more IAEC types than were required, and several included more sophisticated refinements of the minimum standards.

3. The Role of Regional Organizations

North Carolina's multi-county regional planning organizations (referred to as Lead Regional Organizations, or LROs) have chiefly been involved in three aspects of the coastal zone program. First, because they are expected to play important roles in the developing statewide land policy program, the LROs were involved in the development of the program's planning guidelines. Second, LROs are providing planning services in the form of facilities and support staff for a number of the local planning programs. Third, through membership on the Commission's Advisory Council, the mailing list, and a variety of other means, the LROs have consistently participated in the ongoing activites of the program.

Representatives from the multi-county regional planning organizations which serve the coastal area also met with the CRC at its March 1976 session to discuss progress of the program, problems encountered, and review the status of 208 water quality planning designations in the coastal area. Regional representatives were queried about the acceptance of the coastal planning program in their areas, and it was suggested that member governments would more readily accept programs such as CAMA if a longer plan development period were established.

4. Public Hearings

In addition to the extensive and innovative public participation program that is an integral part of North Carolina's coastal management program, numerous public hearings have been held, as required in Section 306(c)(3) and Section 308 of the FCZMA, both prior to and after the passage of CAMA.

Prior to passage of CAMA, public hearings were held in both 1973, while the Act was being drafted, and in 1974 during debate on it. Major hearings were:

(i) One hearing during the 1973 legislative session;

(ii) Six hearings in Wilmington, Jacksonville, Morehead City, Washington, Manteo and Elizabeth City during the summer of 1973. Testimony at these hearings centered on the need for coastal zone management legislation and on strengths and weaknesses of the version of the legislation extant at that time. As indicated eallier, it was at these hearings that the need for strong local government input was made clear. This input led directly to the heavy local government emphasis of CAMA.

(iii) One formal hearing and a large number of House and Senate committee hearings during the 1974 legislative session when CAMA was debated and ultimately passed.

The CAMA itself requires a large number of public hearings. Some of these have already been held and others will be held as future requirements of the program unfold. The following describes public hearings held as of July 1, 1976:

(i) CAMA (G.S. 113A-114(b)) requires a one-day public hearing by the Secretary of DNER or his designee on proposed IAECs in six specific locations in the coastal area. G.S. 113A-114(c) requires the same procedure for any revision of IAECs except that the location of the hearing will be the county in which lands affected are located.

- Specific provisions:
  - shall begin with a description of proposed IAECs;
  - notice shall be given not less than seven days before hearing; shall state date, time, place, subject and action to be taken;
  - notice must be published one time in newspaper of general circulation in counties affected seven days before the hearing
  - persons desiring to be heard shall give written notice; anyone who so desires can file a written statement within five days after hearing;
  - record of each hearing shall be presented to the CRC with description of IAECs proposed by the Secretary
- Documentation

  Six public hearings were held as follows:

  August 29, 1974 - Wilmington
  August 30, 1976 - Jacksonville
  September 5, 1974 - Morehead City
  September 6, 1976 - Washington
  September 12, 1974 - Manteo
  September 13, 1974 - Elizabeth City
- Notice of Hearings

  Notices of hearings in every instance were mailed to the CAMA mailing list composed of local government officials in the 20 coastal counties, county commissioners, mayors, city and county managers and attorneys, clerks of court, and news media.

(ii) G.S. 113A-125(d) requires one public hearing concerning recommendations of the CRC to the 1975 North Carolina General Assembly on developing a better coordinated and more unified system of environmental and land use permits in the coastal area.

- No specific provisions for this public hearing are mandated by the Act.
- Documentation

  A public hearing was held on March 18, 1975 after notice of hearing dated March 10, 1975 to the CAMA mailing list. No formal presentations were made at this hearing. However, documentation of the hearing is included in the minutes of the CRC meeting of March 18, 1975.

(iii) G.S. 113A-110(e) requires a public hearing prior to the adoption or subsequent amendment of a land use plan by the body charged with its preparation and adoption.

- Specific provisions
  - notice shall be given not less than 30 days before the hearing
  - notice shall state date, time, place, subject and proposed action
  - notice shall be published at least once in newspaper of general circulation in the county
- Documentation

  Each of the 52 local government entities preparing land use plans compiled with these requirements prior to adopting and submitting their plans. Substantiation of these hearings is contained in each respective land use plan.

The following describes public hearings required or enabled by CAMA to be held in the future:

(i) G.S. 113A-115 requires a public hearing in each county before AECs are designated. Each such hearing must meet the following requirements:

- notice shall be given not less than 30 days before date of hearing and shall state date, time, place, subject and action to be taken
- notice must state that a copy of the description of proposed AECs is available for inspection at the county courthouse
- notice shall be published at least once in one newspaper of general circulation in the county/counties affected 30 days prior to date of hearing
- persons desiring to be heard shall give written notice; anyone who so desires can file a written statement within 30 days after hearing
- CRC shall adopt final action after completion of the above process and shall file a certified copy with Secretary of State and board of commissioners of each county.

(ii) G.S. 113A-117(b) requires a public hearing by the local governing body before adoption of a local implementation and enforcement program. Each such hearing must meet the following requirements:

- notice shall be given not less than 15 days before the date of the hearing, and shall state date, time, place, subject and action to be taken
- notice shall state that copies of the proposed program are available for inspection at the county courthouse
- notice shall be published at least once in one newspaper of general circulation in the county 15 days before date of hearing.

Public hearings on actions relating to issuance of denial of permits for minor development are allowed and are mandatory in the case of major developments (G.S. 113A-122). In the case of permit application for minor development, 15 days notice is required before action by the Secretary or other responsible official or body; persons directly affected by such decision are allowed 20 days in which to request a hearing before the Commission. Hearings on applications for major development permits require 30 days notice.

In addition to the public hearings required by CAMA, the coastal management program is subject to the requirements of the North Carolina Administrative Procedures Act (NC APA). The APA which became effective February 1, 1976, regulates procedures for rule-making, licensing, and holding of contested hearings, and requires the filing and publication of all rules, regulations, standards, and ordinances adopted by any state agency or other body falling under its jurisdiction. The requirements of the APA supplement, but do not replace, those of other extant legislation such as CAMA. The APA requires that before the adoption, amendment or repeal of any rules, the CRC shall give notice of public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none applies, then at least 19 days before the public hearing and at least 20 days before the adoption, amendment or repeal of the rule. The notice shall:

- include reference to the statutory authority under which action is proposed;
- include time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted either at the hearing or at other times;
- include statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule;
- be sent to the Attorney General and all persons who have requested in writing in advance notice of proposed action which may affect them;
- be published as prescribed in applicable statute, or if none applies, the notice shall be published in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule. If the persons likely to be affected are unorganized or diffuse in character or location, then the CRC shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

- the CRC, following any public hearing held under APA shall consider fully all written and oral submissions. Upon adoption of a rule, the CRC, if requested to do so by an interested person either prior to adoption of the rule or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption.

As of July 1, 1976, several public hearings have been held to meet relevant requirements of APA:

(i) Public hearing on "Draft Criteria for Local Implementation and Enforcement Programs"

- Documentation

  A public hearing was held at Wrightsville Beach on February 18, 1976. Notice of the hearing was sent to the entire CAMA mailing list. Copies of the draft document were mailed to local government officials in the coastal area and available at DNER field offices in Wilmington and Washington.

(ii) Public hearing on the designation of IAECs and "Rules and Regulations for the Implementation of the Notice Requirement"

- Documentation

  this public hearing was held May 10, 1976 in New Bern. Notice was sent to the entire CAMA mailing list and copies of the draft document were mailed to local government officials and made available in DNER field offices.

At least two public hearings are also required by the Department of Commerce prior to final adoption and submission of the state management program.

A number of other informal opportunities have been provided for public input into the program. These include:

(i) A public notice of each Commission and Advisory Council meeting has been sent to the entire CAMA mailing list which has steadily increased to include social clubs, organizations, interested individuals and property owners.

(ii) On several occasions, personal invitations to attend CRC meetings have been sent to local area officials representing the area where the Commission has met. These include Nags Head, Morehead City and Washington.

(iii) All coastal county commissioners and mayors of municipalities developing land use plans were personally invited to meet with the CRC at their March meeting in New Bern to discuss items of mutual interest.

(iv) The CRC and the Advisory Council have held almost all of their meetings in strategic locations in the coastal area so as to allow better opportunity for participation of coastal residents and keep the program as close as possible to the people.

(v) CAMA (G.S. 113A-119(f)) states that before any final action on land use plans the Commission "shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land use plan in light of such objections and comments..." Thus, still another opportunity has been provided for public input in the planning process.

The future of the CAMA public participation program rests on public participation coordinators hired by DNER under a grant from the Coastal Plains Regional Commission. These local public participation coordinators have established contact with the citizens advisory councils in each municipality and county in the coastal area. Advice and direction has been offered on topics ranging from the production and distribution of a community planning bulletin to the use of electronic media. Assistance has been and will continue to be given to local citizen planners in their efforts to create an atmosphere of working together for the common good when decisions are made on specific tracts of land and when public interest thus reaches a peak. From its inception, the CRC has stressed its belief that the only way to generate widespread support for the plans now being drawn up under CAMA is to have the support of a broad base of citizens who have guided the

plan through its development and who feel that the plan belongs to them rather than to a state or federal agency. The local public participation coordinators travel to the counties and towns, providing assistance and keeping the process at an even pace. The coordinators serve in an ombudsman role between local citizen planners, the CRC, and DNER. The local public participation coordinators, indeed, play a vital role in keeping the lines of communication open between state and local officials.

Coordination with Other Planning Programs and Activities

At the onset, the local government participants in the state's coastal program were required to identify their existing plans and plans in progress as an input to the grant awards formula and as a preliminary indicator of the status of planning activity in the coastal region. Presently, the Commission is reviewing drafts of Section 201 Wastewater Plans for the State, 201 Task Force as an ongoing responsibility, and similar review will be provided in conjunction with the State's A-95 Clearinghouse for other similar programs.

5. State and Federal Agency Involvement and Consultation

North Carolina made concerted efforts to involve relevant federal and state agencies, governmental and quasi-governmental regional organizations, port authorities and other interested parties, in addition to the general public, in every stage of the management program development. This involvement was a valuable element of the program from the state's standpoint in that most "interested parties" involved were keenly aware of the need for comprehensive coastal zone management, supported the program, and had valuable ideas and suggestions to offer the state's Coastal Resources Commission, Department of Administration, and Department of Natural and Economic Resources. (Hereafter, the term "interested parties" will be used to include the relevant federal agencies, state agencies, regional organizations, port authorities and other interested parties referred to in Section 303(d) of the FCZMA.) The involvement was valuable to

the interested parties in that it allowed them to remain informed of all aspects of the program and remain aware of how the program might ultimately affect them. The involvement allowed both state and non-state participants to coordinate research and planning activities in order to avoid unnecessary duplication of efforts. It also initiated coordination of some related planning and management programs in which no coordination previously existed.

a. Consultation

Efforts to develop an adequate forum with which to "deal fully with the network of public, quasi-public and private bodies which can assist in the development process and which may be significantly impacted by the implementation of the program", as required in 15 CFR 923.30, were initiated in an Introductory Federal Consultation Meeting sponsored by the Department of Natural and Economic Resources in November 1975. DNER compiled a list of interested federal agency representatives and sent to each an invitation to the meeting with an explanation of the meeting's purpose and agenda. The purpose of this meeting was to acquaint the federal agencies with the representatives of DNER with whom they would be dealing, the CAMA and its governmental structures, and to outline the state's implementation activities under the CAMA.

In the meeting discussion was initiated to identify potential state-federal consistency problems and to examine possible procedures and working relationships that could be used to resolve these points of contention. Specifically, discussion covered the following subjects:

(i) the kinds of meetings, review procedures and exchange desired, including changes in the approaches used previously;

(ii) the extent to which state and federal land and water use permitting could be coordinated;

(iii) problems or potential areas of conflict which should be "red-flagged" for intensive discussion; and

(iv) excluded federal lands.

The overriding conclusion drawn from all discussion was that federal agencies need every opportunity to participate in the development and review of the state's program on a continuing basis.

The November 1975 meeting was followed in December with a letter sent to all federal contacts soliciting their views on a variety of issues, including regulatory authorities and permit review responsibilities and the degree and form of interaction desired, and requesting a listing of lands under federal jurisdiction. An analysis of the response to this letter revealed a number of state and national interests issues, among which is the exclusion of federal lands. Since a substantial portion of the state's coastal area is under some form of federal jurisdiction, the issue is of great concern both to the state and to the Navy, Air Force, National Forest Service and National Park Service.

b. Direct Involvement

In addition to participation through consultation, interested parties are directly involved in the following four major aspects of program development: local plan preparation and review, IAEC designation, state management plan review, and local ordinance review. The involvement in each of the above is described below.

c. Local Plan Preparation and Review

The purpose of involvement with interested parties in local plan preparation was to ensure consistency or at least compatibility among local plans and the areawide regional plans for activities and facilities in the coastal area. A review of all relevent plans compiled for the jurisdiction was required by the State Guidelines to be included in local plans. Compiling these reviews on the state level produced a comprehensive inventory of plans which the state needed to take into account. (A list of those plans, as required in Section 306(c)(2) of the FCZMA.)

The first opportunity for federal agencies to review and comment on the local planning process directly was afforded them during the December 1975 draft plan review described in Chapter 3. Federal representatives were given the option of reviewing the plans concurrently with state agency representatives or at a later date. The comments made by federal plan reviewers were relayed to local planners in February 1976 with the directive that they incorporate the comments into the planning process.

In May 1976, a letter was sent to designated contacts of federal agencies and the executive directors of the regional Councils of Governments (multi-county planning organizations) inviting them to participate in the final local plan review held from May 26 through June 18, 1976. In this review, agency representatives were primarily concerned with the goals and policies of their agencies, technical accuracy, and the validity of assumption especially as concerned the "national interest."

d. IAEC Designation

In addition to continuing consultation concerning the coordination of permit letting authorities in AECs, interested parties were given full opportunity to participate in the Interim AEC designation process. In May 1976, following adequate notice as required by Section 306(c)(3) and 308 of the FCZMA, a public hearing was held in New Bern. The purpose of the hearing was to receive and review comments on areas proposed for IAEC designation. Notice was sent directly to all federal contacts, several of whom responded with expressions of concern on the proposed action.

Federal agencies have and will continue to serve as a valuable source of technical information in the development of the state's AEC program. Their contributions to the program to date include supplying scientific data, assisting in the analysis of data and aiding in policy development by co-sponsoring research projects, as well as serving as consultants.

e. State Management Plan Review

A valuable input from interested parties is foreseen in the review of this Management Plan. This review will afford both state and federal authorities the opportunity to review the progress in program development to date and to identify more precisely what steps should be taken in the future to initiate and conduct program implementation and enforcement.

f. Local Ordinance Review

The next major part that interested parties will play in the state's coastal zone management program will be the review of local ordinances submitted to the CRC by local governments requesting permit letting authority in AECs. The purpose of involvement in this stage of the program is to ensure that (as described previously in the Permissible Uses section of Chapter 4) adequate consideration has been given the national interest involved in "the siting of facilities necessary to meet requirements which are other than local in nature" in order to avoid their unreasonable restriction or exclusion. Procedures for this review have not yet been developed, but will probably follow along the lines of previous plan reviews.

The following items are included in the Appendix V, Intergovernmental Involvement:

(i) Federal Consultation introductory meeting-November 21, 1975

(1) copy of invitations sent to federal agency representatives
(2) copy of invitation sent to DNER staff
(3) agenda of meeting
(4) federal agency mailing list
(5) federal agency representation at meeting
(6) "follow-up" letter sent to federal contacts - December 12, 1975
(7) analysis of response to December follow up letter.

(ii) "Local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of this year"

(1) list of plans currently in effect
(2) list of areawide planning activities
(3) mutually adopted thoroughfare plans
(4) list of plans and studies, by category, and by coastal county.

(iii) Draft local land use plan review - December 3, 1975

(1) federal attendance at review session
(2) federal comments on draft local plans

(iv) Final local land use plan review - May 26-June 18, 1976

(1) state invitation to attend final plan review
(2) state mailing list
(3) draft federal invitation letter
(4) draft regional invitation letter
(5) regional mailing list
(6) "other" draft invitation letter
(7) federal mailing list
(8) federal attendance

(v) IAEC designations

(1) federal contact letter explaining designation process
(2) summary transcript of proceedings-IAEC public hearing.

PART II. COASTAL AREA MANAGEMENT PLAN FOR NORTH CAROLINA

CHAPTER 3 PROGRAM OBJECTIVES AND GENERAL MANAGEMENT FRAMEWORK

A. Goals and Objectives

The goals of North Carolina's coastal management program, as set forth in the Coastal Area Management Act, are:

(1) To provide a management system capable of preserving and managing the natural, ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4) To establish policies, guidelines and standards for:

(i) Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;

(ii) The economic development of the coastal area, including but not limited to construction, location and design of industries, port

facilities, commercial establishments and other developments;

(iii) Recreation and tourist facilities and parklands;

(iv) Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;

(v) Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;

(vi) Protection of present common law and statutory public rights in the lands and waters of the coastal area;

(vii) Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

Specific policies and guidelines relating to management of coastal waters and land activities are discussed in Chapters 4 and 5.

The objective of North Carolina in developing a coastal management program is to bring a comprehensive, coordinated management approach to the protection, preservation, and orderly development of the state's coastal resources. The management approach to be used will integrate four major components into a system of management that will provide for state involvement in those land and water areas that require active state level oversight and control and for local initiative and control over all other areas. The four management tools to be employed are: Planning; Coordination; Regulation; and Research.

Our specific objectives are: (1) to stimulate, encourage, and support local planning as an essential element of wise resource management. Identification and understanding of the problems associated with land use and growth management is a prerequisite to avoiding environmental degradation while achieving economic growth and development.

(2) to achieve a coordinated system of decision-making on the part of local, state, and federal agencies that will eliminate overlap, inconsistency and confusion. The backbone of this effort is the individual citizen's desires as expressed in the local land use plan and the policies developed by the Coastal Resources Commission for the intelligent management and use of North Carolina's land and water resources. Coordination will be achieved through simplification of state and local regulatory permitting systems, coordination with and hopefully delegation of federal permitting programs, and guidance of public investment decisions.

(3) to identify and regulate those areas and uses that have a direct and significant impact on the coastal waters of North Carolina. Our intentions are to require regulation only in those areas or uses that are of overriding state or national interest. We feel that the majority of land use decisions can and should be left to the local level. In order to support the local decisions outside of the critical areas however, it will be necessary to assure that state and federal agencies conduct their activities consistent with local decisions.

(4) to stimulate, coordinate and monitor research on critical coastal problems in order that appropriate and useful scientific information will be available for state and local decision-making on resource management problems.

It is our belief that a comprehensive management approach that will actively involve all levels of government in a program that applies the appropriate management tool to the given problem is the best system to achieve the lofty objectives set forth in both state and federal coastal management legislation. If we are correct in this supposition, the public's rights will be preserved, the citizen's private property rights will be maintained, our coastal resources will be conserved,

and growth and development will proceed in a manner consistent with the desire of the people and the capability of the land to sustain it.

B. Definition of Direct and Significant Impact - The Two-Tier Approach

In order to determine which uses and activities will fall under the purview of North Carolina's management program, it is necessary to define those uses which have direct and significant impact on coastal waters and are therefore of statewide concern. It is North Carolina's determination that this concept cannot in any practical sense be summed up in a simple verbal definition or mathematical formula. Two major criteria have been used in determining the potential impact of any given activity: the location of the development in relationship to coastal waters; and the character of the development, e.g. the type of activity and the size of the development. North Carolina has recognized that any management system for considering the impacts of a development on coastal waters must separately consider the location and size of the development. Put another way, there are certain areas in the coastal zone that are of great enough significance to management of coastal waters that almost any development within those areas has the potential to directly and significantly affect coastal waters and should therefore be regulated according to certain performance standards on a case-by-case basis.

1. Coastal Management Within Areas of Environmental Concern, the First Tier of North Carolina's Coastal Zone

The critical or vital areas in the North Carolina coastal zone can be identified as Areas of Environmental Concern under authority of the Coastal Area Management Act (CAMA). In combination, these areas comprise the First Tier, which is the more thoroughly regulated area in North Carolina's coastal zone. The Coastal Resources Commission (CRC or Commission) has determined which types of areas should be

presently designated as AECs (subject to further public comment), and has established standards for development in those areas. All but a few exempted activities must receive a CAMA permit to develop in these areas, and must therefore comply with the appropriate standards. The CRS's prospective AECs are: Coastal Wetlands, Estuarine Waters, Public Trust Areas, Estuarine Shorelines, Ocean Beaches, Frontal Dunes, Ocean Erosion Areas, Inlet Lands, Small Surface Water Supply Watersheds, Public Water Supply Well-Fields, and certain Fragile Natural Resource Areas to be nominated and designated on a case-by-case basis in the future. These areas and the standards for development within them are thoroughly described in Chapter 4 of this plan and will not be further discussed here. However, several points should be explained or emphasized at this juncture.

- All of the above mentioned AECs combine to create a zone that includes all estuarine waters and a narrow buffer zone around them. This zone is the area where strictest regulation is deemed necessary, and therefore where the most thorough regulatory process (the CAMA permit-letting process) will be applied to practically all development.

- North Carolina's AECs are a category of the Coastal Zone Management Act's Geographic Areas of Particular Concern (GAPCs). Therefore, because it is understood that the Coastal Zone Management Act (CZMA) concept of "priority of uses" is to be applied to CAPCs only, the policies, standards, and criteria for development in AECs should be considered as North Carolina's statement of "priority of uses."

- The CRC is authorized by CAMA to consider designation of AECs from a list of categories that is considerably more inclusive than the areas they have chosen. Therefore, further designations can be made by the CRC if it concludes that regulation of the chosen AECs and existing regulation of development outside of AECs are not sufficient in combination to manage land

and water uses that directly and significantly affect coastal waters. The CRC will study the other categories with a view toward establishing policies to serve as a guide for development and government activities.

- Virtually all development in AECs is subject to the permit requirement. This very thorough approach is based on the decision that the highly vital nature of these areas demands consideration of even relatively small individual projects in order to avoid incremental deterioration of the coastal environment. Attendant social and economic impacts are evaluated by local governments using state standards and criteria as found in the planning guidelines issued by the CRC. These guidelines can be amended as necessary.

- Finally, it should be pointed out that the CRC is the agency responsible for designating and setting standards for all development in AECs. The CRC itself will administer and enforce the standards for major development in AECs, while local governments have the option of implementing the standards for minor development. The CRC and its staff will continue to operate within DNER, the lead agency for North Carolina's coastal management plan. This first tier is more specifically described and management techniques discussed in the following two chapters on Boundaries and GAPC's.

2. Organization and Authorities for Management of Areas Outside of AECs, the Second Tier of North Carolina's Coastal Zone.

As mentioned before, the second part of North Carolina's definition of "direct and significant impact on coastal waters" is based on the type of activity and the size of the development. Thus the State has identified certain uses that have potential to affect coastal waters even though they are not located in the AECs. In determining such potential for direct and significant impact, consideration was given to such factors as the nature of the process or activities involved and the residuals generated; the tendency of the type of project to induce further

development; and the scale of the development. The following discussion will first set out state policies for land and water uses in the second tier of the coastal zone. Following the policy statements is a listing of those uses that North Carolina has determined should be regulated in the second tier of our management program. Following the list is an explanation of the breadth, scope, organization, interaction, and methods for networking the authorities that North Carolina has available to guide the listed uses toward the coastal management policies that this State has established.

C. Boundaries

Section 305(b)(1) of the Federal Coastal Zone Management Act requires that a state's coastal zone management program identify "the boundaires of the coastal zone subject to the management program". Section 304(a) requires that this area include those lands "necessary to control the shorelands, the uses of which have a direct and significant impact on the coastal waters" as defined in Section 304(b) of the Act.

1. Definition

As explained earlier in this chpater, the Coastal Area Management Act, in establishing a procedure for designating the State's "coastal area", designated a "coastal zone" in which two levels (tiers) of control will be applied. Collectively the State's areas of environmental concern (described in Chapter 4) constitute the first tier of the coastal zone and include the coastal waters and adjacent shorelands, the use of which have a direct and significant impact on the coastal waters. The AEC permit program is the management tool established to apply controls over these areas. The remaining area of the entire 20 county "coastal area" constitutes the contiguous area deemed "necessary to control the shorelands...". These two areas together constitute the State's "coastal zone" which is the geographical area over which the terms of the entire management program will be exercised. However, as will be made clear later in this plan, the level of management for the two tiers varies because of the difference in their proximity and relationship to coastal waters.

The North Carolina "coastal area" is defined in Section 113A-103(2) of CAMA as "the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the

Atlantic Ocean (extending offshore to the limits of state jurisdiction, as may be identified by rule of the Commission for purposes of this article, but in no event less than three geographical miles offshore) or any coastal sounds." Governor Holshouser, as charged by the CAMA, in Executive Order 5 (Figure 1) issued April 29, 1974, designated Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington as the counties comprising the coastal area (Figure 2).

Although North Carolina's coastal area is delineated by political boundaries, environmental factors form the criteria to be considered in determining which counties to include. Counties adjacent to the Atlantic Ocean were obvious choices and there was general agreement in the legislature that all counties adjacent to any coastal sound should be included. Problems were encountered, however, in defining the landward limit of coastal sounds. A number of possible criteria for establishing such a limit were considered including the zone of tidal influence on major coastal rivers entering the sounds. In the end, however, Section 113A-103(3) of CAMA defines the inland limits of a sound or a tributary river under normal conditions as follows:

> "'Coastal sound' means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds...'Normal conditions' shall be understood to include regularly occurring conditions of a low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seaward encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:
>
> (a) On the Chowan River, its confluence with the Meherrin River;
>
> (b) On the Roanoke River, its confluence with the northeast branch of the Cashie River;
>
> (c) On the Tar River, its confluence with Tranters Creek;

John O'Donnell

NC

1. ~~discourage use of~~ 3 meetings listed for Consultation — Nov. 1975, Dec. 75, May 76
   How about other meetings or contacts?

2. What else has happened to provide "... opportunity for full participation...at all appropriate stages of (the) management program ..." 923.31

3. The draft has an echo of "we made attempts to involve feds" but it does not reveal NC's degree of success at getting fed participation. Perhaps, this will be identified in later drafts. It should be.
   ~~The letter K~~ In the letter I wrote, for circulation to feds, Ken wanted me to indicate that NC had provided frequent or many opportunities for fed involvement. I'm not sure I could include Ken's suggested comments based upon the record presented in this draft.

4. Were conflicts identified as a result of Nov.'75 meeting – point "iii" on p. 2-32 refers to problems + potential areas of conflict ... for intensive discussion. Any record of what happened or whether or not conflicts were resolved if identified?

⑤ Did local governments incorporate the comments of federal reviewers (how many?) into the planning process? p. 2-34

⑥ How many feds participated in May 76 final local plan review? What concerns were raised? If conflicts were identified, were they resolved (esp. (p 2-34)) with regard to nat'l interest?

⑦ IAEC designation (p. 2-34)
What was the disposition of the ... several (federal contacts (how many?)) who responded to the IAEC designations?

⑧ Was the May 76 meeting on final review of local plans the same as the meeting referred to in the next paragraph regard IAEC designation?

⑨ The last paragraph on p. 2-34 allows for several interpretations one of which suggests that NC views federal involvement most appropriately as "a technical assistance role. I don't think they want to leave that impression with us or the feds.

⑩ The federal consultation section does not indicate whether or not the federal contacts for the NC program have been local or regional feds. What kind of

contact have regional feds. had with NC?

(d) On the Neuse River, its confluence with Swift Creek;
(e) On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (a) is adjacent to, adjoining or bounded by any of the above points of confluence; or (b) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence".

This limit was chosen because of a somewhat better body of technical data to support it than was available in support of other proposed limits.

Although the criterion is by no means perfect, the 20 counties that were designated the North Carolina coastal area are the 20 counties that lie in that part of the State considered to be the Tidewater region as it is delimited on physiographic and geologic maps. The counties included are those where elevations are generally less than 30-40 feet above sea level, where drainage is poor and where there are discernible effects of salt water. It is also the area the majority of which was inundated by the last Pleistocene rise in sea level. Thus, although the definition is based upon political boundaries, it generally agrees with geological and biological boundaries that are well-known and in common usage.

2. Alternative Definitions of the Coastal Area Considered

The first version of CAMA simply defined the coastal area as those counties bounded in whole or in part by the Atlantic Ocean. Because of North Carolina's irregular coastline, with its vast inland sounds, such a definition was quickly rejected as too narrow and unlikely to meet the criteria of the FCZMA.

The second version of CAMA broadened this definition by patterning it much more closely after the wording of the federal act by listing the counties to be included. [1] The 20 counties

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1. "'Coastal area' means the coastal waters (including the lands therein and thereunder) and adjacent shorelines (including (cont'd)

ultimately included in North Carolina's coastal area were listed in this version, plus Bladen, Columbus, Halifax, Jones, Martin, and Northhampton. This definition identified the coastal area both in terms of natural phenomena and by listing specific counties. The counties to be included were basically those that contain coastal fishing waters as these are defined by statute (GS 113-129(4)) and by agreement between the Director of the Wildlife Resources Commission, dated March 1, 1966 and as subsequently amended. Despite this dual effort at specificity, the definition was deemed defective because it was vague, imprecise, and based on criteria that were difficult to quantify. Furthermore, the jurisdiction it created extended too far inland, thus including counties generally agreed not to be coastal counties, and violated its own stated criterion of extending "inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters."

The bill submitted for initial legislative consideration in 1973 returned to a reliance on county boundaries and defined the coastal area as "the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean or any coastal sound or major river to the end of the zone of tidal influence." Major rivers were defined as the Cape Fear and its tributaries, the Neuse, the Pamlico, the Chowan, and the Roanoke. The concept of "zone of tidal influence" was defined by reference to major familiar landmarks that approximated as well as possible the tidal reaches of the rivers. This definition was deemed

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1. (cont'd)
the waters therein and thereunder), strongly influenced by each other and in proximity to the shoreline of North Carolina, and includes the transitional and intertidal areas, salt marshes, wetlands and beaches. The zone extends seaward to the outer limits of the State of North Carolina and extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. The applicable lands and waters are those within the following counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington Counties."

vulnerable because its listing of "major coastal rivers" was not sufficiently comprehensive, because the identification of tidal reaches upon which it relied could not be supported with adequate technical data and because it, too, did not extend inland "only to the extent necessary to control shoreland, the uses of which have a direct and significant impact on coastal waters."

The ultimate definition of North Carolina's coastal area contained in CAMA evolved as a result of refinements in the definition in the 1973 bill. The final definition uses the same basic criteria but omits reference to specific coastal rivers and defines the inland limit of a sound with reference to the limits of seawater encroachment on its principal tributary river(s). The actual limit was determined by reference to data on salinity provided by the U. S. Geological Survey and, for purposes of statutory specificity, is defined as "the confluence of a sound's tributary river with the river oceanic salt water under normal conditions." Early versions of the definition named the counties that would be included under the definition but these references were deleted in the final version of the bill in favor of a process requiring the Governor to designate them based on the standards included in the Act.

The alternative utilized in the final version of CAMA was judged by the legislature to be the best method of defining a coastal area, utilizing objective criteria in conjunction with political (county) boundaries. Objective criteria establishing the distinctiveness of the area were deemed necessary to avoid the charge that the act might be a local act, and thus vulnerable on constitutional grounds. Political boundaries were vital because of the heavy reliance in CAMA on local government responsibility and the requirement that they be responsible for planning within their own limits of jurisdiction. By including all (non-federal) salt marshes, wetlands, and beaches and the coastal waters within the State's territorial sea (AECs), as well as a minimal amount

of adjacent transitional and intertidal areas located within the 20 county jurisdictions, the State's coastal zone includes all, but only, those lands required to control "shorelands the uses of which have a direct and significant impact on the coastal waters".

3. Interstate Compatibility

As of the date of preparation of this plan, neither South Carolina nor Virginia has adopted comprehensive coastal management legislation comparable to North Carolina's. Such legislation is currently being considered in South Carolina but none has been prepared in Virginia.

(a) South Carolina

The bill currently under consideration defines the South Carolina coastal zone as the tier of counties adjacent to the Atlantic Ocean. Thus, South Carolina's coastal zone where it borders North Carolina includes Horry County. The regulatory authority contained in South Carolina's proposed legislation covers critical areas including coastal waters, wetlands, beaches, and the first row of sand dunes. This authority is very similar in extent to that contained in North Carolina's legislation and it appears, therefore, that similar regulatory programs will be exercised on either side of the border. From these facts, we conclude that the coastal zone boundary proposed by South Carolina is compatible with that established by North Carolina.

(b) Virginia

Although Virginia has not developed a full coastal zone management program, the State's proposed southern coastal zone boundary extends inland to the western border of Isle of Wight-Nansemond County line. This line joins North Carolina at the point where the Chowan River crosses the state line. The boundaries defined thus far by the two states seem to be compatible.

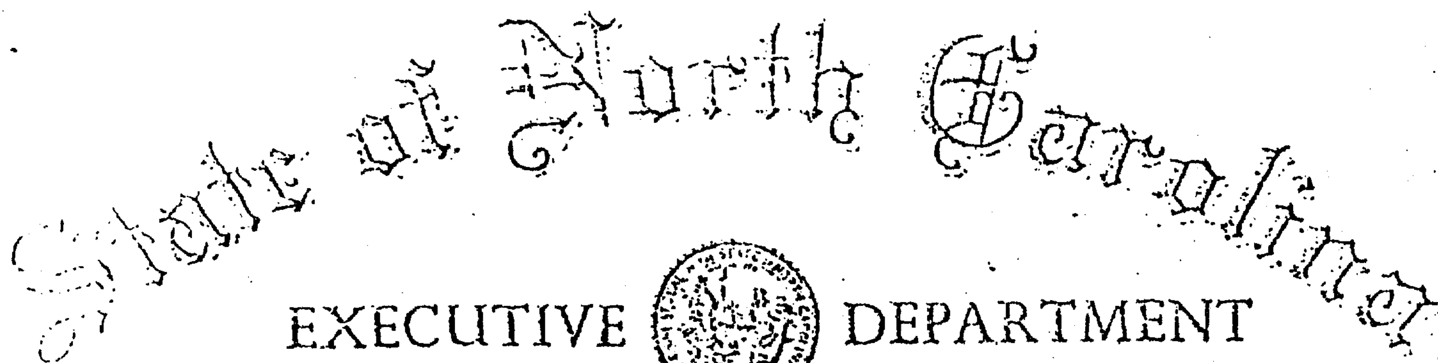
4. Excluded Federal Lands

The FCZMA (Section 304(1)) excludes from the definition of coastal zone "lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."

During program development, questions were raised as to whether the federal lands to be excluded from the coastal zone were those over which the federal government has only "exclusive legislative jurisdiction" or those over which the federal government exercises any of the varying sorts of jurisdiction which it may have over land. In August, 1976, this issue was resolved in an opinion issued by the Justice Department that since "full power to control the use of lands of the United States resides in Congress,such power must also be the sole power, for power is not full if subject to the actions of another. Thus...all federal lands are excluded from the Coastal Zone."

The location of major federally owned lands in North Carolina's coastal area, which are therefore excluded from the State's coastal zone, is shown in the Appendix III as "Preliminary inventory of federally owned lands."

Fig. 1



GOVERNOR JAMES E. HOLSHOUSER, JR.

EXECUTIVE ORDER NUMBER 5

AN EXECUTIVE ORDER DESIGNATING COUNTIES CONSTITUTING THE NORTH CAROLINA COASTAL AREA

WHEREAS, the Coastal Area Management Act of 1974 requires that the Governor, on or before May 1, 1974, designate the counties that constitute the "coastal area", as defined in GS 113A-103 (2) and that such designation is final and conclusive; and

WHEREAS, GS 113A-103 (2) of said Act states that any county that wholly or in part, is adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean shall be part of the "coastal area"; and

WHEREAS, Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow and Pender Counties thus qualify to be included in the "coastal area"; and

WHEREAS, GS 113A-103 (2) and (3) further state that any county that wholly or in part, is adjacent to, adjoining, intersected by or bounded by any coastal sound and provide a detailed definition of "coastal sounds"; and

WHEREAS, following these criteria, and on the basis of the best available data concerning salt water encroachment in the coastal sounds provided by several sources including the United States Geological Survey, Beaufort, Bertie, Camden, Chowan, Craven, Gates, Hertford, Pamlico, Pasquotank, Perquimans, Tyrrell and Washington Counties qualify for inclusion in the "coastal area"; and

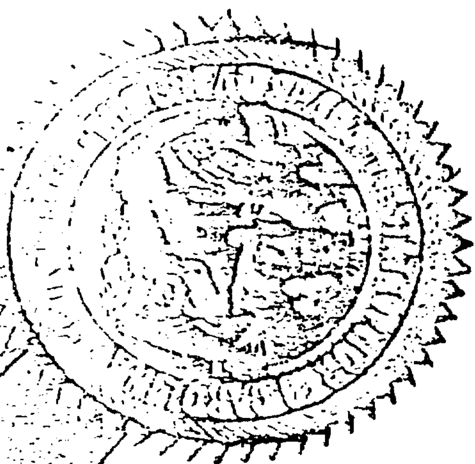
Fig. 1 (con't)

WHEREAS, I have taken into account the fact that the debates in the General Assembly concerning the definition of the coastal area and the floor amendments adopted in the House indicate a legislative intent to include only those counties major portions of which are included under the criteria outlined in GS 113A-103 (2) and (3);

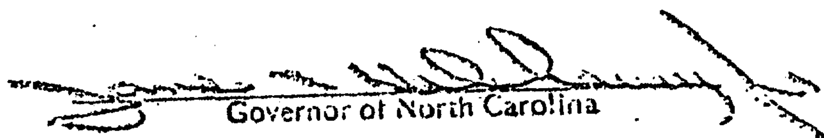
NOW, THEREFORE, I, James E. Holshouser, Jr., Governor of the State of North Carolina, do, under the authority conferred upon me by the Coastal Area Management Act of 1974, make the following initial designations of counties in the coastal area: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

This Executive Order shall be effective immediately and continue until superceded.

IN WITNESS WHEREOF, I have subscribed my signature and have caused the Great Seal of the State of North Carolina to be affixed, this 29th day of April, 1974.



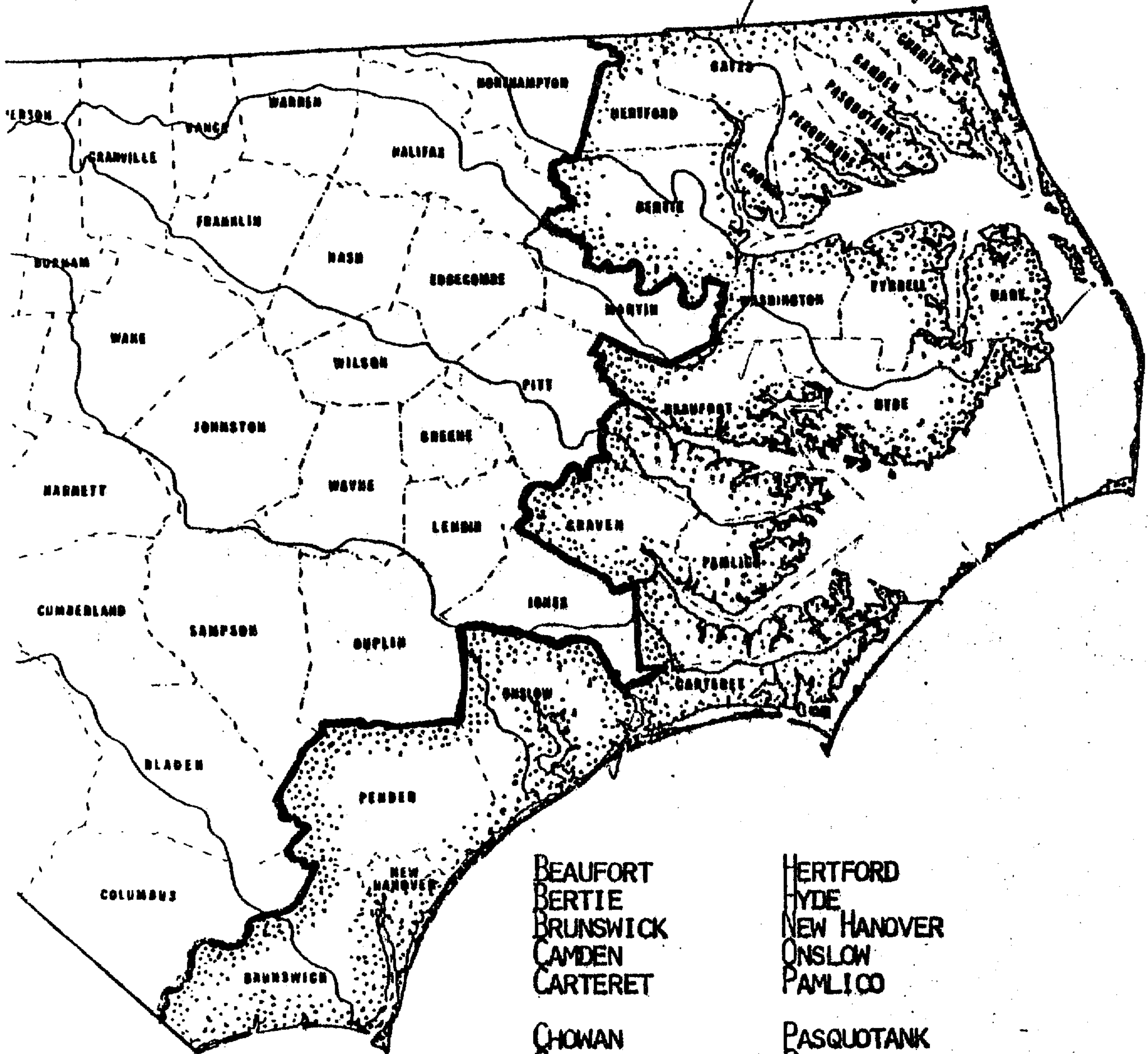
Seal of the State of North Carolina



Governor of North Carolina

Fig. 2

COASTAL
AREA



BEAUFORT
BERTIE
BRUNSWICK
CAMDEN
CARTERET

CHOWAN
CRAVEN
CURRITUCK
DARE
GATES

HERTFORD
HYDE
NEW HANOVER
ONSLOW
PAMLICO

PASQUOTANK
PENDER
PERQUIMANS
TYRRELL
WASHINGTON

CHAPTER 4 POLICIES AND AUTHORITIES IN AREAS OF ENVIRONMENTAL CONCERN

A. Areas of Environmental Concern - Introduction

Areas of environmental concern (AECs) represent geographic segments of the coastal zone that have been identified as critical resource management areas of greater than local concern. Chapter 2 outlines the process utilized by the Coastal Resources Commission and DNER in identifying, selecting, and designating these critical environmental areas. It is the purpose of this section to augment the discussion in Chapter 2 and to expand the reader's understanding of the functional role of AECs in our management system.

B. AEC Concept

Areas of environmental concern (AECs) are considered in two contexts in our management plan. First, AECs form the first tier of our coastal zone because of their function in controlling direct and significant impacts to coastal waters. Second, AECs are interpreted through the FCZMA to be Geographic Areas of Particular Concern (GAPCs). The emphasis of this chapter is AECs as the first tier of the coastal zone while Chapter 6 deals more thoroughly with GAPCs.

1. Relationship to Coastal Zone Boundaries

AECs, because of their spatial relationship to coastal waters and their characteristic resources, are considered to be of major importance in protecting the values of the coastal land and water resources. AECs form the first tier of our coastal zone and are managed through a permit program that regulates most forms of development within their geographic boundaries. This permit program administered by the CRC and DNER in conjunction with local governments ensures an intensity of management that is commensurate with the threat of degradation to coastal waters.

2. Advantages of AECs as a Resource Management Tool

As a resource protection strategy, the AEC permit program is unique in North Carolina. Created and designed specifically for coastal management, the AEC permit is a coercive implementation tool that requires that public and private land uses comply with the standards for activities in and adjacent to coastal waters. Control over impacting uses is therefore a major advantage given to North Carolina's coastal management program through AECs.

Flexibility is another important characteristic of the program since the designated AECs may be periodically reviewed and both the geographic extent as well as the permit standards altered if the conditions upon which the original designations were based have changed (G.S. 113-115(c)). The process required to implement such desired changes is discussed in Chapter 6.

3. Relationship of AEC Standards to Priority of Uses

Section 305(b) of the FCZMA requires the state management plan to include "broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority" (Section 305(b)(5)). The prioritization of uses within GAPCs has been a difficult concept to place within the context of North Carolina's coastal management program. It appears that the specification of priority of uses, although theoretically sound, becomes impractical when applied to a permit system such as the AEC program. Thus, while priority of uses is not actually arranged in a list, priorities are implicit in the performance standards that serve as permit review criteria to minimize or eliminate the negative impacts of activities in the AECs. The specific standards are stated in the section entitled "C. Areas of Environmental Concern - Description, Policies, and Use Standards".

4. Alternatives Available in Selecting and Designating AECs

In order that the reader may understand the AEC designation process, a brief review of the criteria for selection is necessary. The source of the standards that were utilized for selecting AECs is the North Carolina Coastal Area Management Act. Section 113A-113 provides that the Coastal Resources Commission may designate as AECs one or more of the following general categories:

(a) coastal wetlands;

(b) estuarine waters;

(c) renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food, or fiber requirements of more than local concern;

(d) fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, or scientific or scenic values or natural systems;

(e) areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Section 5 of the North Carolina Constitution;

(f) natural hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind, and water;

(g) areas which are or may be impacted by key facilities.

(See Chapter 2 for a more complete description of the legislative criteria for AEC selection.)

In 1974, the Coastal Resources Commission, on the basis of the criteria summarized above, began the process of AEC selection that will soon culminate in the designation and regulation of AECs.

In addition to the standards for the identification of AECs, the legislation also contains criteria describing the types of activities that might be controlled by AEC regulations. An understanding of these criteria will allow an accurate evaluation of the degree of control possible through the AEC program. G.S. 113A-103(5) explicitly states that "development" (which is those activities subject to the provisions of the AEC regulations) means:

> "any activity in a duly designated area of environmental concern (except as provided in paragraph (b) of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal.
> (b) The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
>
> (i) Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
>
> (ii) Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
>
> (iii) Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of

energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;

(iv) The use of any land for the purpose of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine water (as defined in G.S. 113-229) or navigable waters is involved;

(v) Emergency maintenance or repairs;

(vi) The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;

(vii) Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article.

Subdivisions

(viii) Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article.

new utilities?

(ix) Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974."

5. Alternatives Considered

With the legislation as a starting point, the Coastal Resources Commission and DNER proceeded in a cooperative effort to designate AECs and to implement a permit program to protect critical coastal resources. Various alternatives have been considered including the inclusion of the entire outer banks as an AEC, the exclusion of small marsh areas adjacent to intensive development from the Coastal Wetlands category of AEC, the delegation of AEC designation powers to local government, and the designation of wooded swamps as an AEC. Each of these specific suggestions have been rejected in favor of a program that now incorporates the most critical resource areas in the coastal zone. The program is characterized by a joint state-local administration of regulations and standards established by the Coastal Resources Commission. (The identification process and alternatives considered are detailed in Chapter 2.)

C. Areas of Environmental Concern - Descriptions, Policies and Use Standards

The following is a discussion of the definitions, policies and use standards for the thirteen categories of AECs proposed by the CRC. As presented in this management plan and in the State Guidelines, the thirteen AECs are grouped into four broad resource categories.

1. Estuarine System

The first AECs discussed collectively represent the water and land areas of the coast that contribute enormous economic, social, and biological values as North Carolina's estuarine system. Included within the estuarine system are the following AEC categories: Estuarine Waters, Coastal Wetlands, Public Trust Areas, and Estuarine Shorelines. Each of these AECs is either geographically within the estuary or, because of its location and nature, may significantly affect the estuary.

(a) Significance of the Systems Approach in Estuaries

The management program must embrace all characteristics, processes, and features of the whole system and not characterize individually any one component of an estuary. They are all completely interdependent and ultimately require management as a unit. Any alteration, however slight, in a given component of the estuarine system may result in unforeseen consequences in what may appear as totally unrelated areas of the estuary. For example, destruction of wetlands may have harmful effects on estuarine waters which are also areas within the public trust. As a unified system, changes in one AEC category may affect the function and use within another category.

(b) Management Objective of the Estuarine System

It is the objective of the CRC to give high priority to the protection and coordinated management of Estuarine Waters, Coastal Wetlands, Public Trust Areas, and Estuarine Shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources.

(c) AECs Within the Estuarine System

The following defines each AEC within the estuarine system, describes its significance, articulates the policies regarding

development, and states the standards for development within each AEC.

(d) Coastal Wetlands

Description - Coastal Wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides.

Coastal Wetlands contain some, but not necessarily all, of the following marsh plant species:

Cord Grass	(*Spartina alterniflora*);
Black Needlerush	(*Juncus roemerianus*);
Glasswort	(*Salicornia* spp.);
Salt Grass	(*Distichlis spicata*);
Sea Lavender	(*Limonium* spp.);
Bulrush	(*Scirpus* spp.);
Saw Grass	(*Cladium jamaicense*);
Cat-tail	(*Typha* spp.);
Salt Meadow Grass	(*Spartina patens*); and
Salt Reed Grass	(*Spartina cynosuroides*).

Included in this definition of Coastal Wetlands is "such contiguous land as the Secretary of NER reasonably deems necessary to affect by any such order in carrying out the purposes of this Section." (G.S. 113-230(a))

Significance - The unique productivity of the estuarine system is supported by detritus and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs currently make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational business along the seacoast.

The roots, rhizomes, stems, and seeds of Coastal Wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, Coastal Wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the Coastal Wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing organic and inorganic particulate matter to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh plants, thus providing an inexpensive water treatment service.

Management Objective - To give highest priority to the protection and management of Coastal Wetlands so as to safeguard and perpetuate their biological, social, economic, and aesthetic values. To coordinate and establish a management system capable of conserving and utilizing Coastal Wetlands as a natural resource essential to the functioning of the entire estuarine system.

Use Standards - Suitable land uses shall be those consistent with the above management objective. Highest priority of use shall be allocated to the conservation of existing Coastal Wetlands. Second priority of Coastal Wetland use shall be given to those

types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses may include, but would not be limited to, the following examples: restuarants and businesses; residences, apartments, motels, hotels, and trailer parks; parking lots and offices; spoil and dump sites; wastewater lagoons; public and private roads and highways; and factories. Examples of acceptable land uses may include utility easements, fishing piers, docks, marinas, and agricultural uses, such as farming and forestry drainage, as permitted under the Dredge and Fill Act and/or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the General Use Standards for Coastal Wetlands, Estuarine Waters, and Public Trust Areas.

(e) Estuarine Waters

Description - Estuarine Waters are defined in G.S. 113-229(n)(2) as "all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Natural and Economic Resources and the Wildlife Resources Commission" and set forth in joint regulations filed with the Attorney General in section .0200, Chapter 3F Title 15, North Carolina Administrative Code. These boundary lines may be changed from time to time by joint action of the two agencies. The category is a simplified administrative breakdown of public trust areas which allows for efficient management of the mid-salinity brackish waters and their biological components.

Significance - Estuarine Waters are the dominant component and bonding element of the entire estuarine system, integrating

aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the ten leading species in the commercial catch, all but one are dependent on the estuary.

This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of Estuarine Waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

Secondary benefits are derived from stimulations of the coastal economy from operations such as are required for commercial and sport fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics, recreation, and education.

Management Objective - To give the highest priority to the conservation and management of the important features of Estuarine Waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values. To coordinate and establish a management system capable of conserving and utilizing Estuarine Waters so as to maximize their benefits to man and the estuarine system.

<u>Use Standards</u> - Suitable land/water uses shall be those consistent with the above management objectives. Highest priority of use shall be allocated to the conservation of Estuarine Waters and their vital components. Second priority of Estuarine Waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; and boat docks, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the General Use Standards for Coastal Wetlands, Estuarine Waters, and Public Trust Areas.

(f) Public Trust Areas

<u>Description</u> - Public Trust Areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the mean high water mark; all navigable natural bodies of water and lands thereunder to the mean high water level or mean water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing significant public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

(1) the use of the body of water by the public,

(2) the length of time the public has used the area,

(3) the value of public resources in the body of water,

(4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water,

(5) whether the creation of the artificial body of water required permission from the State, and

(6) the value of the body of water to the public for navigation from one public area to another public area.

Significance - The public has rights in these areas, including navigation and recreation. In addition, these areas support valuable commercial and sports fisheries, have aesthetic value, and are important potential resources for economic development.

Management Objective - To protect public rights for navigation and recreation and to preserve and manage the Public Trust Areas so as to safeguard and perpetuate their biological, economic, and aesthetic value.

Use Standards - Acceptable uses shall be those consistent with the above management objective. In the absence of overriding public benefit, any use which significantly interferes with the public right of navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within Public Trust Areas, provided that such uses will not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below mean high tide, cause adverse water circulation patterns, violate

water quality standards, or cause degradation of shellfish waters are generally considered incompatible with the management policies of Public Trust Areas. In every instance, the particular location, use, and design characteristics shall be in accord with the General Use Standards for Coastal Wetlands, Estuarine Waters, and Public Trust Areas (below).

(g) General Use Standards for Coastal Wetlands, Estuarine Waters, and Public Trust Areas

The CRC will use the following criteria to determine if a development or its intended use would interfere with or negatively affect either public interests or natural values of the Coastal Wetlands, Estuarine Waters, and Public Trust Areas.

Public Interests -

1. Finding that a project does not illustrate either the public or private need for a proposed development will be considered a negative factor in project evaluation.

2. Finding that a project is in conflict with officially adopted state, regional, or local land use plans, or policies applicable to the land and water areas under review will be considered a negative factor in project evaluation.

3. Finding that a project is incompatible with the purposes of an existing or proposed civil works project will be considered a negative factor in project evaluation.

4. Those particular projects, supported by public funds, that are initiated, planned, and constructed by federal programs and agencies must clearly exhibit overriding factors of national interest or public benefit in order to obtain favorable consideration. Preferred federal projects may include navigation aids, devices, and structures; maintenance activities in vital shipping channels to continue intrastate and interstate commerce; and work necessary to increase use by waterfowl or conserve important wildlife resources.

5. Finding that a proposal will or could create a significantly adverse effect on the value and enjoyment of the property

of any riparian owner will be a negative factor in project evaluation.

6. Finding that a project may impede navigation of, or create undue interference with access to, or use of, navigable waters will be considered a negative factor in project evaluation.

7. All landowners have the general right to protect their properties from erosion, and usually these projects will be viewed favorably. Finding that there exists substantial probability that a proposed protective structure will result in damage to nearby properties or harm public resources will be considered a negative factor in project evaluation.

8. In order to determine the proper balance between social, economic, and ecological costs and benefits of a project, the overall development plan will be evaluated to consider project purposes, multiple uses, social needs, local economic benefits, and anticipated secondary effects. If the balancing of these considerations does not interfere with the public interest, the project will receive favorable consideration.

9. If substantiated negative comments or reasonable objections are received from federal or state agencies, local governments, public interest groups, riparian owners, and individuals, these comments will be considered negative factors in project evaluation.

Natural Values -

1. A project will be evaluated with the recognition that it will be part of a complete and interrelated estuarine resource area.

2. A project's probable impact on the biological systems will be evaluated in relation to the cumulative effect of existing and anticipated uses within the general vicinity of the site.

3. The location, design, and need for a project, as well as the construction activities involved, must be demonstrated to be suitable, considering the biological and physical processes of the estuarine system. The criteria for project planning and evaluation used by the Division of Marine Fisheries (Marine

Fisheries 15 NCAC, 3D .0109 and the Corps of Engineers (FRD Section 209:120(f)(9)) will be utilized in determining the project's suitability regarding location, design and construction methods.

4. In order to conserve the vital components of the estuarine system, all development will be consistent with the following policies:

a. Finding that a project would require excavation and/or fill work directly within the highly productive, regularly flooded coastal wetland (Spartina alterniflora marshes) or would alter their important drainage patterns will be considered a negative factor in project evaluation.

b. Finding that a project would destroy, alter, pollute, or interfere with the social, economic, and biological values of productive shellfish beds (including sand, mudflat, and oyster beds) will be considered a negative factor in project evaluation.

c. Finding that a project would destroy or adversely impact important marine grass beds; spawning and nursery areas of valuable estuarine dependent fish species; and important nesting, feeding, and wintering sites of waterfowl or wildlife will be considered a negative factor in project evaluation.

d. Finding that a project would weaken natural erosion barriers, including peat marshland, resistent clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable estuarine shorelines, will be considered a negative factor in project evaluation.

(h) Estuarine Shorelines

As an AEC, Estuarine Shorelines, although characterized as dry land,are considered a component of the estuarine system because of their close association with the adjacent Estuarine Waters. The following defines Estuarine Shorelines, describes their significance, and articulates standards for development.

Description - Estuarine Shorelines are those non-ocean shorelines which are especially vulnerable to erosion, flooding, or other

elevation in the depression immediately behind the first dune ridge.

Significance - Frontal Dunes comprise a significant portion of the outer banks and barrier islands and represent a protective barrier for development on the outer banks. Development with inadequate design or construction may alter the protective character of the dunes and subject property to an increased risk of substantial damage due to the adverse effects of wind and water. Frontal Dunes are also extremely dynamic and highly susceptible to the erosive effects of storm surges.

(f) Inlet Lands

Description - Inlet Lands as identified by the State Geologist are those lands with a substantial possibility of excessive erosion located adjacent to inlets and extending inland a distance sufficient to encompass that area through which either the inlet is predicted to migrate during the next 25 years or the maximum extent of recorded migration over the past 25 years, whichever is less.

Significance - The particular location of the inlet channel is a temporary one, as such channels are subject to extensive migration. Coastal inlet lands are extremely dynamic land areas that are highly susceptible to becoming completely displaced by water.

(g) Ocean Erodible Areas

Description - The landward extent of those ocean shoreline areas identified by the State Geologist to have a substantial possibility of excessive erosion has been determined for each ocean-fronting county from the report (no. 73-5) prepared by C.E. Knowles, Jay Langfelder, and Richard McDonald, published by the N.C. State University Center for Marine Coastal Studies, as follows:

Virginia line to Hatteras Inlet - 61 ft.
Hatteras Inlet to Bogue Inlet - 72 ft.

Bogue Inlet to Rich Inlet - 121 ft.
Rich Inlet to Cape Fear Inlet - 156 ft.
Cape Fear Inlet to South Carolina line - 144 ft.

The above distances are measured landward from the seaward toe of the frontal dune.

Significance - Ocean Erodible Areas are extremely dynamic lands, highly susceptible to becoming displaced by water created by periodic storm surges.

(h) Ocean Hazard Areas - General Identification

As AECs, ocean hazard areas include Ocean Beaches, Frontal Dunes, Inlet Lands, and Ocean Erodible Areas, each characterized by a substantial possibility of excessive erosion. The landward boundary of the hazard areas is formed by the landward-most extent of the included land areas.

For the purpose of public and administrative convenience, each designated permit-letting agency for minor development permits is authorized to designate, subject to CRC approval, a more readily identifiable land area with which to serve public notice of the probability of occurance of an ocean hazard AEC. This designated notice area, however, must include all of the land areas as defined above. It is recommended that for this purpose each permit-letting agency consider the use of natural or man-made landmarks such as roads, existing hazard area delineations such as those prepared for administration of the federal Flood Disaster Protection Act, or existing shore protection lines established for administration of county sand dune protection ordinances.

(i) General Use Standards for Ocean Hazard Areas

1. In order to avoid unreasonable danger to life and property, the construction or placement of structures to be used for residential, institutional, or commercial purposes will be permitted only landward of the frontal dune.

(a) Significance

The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Hazard area property is in the ownership of a large number of private individuals as well as several public agencies; hazard area land is used, however, by a vast number of visitors to the coast in addition to the land's owners. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them. The value of each landform lies in the particular role it plays in affording protection to life and property. Overall, however, the energy dissipation and sand storage capacities of the landforms are most most essential for the maintenance of the landforms' protective function.

(b) Management Objective of Ocean Hazard Areas

The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located along the ocean. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of shoreline structures and by care taken in prevention of damage to natural protective features.

Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(c) AECs Within Ocean Hazard Areas

The following defines each AEC within ocean hazard areas and describes its significance. Standards for the issuance of permits for each of these AECs are found in General Use Standards for Ocean Hazard Areas

(d) Ocean Beaches

Description - Ocean Beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either (a) the growth of vegetation occurs or (b) a distinct change in the slope or elevation of the unconsolidated sands alters the configuration of the landform.

Significance - Sand deposits of ocean beaches and shorelines represent a dynamic zone which does not afford long-term protection for development. The nature of tidal action and the force of storms are such that they cause the beach areas to constantly shift. Littoral drift is a natural phenomenon whereby sand is deposited upon a different stretch of the beach. The action also shifts the line of high tide and low tide. Ocean beaches and shorelines are valuable for public and private recreation and are located within a natural hazard area. Development within this dynamic zone may result in loss of property and possible loss of life.

(e) Frontal Dunes

Description - Frontal Dunes are mounds of sand located directly landward of the ocean beaches and extending inland to the lowest

adverse effects of wind and water and are intimately connected to the estuary. This area extends 75 feet landward from the mean high water level (in tidal waters) or normal water levels (in non-tidal waters) along estuaries, sounds, bays and brackish waters as set forth in an agreement between the Department of Natural and Economic Resources and the Wildlife Resources Commission filed with the Attorney General in Section 0200 Chapter 3F Title 15, N.C. Administrative Code.

Significance - Development within Estuarine Shorelines influences the quality of estuarine life and is subject to the damaging processes of shore front erosion and flooding.

Management Objective - To ensure shoreline development is compatible with both the dynamic nature of Estuarine Shorelines and the values of the estuarine system.

Use Standards - Suitable land uses shall be those consistent with the management objective .

Highest priority of land use allocation shall be given to recreational, rural, and conservation activities in those shoreline areas exhibiting a significant erosion rate. High priority shall be given to water access and shoreline protection proposals, provided that public resources will not be detrimentally affected.

Second priority of land use allocation shall be given to proposals which illustrate a sound understanding of the management principles of this dynamic and susceptible zone. The applicant must demonstrate, in cases where the shoreline is to be altered, that notification of the proposed activity has been given to adjacent riparian land owners.

All allowable construction activities shall require the applicant's written acknowledgement that there may be associated risks with building on the particular location.[1]

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1. In order to give proper guidance to the applicant, the most up-to-date information concerning shoreline erosion rates, potentials for flooding, and recommended shoreline stabilization and flood proofing techniques shall be provided to the applicant.

Proposals must not conflict with the purposes and goals of officially adopted state, regional, or local land use plans and regulations.

Proposed land uses should not significantly harm estuarine resources (both biological and physical) or cause damage to adjacent riparian properties.

Major public facilities that guide growth and land use patterns which may include, but are not limited to, roads, water lines, and sewers, will not be permitted within this AEC if their placement would result in a substantial possibility of excessive public expenditures for maintaining public safety and continued use of the facilities or would result in a loss of significant private resources.

Construction within the 75-foot shoreline zone shall be in compliance with relevant provisions of local and state building codes.

All construction within the 75-foot shoreline zone shall be in compliance with the mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973 (G.S. 113A-57).

2. Ocean Hazard Areas

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. Ocean hazard areas include Beaches, Frontal Dunes, Inlet Lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

2. In order to avoid the necessity of excessive public expenditures for maintaining public safety, no construction or placement of major public facilities to be supported by state funds, including but not limited to roads and sewer and water lines, will be permitted in hazard areas.

3. In order to avoid weakening the protective nature of frontal dunes, no development will be permitted which would involve the removal or relocation of frontal dune sand or frontal dune vegetation.

4. Any residential building erected within an Ocean Erodible Area is required to be in compliance with the piling requirements (Appendix D, Section 3.0) of the N.C. Uniform Residential Building Code. All other construction in ocean hazard areas must comply with the state Building Code or more stringent local building codes.

(j) Exceptions to the General Use Standards for Ocean Hazard Areas

1. Development which does not involve the placement or construction of major state supported facilities or of structures to be used for residential, institutional, or commercial purposes may be permitted in hazard areas if it can be demonstrated that that development will not (a) reduce or cause to be reduced the amount of sand held in storage in beaches and frontal dunes, (b) cause accelerated erosion along the shore, or (c) otherwise increase the risk of loss or damage presented to life or property.

2. The following construction activities may be permitted on or seaward of the frontal dune, provided that their specific location and design are demonstrated to be the most suitable alternatives and in compliance with the North Carolina Building Code and the standards set in paragraph 1 above:

a. necessarily water-oriented structures such as fishing piers;

b. structural accessways to beaches; and

c. non-permanent recreational structures such as lifeguard chairs.

3. The construction or placement of a structure to be used for residential, institutional, or commercial purposes may be permitted on the frontal dune if it can be demonstrated that the size or location of an existing lot (as defined in the Note below) would not otherwise allow any practical use to be made of it. In such a case, written acknowledgement of the lot's location in a hazard area and of the State's policy concerning public expenditures in hazard areas will be required of the property owner, as well as compliance with relevant provisions of the North Carolina Building Code and the standards set in paragraph 1 above.

4. The minimum necessary amount of removal or relocation of frontal dune sand or dune vegetation may be permitted if it can be demonstrated that the size or location of an existing lot (as defined in paragraph 5 below) would not otherwise allow any practical use to be made of it or if the development requiring that removal or relocation is shown to be in the best public interest. In either case, it must be demonstrated that such activity will be in compliance with the standards set in paragraph 1 above and that all reasonable measures will be taken to prevent erosion of the dune and to reestablish the dune and its vegetation in the most appropriate location.

(Note: The words "existing lot" in paragraphs 3 and 4 shall mean a lot or tract of land which on the effective date of this section is specifically described in a deed, contract, or other instrument conveying fee title or which is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.)

3. Public Water Supplies

The third broad grouping of AECs includes valuable Surface Water Supply Watersheds and Public Water Supply Well Fields.

(a) Significance

These vulnerable, critical water supplies, if degraded, could adversely affect public health or require substantial monetary outlays by affected communities for alternative water source development.

Uncontrolled development within the designated boundaries of a watershed or well field site could cause significant changes in runoff patterns or water withdrawal rates that may adversely affect the quantity and quality of the raw water supply. Also, incompatible development could adversely affect water quality by introducing a wide variety of pollutants from homes, businesses, or industries, either through subsurface discharge, surface runoff, or seepage into the vulnerable water supply.

(b) Management Objective of Public Water Supplies

The CRC objective in regulating development within critical water supply areas is the protection and preservation of public water supply well fields and A-II streams[1] and to coordinate and establish a management system capable of maintaining public water supplies so as to perpetuate their values to the public health, safety, and welfare.

(c) AECs Within Public Water Supplies

Public water supplies as a broad category includes two AECs: Small Surface Water Supply Watersheds and Public Water Supply Well Fields. The following discussion includes the description and the land use standards for each.

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1. A-II waters are those surface waters which are suitable as a source of water supply for drinking, culinary or food processing purposes after approved treatment. These streams are classified by the Water Quality Section of the Division of Environmental Management (G.S. 143-214.1; 143-215.1; 143-215.2)

(d) Small Surface Water Supply Watersheds

Description - These are catchment areas which contain a stream(s) classified as A-II by the Environmental Management Commission. This means the maximum beneficial use of these streams is to serve as public water supply areas. The watershed of the A-II streams has been identified by the North Carolina Department of Human Resources for designation by the CRC.

Use Standards - The CRC or local designated official shall approve an application upon finding that the project is in accord with the following minimum standards:

1. Ground absorption sewage disposal systems shall be located a minimum of 100 feet from A-II surface waters.

2. Development requiring a National Pollution Discharge Elimination System (NPDES) permit will be denied an AEC permit until the NPDES permit is secured.

3. An AEC permit will not be approved until a response has been received from the appropriate agency which issues floodway permits, water diversion authorization, pesticide permits, and mosquito control permits, if the proposed activity falls within the scope of these programs.

4. Land-disturbing activities (land clearing, grading, and surfacing) shall be in compliance with the mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973 (G.S. 113A-57).

(e) Public Water Supply Well Fields

Description - These are areas of well-drained sands that extend downward from the surface into the shallow ground water table which supplies the public with potable water. These surficial well fields are confined to a readily definable geographic area as identified by the North Carolina Department of Human Resources with assistance and support from affected local governments.

Use Standards - The CRC or the local designated official shall approve an application upon finding that the project is in accord with the following minimum standards:

1. The project does not use ground absorption sewage disposal systems within the designated boundary of the well field.

2. The project does not require subsurface pollution injection within the designated boundary of the AEC.

3. The project does not significantly limit the quality of the water supply or the amount of rechargeable water to the well fields.

4. The project does not cause salt water intrusion into the public water supply or discharge toxic and/or soluble contaminants.

4. Fragile Coastal Natural Resource Areas

The fourth and final group of AECs is gathered under the heading of Fragile Coastal Natural Resource Areas and is defined as areas containing environmental or natural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems, scientific or educational values, or aesthetic qualities.

(a) Significance

Fragile Coastal Natural Resource Areas are generally recognized to be of educational, scientific, and/or cultural value because of the natural features of the particular site. These features in the coastal area serve to distinguish the area designated from the vast majority of coastal landscape and therein establish its value. Such areas may be key components of systems unique to the coast which act to maintain the integrity of that system.

Areas that contain outstanding examples of coastal processes or habitat areas of significance to the scientific/educational community are a second type of fragile coastal natural resource. These areas are essentially self-contained units or "closed systems" minimally dependent upon adjoining areas.

Finally, fragile areas may be particularly important to a locale either in an aesthetic or cultural sense.

(b) The Designation Process for Fragile Coastal Natural Resource Areas

The designation of a Coastal Complex Natural Area, a Unique Coastal Geologic Formation, or a Coastal Area that Sustains a Remnant Species is a process peculiar to these categories of AECs alone. Unlike the other AECs, designation is based upon a procedure of nomination, evaluation, and site specific designation.

Nomination - The first step in the nomination process will be the collection of relevant information regarding location, size, importance, ownership, and uniqueness of the proposed site by the sponsoring individual or group. This information will then be transmitted to the CRC and the local government in whose jurisdiction the site is located. The local government will forward the nomination and recommendations to the CRC within 60 days of the first meeting of the local board following that nomination. Those sites considered appropriate, i.e., meeting the definition of at least one of the Fragile Coastal Natural Resource Areas categories, will continue to the evaluation step.

Evaluation - Opportunity will be given to local government officials, interest groups including private land owners, the CRAC, the CRC staff, and those with scientific expertise to comment on the appropriateness of designation. Statements from the scientific community should include any documentation attesting to the unique qualities of the site, and, when appropriate, a discussion relating the specific values of the site to the associated biological and physical systems.

<u>Designation</u> - The CRC has the sole authority to designate AECs; thus, upon receipt of all relevant information, the CRC must decide if designation is merited. This will be determined by establishing that the resource is of unusually high or unique quality and by showing that the resource does fit the descriptions of at least one of the Fragile Coastal Natural Resource Areas categories. General statements from local government and interest groups will be considered along with the scientific rationale. All parties involved in the processes of nomination and evaluation will be informed, in writing, of the Commission's decision to designate or not to designate the site in question.

A public hearing is required prior to designation of each site at which time the Commission shall present the scientific documentation and general statements concerning the designation decision. Also, the values established in the evaluation stage will be so stated and will be used as the basis for policy development by which permits will be approved or denied. All sites chosen for designation that are within the bounds of state-owned property will become an AEC regardless of state agency ownership. Sites located on private property will immediately become AECs if the property owner is in favor of their designation. If land owners dissent they will be given 60 days to prepare arguments explaining why their property should not be designated, whereupon the Commission will make its final judgement. It is the intent of the Commission to point out the significance of AECs on private property and to suggest how appropriate development should proceed within the constraints imposed by constitutionally guaranteed rights of private property.

(c) AECs Within Fragile Coastal Natural Resource Areas

The description, significance, and management objectives for each AEC (Coastal Complex Natural Areas, Coastal Areas that Sustain Remnant Species, and Unique Coastal Geologic Formations) within the grouping of Fragile Coastal Natural Resource Areas follows.

(d) Coastal Areas that Sustain Remnant Species

Description - Coastal Areas that Sustain Remnant Species are those areas that support native plants or animals, rare or endangered (synonymous with threatened and endangered), within the coastal area. Such places provide habitat conditions necessary for the survival of existing populations or communities of rare or endangered species within the coastal area. Determination will be made by the Commission based upon the listing adopted by the North Carolina Wildlife Resources Commission or the federal government listing, upon written reports or testimony of experts indicating that a species is rare or endangered within the coastal area, and upon consideration of written testimony of local government officials and of interest groups, including private land owners.

Significance - The continued survival of habitats that support threatened and endangered native plants and animals in the coastal area is vital for the preservation of our natural heritage and for the protection of natural diversity which is related to biological stability. These habitats and the species they support provide a valuable educational and scientific resource that cannot be replicated.

Management Objective - To protect unique habitat conditions that are necessary to the continued survival of endangered native plants and animals and to minimize development or land use impacts that might jeopardize known areas that support such species.

(e) Coastal Complex Natural Areas

Description - Coastal Complex Natural Areas are defined as lands that support native plant and animal communities and provide habitat conditions that have remained essentially unchanged by human activity. Such areas may be either significant components of coastal systems or especially notable habitat

areas of scientific, educational, or aesthetic value. They may be surrounded by landscape that has been modified but does not drastically alter conditions within the natural area.

Significance - Coastal Complex Natural Areas function as key biological components of natural systems, as important scientific or educational sites, or as valuable scenic or cultural resources. Often these natural areas provide habitat conditions suitable for endangered species or they support plant and animal communities representative of pre-settlement conditions. These areas help provide a historical perspective to changing natural conditions in the coastal area and together are important and irreplaceable scientific and educational resources.

Management Objectives - To protect the features of a designated Coastal Complex Natural Area so as to safeguard its biological relationships, educational and scientific values, and aesthetic qualities. Specific objectives for each of these functions shall be related to the following policy statement either singly or in combination:

1. To protect the natural conditions or the sites that function as key or unique components of coastal systems. The interactions of various life forms are the foremost concern and include sites that are necessary for the completion of life cycles, areas that function as links to other wildlife areas (wildlife corridors), and localities where the links between biological and physical environments are most fragile.

2. To protect the identified scientific and educational values and to ensure that the site will be accessible for related study purposes.

3. To protect the values of the designated Coastal Complex Natural Area as expressed by the local government and citizenry. These values should be related to the educational and aesthetic qualities of the feature.

(f) Unique Coastal Geologic Formations

Description - Unique Coastal Geologic Formations are defined as sites that contain geologic formations that are unique or otherwise significant components of coastal systems or are especially notable examples of geologic formations or processes in the coastal area. Such areas will be evaluated by the Commission after identification by the State Geologist.

Significance - Unique Coastal Geologic Areas are important educational, scientific, or scenic resources that would be jeopardized by uncontrolled or incompatible development.

Management Objectives - The CRC's objective is to preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific or educational sites, or as valuable scenic resources. Specific objectives for each of these functions shall be related to the following policy statements either singly or in combination:

1. To ensure that the designated geologic feature will be able to freely interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions which may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of that feature to the hydrological element, either ground water or surface runoff.

2. To ensure that the designated geologic feature or process will be preserved for and accessible to the scientific and educational communities for related study purposes.

3. To protect the values of the designated geologic feature as expressed by the local government and citizenry. These values should be related to the educational and aesthetic qualities of the feature.

(g) General Use Standards for Fragile Coastal Natural Resource Areas

Permits for development in designated Fragile Coastal Natural Resource Areas will be approved upon finding that:

1. The proposed design and location will cause no major or irreversible damage to the stated values of a particular site. One or more of the following values must be considered depending upon the stated significance of the site:

a. Development shall preserve the values of the individual site as it functions as a critical component of a natural system.

b. Development shall not adversely affect the values of the site as a unique scientific or educational resource.

c. Development shall be consistent with the aesthetic values of a site as identified by the local government and citizenry.

2. No reasonable alternative sites are available outside the designated AEC.

3. Reasonable mitigation measures have been considered and incorporated into the project plan. These measures shall include consultation with recognized scientific authorities and with the CRC.

4. The proposed development will be of equal or greater public benefit than those benefits lost or damaged through development.

5. Development Standards Applicable to All AECs

1. No development should be allowed in any AEC which would result in a contravention or violation of any rules, regulations, or laws of the State of North Carolina or of local government in which the development takes place.

2. No development should be allowed in any AEC which would have a substantial likelihood of causing pollution of the waters of the State to the extent that such waters would be closed to the taking of shellfish under standards set by the Commission for Health Services pursuant to G.S. 130-169.01.

D. AEC Implementation - The Permit Process

1. AEC Permitting

The authority to designate AECs rests exclusively with the CRC. However, once these areas are designated, the authority for administering the CAMA permit program is shared between the CRC and local government units within the coastal area. The CAMA provides that "each county and city within the coastal area shall submit to the Commission a written statement of its intent to act or not to act as a permit-letting agency..." Upon presenting to the Commission and having approved a plan for a local implementation and enforcement program, any county or city that has submitted such a letter will be authorized to process applications for minor development permits in AECs. The Commission will process applications for major development permits and appeals of local decisions concerning minor development applications.

Therefore, in order to understand which permits will be handled locally and which will be handled by the Commission, it is necessary to distinguish between major and minor development. Major development is any development that requires the authorization, permission, certification, approval, or licensing of another state agency; or will occupy a land or water area in excess of 20 acres; or contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet; or the siting of a utility facility that is not subject to the authority of the State Utilities Commission. Any other development is minor.

(a) The Major Development Permit Process

(i) The Application

The statutory requirements for the CAMA permit for major development are found in G.S. 113A-119 et seq. This section begins by stating that "(a)ny person required to obtain a permit under this Part (a major development permit) shall file with the Secretary of Natural and Economic Resources -- an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission". Therefore it is the responsibility of the Secretary of DNER, subject to approval by the Commission, to determine the details of what the CAMA permit will be.

At this time the major development permit application has taken the form of a comprehensive project description. This form should allow a standardized application to be used that will supply the permit reviewer with information sufficient to evaluate the project's consistency with the various land use standards in each of the AECs. The standards for the AECs are rather general, and a fairly simple project description will probably suffice in most cases for a determination of whether a permit should issue. Where the initial description is insufficient, more specific information can be requested or a site visit can be arranged.

(ii) The Distribution

The CAMA permit application will be distributed from at least three locations: (1) at the DNER field offices located in Washington and Wilmington by a "permit officer", (2) by the Division of Marine Fisheries, and (3) by the local designated official (at the local permit office). Permit officers at each of these locations will be trained to help applicants with their project description/master application form and to help them determine what other local, state, and federal permits are required. The permit officer will also help the applicant decide whether he is actually in an AEC.

(iii) Public Notice Requirements

§113A-119 of CAMA states that upon receipt of an application, the Secretary shall issue public notice of the proposed development by (1) mailing a copy of the application or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected to any citizen or group which has filed a request to be notified of the proposed development, and to any interested state agency; (2) posting or causing to be posted a copy of the application at the location of the proposed development; and (3) publishing notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory.

(iv) Disposition of Major Development Applications

The CAMA permit will usually be issued separate from and after all other state permits. The one most obvious exception is the NPDES permit, which takes a longer time than the 90 days within which the CAMA permit must be issued. Thus the CAMA permit should be issued conditional upon the issuance of the NPDES permit where the latter is required.

When the CAMA permit is issued or denied, the project is thereby certified as consistent or inconsistent with North Carolina's coastal management plan. Any federal license or permit decision that is contrary to the CAMA permit decision will thus be inconsistent with the state plan and

must be based on an overriding national interest in order to justify such inconsistency with the CAMA permit determination (see Chapter 6 for more detail on federal consistency).

Further discussion of the disposition of major development permits and the relationship of the permit with other state permits can be found in Chapter 6 under the Permit Coordination Section.

(b) Minor Development Permit Process

(i) The Application

CAMA minor development permit applications will take the form of a master project description and should be, to the greatest extent possible, interchangeable with the major development application. The content is to be determined by DNER with approval by the CRC.

(ii) The Distribution

CAMA minor development permit applications should be issued by the local designated official (LDO)* at the local permit office. The LDO will be trained to help applicants determine whether they are in an AEC and what other permits might be required (thus becoming the first contact in permit coordination efforts as described in Chapter 6.)

(iii) Disposition

CAMA requires that other local permits be issued before the CAMA minor development permit is issued. The LDO will be trained to process several of the local permits where they apply to development in AECs. The LDO will be primarily concerned with development in beach hazard areas, estuarine

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*LDO referes to the local official authorized and designated by the CRC and local government to administer the minor development permit.

shorelines, and public water supply areas because any development in water-covered areas and wetlands requires a state permit, and thus is major development by definition. Consequently, the applicable local permits are septic tank approval, sand dune permits, erosion control plan approvals, floodway zoning permits, building, electrical and plumbing inspection, and subdivision and zoning approvals. Local governments will be encouraged to coordinate and consolidate all appropriate local permit programs in order to achieve the maximum degree of efficiency and economy while streamlining the process for the applicant. It is particularly important and efficient for the LDO to determine sand dune permits in ocean hazard areas and erosion control plans in estuarine shorelines because most applications will be for development in these areas and the standards for the CAMA permit incorporate sand dune protection and erosion control standards.

2. Monitoring and Conflict Resolution

(a) Monitoring

The responsiveness and simplicity of our permit program will be enhanced by the delegation of administrative responsibilities to local government. However, it is necessary when delegating responsibilities for any purpose to attach a degree of accountability. The Coastal Reosources Commission has recognized this fact and is planning to actively monitor the results of the minor permit program and evaluate the performance of each local government. Consistency with the Commission's standards for AECs, compliance with the provisions of the approved local implementation and enforcement plan, and conformity with the administrative provisions of CAMA will be the primary subjects to be emphasized in the monitoring activities.

(b) Remedies for Violations by the Local Permit-Letting Agency

When a local permit-letting agency fails to administer or enforce the local implementation and enforcement program submitted to the Commission and approved by it, the Commission shall:

- notify the local permit-letting agency in writing that it is in violation of the provisions of its local management plan and specifying the grounds for such charges of violation;
- inform the local permit-letting agency of specific deficiencies in administration and enforcement;
- inform the local permit-letting agency of its opportunity to request a hearing before the Commission at which time it may make any presentation or present any arguments relevant to the issue raised in the Commission letter to the local agency. The Commission may question any witness presented by the local permit-letting agency. The Commission may at its sole discretion hear from any other affected person at the hearing.

When the conditions are not remedied or corrected within 90 days after receipt of Commission notification of such violation, the Commission shall assume the duties of the local permit-letting agency until the local permit-letting agency indicates to the Commission in writing its willingness and/or ability to perform in conformance with its approved local implementation and enforcement plan. Such willingness and ability in addition to changed circumstances as to ability shall be substantiated in writing to the Commission.

When the local permit-letting agency exceeds the scope and extent of its authority, which is limited to consideration of applications proposing minor development as defined in CAMA, that action shall be null, void, and of no effect. The determinations of the Commission shall be binding on the local permit-letting agency as to questions of such jurisdiction.

The local permit-letting agency lacks the authority to issue variances (G.S. 113A-120(c)) or to consider permits for

the siting of any utility facility for the development, generation, or transmission of energy when such facilities require permits under the CAMA.

(c) Resolution of Conflicts

In North Carolina's coastal zone management program, the effort has been made to resolve conflicts among different land and water uses initially involving the general public, special interest groups, local governments, federal and regional agencies and the like in the formulation of policies concerning the acceptibility of land uses. It would be unrealistic to assume, however, that all possible conflicts could be anticipated, much less resolved, in program development. For that reason, the management program includes specific provisions for the resolution of such conflicts in program implementation and enforcement.

CAMA, in establishing the procedure for grant or denial of permits, includes procedures whereby

> "any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, regulations, standards or limitations prescribed by theCommission, or orders issued by the Commission, pursuant to this Article. When the Commission finds that:
>
> (a) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, regulations, standards, or other restrictions applicable to the property,
>
> (b) such difficulties or hardships result from conditions which are peculiar to the property involved,
>
> (c) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, regulations, standards or restrictions were adopted or amended,
>
> The Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public welfare secured, and substantial justice preserved.
> In varying such regulations, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit of issues" (G.S. 113A-120(c);

> "any person who is directly affected by the decision of the Secretary or the designated local official (as the case may be) to grant or deny an application for minor development permit, may request within 20 days of such action, a hearing before the Commission" (G.S. 113A-121(d)).

The CAMA (G.S. 113A-122(a)(b)) describes the procedures which are to be followed in connection with hearings (pursuant to this section) which include provisions for (a) notice given by the CRC to persons party to the proceedings, (b) public attendance, (c) records kept of the proceedings, (d) following procedures applicable in civil actions, (e) administering oaths and issuing subpoenas, (f) exercising police power in issuing subpoenas (g) assigning the burden of proof, and (h) decision making based on evidence.

In addition, the CAMA (G.S. 113A-123) allows "any person directly affected by any final decision or order of the Commission (under this Part) to appeal such decision or order to the superior court of the county where the land or any part thereof is located."

CHAPTER 5 POLICIES AND AUTHORITIES FOR THE COASTAL ZONE OUTSIDE OF AECs

This document has emphasized that North Carolina has chosen a two-tiered approach to coastal management in recognition of the need for two levels of management in the coastal zone. The first level consists of thorough management of practically all uses in those areas most vital to coastal waters (AECs); the second level consists of less stringent management of uses outside of those vital areas.

Concerning management of the first tier, the determination has been made that in order to accomplish the broad goals and objectives of North Carolina's coastal management plan, a dispositive state-administered management tool such as the CAMA permit is necessary. Concerning management of the less vital second tier, the determination has been made that two major approaches are adequate and feasible at the present time.

The first approach is the promulgation by the Commission of State Guidelines and the development by local governments of land use plans that are consistent with those Guidelines. Thus, both the State Guidelines and the local land use plans are a part of North Carolina's management program. This approach is therefore a joint state-local effort, with state responsibility for the broad framework and policies for local planning (particularly through the land classification system) and the local responsiblity for fleshing out the framework and implementing the plan.

The second approach involves direct state regulation through existing regulatory programs of certain types of uses and activities which, because of their type or size, have potential to directly and significantly affect coastal

waters and are therefore of statewide concern. These critical uses should be considered "permissible uses" in the FCZMA terminology. At least one, and in most cases several, state permits apply to each of these critical uses. The standards applied under all of the permits applicable to a particular critical use should be viewed in combination as a set of "performance standards" for that critical use.

This chapter discusses the two approaches, describing in detail the policies to be promulgated through each approach, the authorities for implementing those policies, and the mechanisms for monitoring implementation and resolving conflicts.

A. CRC Guidelines and Local Plans

1. Policies Established in Guidelines

Section 113A-107(a) of the CAMA provides that the CRC may adopt State guidelines for the coastal area which

> "shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the Coastal Area Management System as set forth in G.S. 113A-102."

Particular attention should be given to the provision of Section 113A-102(b)(4)(i) through (vii) which provide guidance as to which concerns the guidelines should address. The Commission is therein authorized to

> "establish policies, guidelines, and standards for:
>
> (i) Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas expecially suited to intensive use of development, as well as areas of significant natural value;
>
> (ii) The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;

(iii) Recreation and tourist facilities and parklands;

(iv) Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;

(v) Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;

(vi) Protection of present common law and statutory public rights in the lands and waters of the coastal area;

(vii) Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

Section 113A-108 also provides that "any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area." It is obviously also very problematic to determine what effect the adoption of broad policy guidelines by the CRC would have on any future state land classification system.

The State Guidelines require that every local land use plan include a land classification system and set forth the policies for that system. The following discussion, based on Chapter II, Part D of the Guidelines, describes the system and the policies for uses of land within each class.

The North Carolina land classification system contains five classes of land. These five classes provide a framework to be used by local governments to identify the general use of all lands in each county. Such a system presents an opportunity for the local government to provide for its needs as well as to consider those of the whole state. This system also allows local governments to make a statement of policy regarding the location and density of growth and to conserve the county's natural resources by guiding growth.

The five classes of land and policies for their use are:

<u>Developed</u> - The Developed class identifies developed lands which are presently provided with essential public services. This category is distinguished from areas where significant new growth and/or new service requirements will occur. Continued development and redevelopment in these areas should be encouraged to allow for orderly growth.

<u>Transition</u> - The Transition class identifies lands in which moderate to high density growth is to be encouraged and in which any such growth that is permitted by local regulation will be provided with the necessary public services. Land classified Transition should be considered in the following order:

> First priority is for lands which presently have a gross population density of more than 2,000 people per square mile, but do not qualify as Developed because they lack the necessary minimum public services. These areas may not be expected to accommodate additional population, but they will require funds for services to avoid public health and safety problems.
>
> Second priority is for lands that have all the necessary public services in place, but which lack the minimum gross population density of 2,000 people per square mile needed to qualify the area as Developed. These areas therefore have not utilized the capacity of the existing services.
>
> Third priority is for additional lands necessary to accommodate the remainder of the estimated Transition growth for the ten year planning period.

In choosing lands for the Transition class, such lands should not include areas with severe physical limitation for development with public services; lands which meet the definition of the Conservation class; lands of special value such as the following unless no other reasonable alternative exists: productive and unique agricultural lands, productive forest lands, potentially valuable mineral deposits, potential aquifers and key parts of water supply watersheds, scenic and tourist resources, habitat for economically valuable wildlife species, flood fringe lands,open coast flood hazard areas

and estuarine flood hazard areas.

Community - The Community class identifies existing and new clusters of low density development not requiring major public services. This class includes existing clusters of one or more land uses such as a rural residential subdivision or a church, school, general store, industry, etc. This class will provide for all new rural growth when the lot size is ten acres or less. Such clusters of growth may occur in new areas, or within existing community lands. In choosing lands for Community growth, such lands should not include areas with severe physical limitations for development; areas meeting the definition of the Conservation class; lands of special value such as the following unless no other reasonable alternative exists: productive and unique agricultural lands, productive forest lands, potentially valuable mineral deposits, potential aquifers and key parts of water supply watersheds, scenic and tourist resources, habitat for rare and endangered wildlife species and economically valuable wildlife species, flood fringe lands, open coast flood hazard areas and estuarine flood hazard areas. New development in the Community class areas will be subject to subdivision regulations under the Enabling Subdivision Act (G.S. 143A-330 et. seq.). In every case, the lot size must be large enough to safely accommodate on-site sewage disposal and where necessary water supply so that no public sewer services will be required now or in the future. Limited public services should be provided in the Community class such as public road access and electric power.

Rural - The Rural class identifies lands for long-term management for productive resource utilization where only limited public services will be provided. Development in

such areas should be compatible with resource production.

Conservation - The Conservation class identifies land which should be maintained essentially in its natural state and where very limited or no public services are provided. Lands to be placed in the Conservation class are the least desirable for development because they are too fragile to withstand development without losing their natural value; and/or they have severe or hazardous limitations to development; and/or though they are not highly fragile or hazardous, the natural resources they represent are too valuable to endanger by development. Lands in the Conservation class at a minimum should include fragile areas such as wetlands, steep slopes and prominent high points, frontal dunes, beaches, surface waters (including lakes and ponds, rivers and streams, and tidal waters below mean high water), prime wildlife habitat, and unique natural areas and historic and archaeological sites; hazard areas such as floodways, ocean erodible areas, inlet lands, and estuarine erodible areas; and other areas such as publicly-owned forest, park, and fish and game lands and other non-intensive outdoor recreation lands, privately owned sanctuaries, etc., which are dedicated to preservation, publicly-owned water supply watershed areas, undeveloped key parts of existing water supply watersheds, and potential water impoundment sites. In addition to the above named types of land, a county may include other areas to be maintained in an essentially natural state which are needed to implement their stated policy objectives.

As a statement of local policy consistent with statewide needs and goals, the county land classification map will serve as a basic tool for coordinating numerous policies, standards, regulations, and other governmental activities at the local, state, and federal level. Such coordination

may be achieved by the following methods:

- The land classification system encourages coordination and consistency between local land use policies and those of state government. Lands are classified by the local governments. The CRC reviews those classifications to ensure conformance with minimum guidelines for the system. The coastal county maps taken together will be the principal policy guide for governmental decisions and activities which affect land uses in the coastal area.
- The system provides a guide for public investment in land. For example, state and local agencies can anticipate the need for early acquisition of lands and easements in the Transition class for schools, recreation, transportation, and other public facilities.
- The system can also provide a useful framework for budgeting and planning for the construction of community facilities such as water and sewer systems, schools, and roads. The resources of many state and federal agencies, as well as those of the local government which are used for such facilities can then be more efficiently allocated.
- In addition, such a system will aid in better coordination of regulatory policies and decisions. Conservation and Rural lands will help to focus the attention of state and local agencies and interests concerned with the valuable natural resources of the state. On the other hand, lands in the Transition and Community classes will be of special concern to those agencies and interests who work for high quality development through local land use controls such as zoning and subdivision regulations.
- Finally, the system can help to provide guidance for a more equitable distribution of the land tax burden. Private lands which are in the Rural and Conservation classes should have low taxes to reflect the policy that

few, if any, public services will be provided to these lands. In contrast, lands in the Transition class should be taxed to pay for the large cost of new public services which will be required to support the density of growth anticipated.

Policies, rules, and actions concerning AECs shall take precedence over policies, rules, and actions concerning the land classifications, in the event of any conflicts. The Commission is empowered to review and update the land classification system as it deems necessary.

B. Uses and Activities of Statewide Concern

This section will discuss uses and activities outside the first tier (AECs) which are of statewide concern and are therefore subject to the purview of the coastal management program (included are a few uses which will be found within AECs, but which are regulated by an authority that provides additional management capability to that provided by the CAMA permit). The CAMA authorizes the CRC to establish policies, guidelines, and standards for activities throughout the coastal area, including protection, preservation, and conservation of natural resources; economic development; recreation and tourist facilities and parklands; transportation and circulation patterns; preservation and enhancement of the historic, cultural, and scientific aspects; protection of present common law and statutory public rights. (Section 102(b))

Because these uses are of statewide concern and come under the purview of the coastal management program, they are called critical uses, or in terms of the FCZMA, the permissible uses. They are the uses which have the potential of causing direct and significant impact on coastal waters.

In the case of North Carolina, statewide policies and authorities already exist to manage the critical uses and activities. This management is undertaken through the issuance of permits according to specific standards and criteria.

The following sections identify the uses and policies subject to the management program, discuss the authorities relevant to these uses, and describe the mechanisms that will be used to ensure that the goals and objectives of CAMA are being met.

1. Uses and Activities Subject to the Management Program

Uses are divided into six major categories. In order to have a manageable and comprehensible number of categories, some of the groupings may at first appear arbitrary. If the linkages are not immediately apparent, the rationale will be explained. All of the listed activities require at least one permit which will be issued in consultation and coordination with the CRC/DNER once the management program has been approved. Standards and criteria for the permits are found in the appendix. Compliance by other state agencies with goals and objectives of the coastal management program is discussed in the last section of this chapter. The matrix shows the permits required for each activity and the agency responsible for issuing the permit.

The six major categories are as follows:

- Energy Development and Mineral Extraction

    Petroleum refineries
    Mining Operations
    Energy generating facilities
    Oil and gas wells
    Major petroleum storage sites

- Commerce and Industry

  Industrial parks

  Shopping centers

  Commercial fishing (fishing can also be recreational, but it will be considered in this category because it is a major contributor to North Carolina's gross state product and because the State has a commercial fishing policy.)

  Development and preservation of estuarine areas. This is grouped with Commercial activities because of the direct relationship between the quality of estuarine waters and the commercial productivity of the fishing industry.

- Residential and Related Uses

  (Water and sewerage activities are considered in this category because they are major factors in residential development, and individual residential decisions can incrementally cause direct and significant impact on coastal waters. Water and sewerage controls are a means of guiding these incremental residential decisions. Water is also a major factor in industrial, commercial, and agricultural use, but these uses are already managed through other authorities.)

  Large water wells

  High-rise apartments or hotels

  Large subdivisions

  Sewage treatment facilities

  Public drinking water supplies and systems

  Solid waste disposal sites

- Recreation and Preservation

  (Preservation is grouped with recreation because leisure-time use is often closely linked with areas that have been purposefully preserved or restored.)

  Large marinas

  State parks

  State forests

  Preservation of natural and scenic rivers

  Public accessways to state waters and beaches

- Transportation
  - Bridges
  - Commercial ports
  - State roads
- Agriculture
  - Livestock feedlot operations
  - Livestock grazing on outer banks
  - Pesticide application
  - Large drainage operations
- Water Control Projects and Impoundments
  - Large dams
  - Major water diversions

2. Policies for Uses and Activities

North Carolina already has legislated policies which apply to the uses and activities listed in the preceeding section. These policies are grouped in the same categories as the listing of activities. Those cases where policy statements relate to more than one category will be noted.

It is general state policy to:

"Advise and confer with various interested individuals, organizations and state, federal, and local agencies which are interested in development of the seacoast area and use its facilities and efforts in planning, developing, and carrying out overall programs for the development of the area as a whole; Act as liaison between agencies of the state, local government, and agencies of the federal government concerned with development of the seacoast region." (G.S. 113-14.1)

In addition, the General Assembly of North Carolina,

"recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be

the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance." (G.S. 113A-3)

"It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly..., to achieve and to maintain for the citizens of this State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's utlimate responsibility for the preservation and development of these resources in the best interests of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare." (G.S. 143-211)

- Energy Development and Mineral Extraction

Energy Generating Activities - It is state policy that construction of a facility for the generation of electricity to be used directly or indirectly for the furnishing of public utility service shall not begin until there is a determination by the State Utilities Commission that public convenience and necessity requires, or will require, such construction. It is state policy to protect the public interest in natural oil and/or gas by establishing regulations to prohibit waste, compel ratable production, and protect the environment. (G.S. 62-110)

Mining - It is state policy that the usefulness, productivity, and scenic values of all lands and water involved in mining within the State will receive the greatest practical degree of protection and restoration. No mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the environment and reclamation of the affected area of land. (G.S. 74-48)

- Commerce and Industry

Impact of Industry - It is state policy for the Department of Natural and Economic Resources to conduct an evaluation in conjunction with other state agencies having environmental responsibilities of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina (G.S. 113-15.2).

Rights in Coastal Waters - The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole (G.S. 113-131).

Sedimentation Pollution Control - According to state policy, "Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of the Sedimentation Pollution Control Act of 1973 to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. " (G.S. 113A-50)

Air Pollution Control - It is state policy to administer a complete program of pollution abatement and control and to achieve a coordinated effort with other jurisdictions. Standards of air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to ensure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. (G.S. 143-211)

- Residential and Related Uses

Water quality policies are included in this section because as noted before they are a major means of managing residential development. In addition, this was felt to be the appropriate section for policies relating to citizen health and well-being.

Water Supply - In the interest of the public health, every person or unit of local government supplying water to the public for drinking and household purposes shall comply with the rules and regulations of the Commission for Health Services in the location, construction and operation of a water supply system (G.S. 130-158).

It is also state policy to require that all proposed public water supply systems be designed in such a manner as will permit the provision of an adequate, reliable and safe supply of water to all service areas anticipated or projected by the owner, owners or developer of the system, and as will further permit interconnection of the system, at an appropriate time, with an expanding municipal, county or regional system (G.S. 130-161. lb 3).

It is state policy to encourage the planning and development of regional water supplies in order to provide adequate supplies of high quality water to the citizens of North Carolina. In connection with this policy, it is the role of state government to provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions, so as to make possible the most efficient use of available water resources and economies of scale for construction, operation, and maintenance. The State should also provide financial assistance to local governments and regional authorities in order to assist with the cost of developing comprehensive regional plans and county-wide plans compatible with a regional system (G.S. 162A-21.4).

It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources (G.S. 143-215.12). The Environmental Management Commission may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters (G.S. 143-215.13d).

Consistent with the duty to safeguard the public welfare, safety, health and to protect and beneficially develop the ground-water resources of this State, it is declared to be the policy of this State to require that the location, construction, repair, and abandonment of wells, and the installation of pumps and pumping equipment conform to such reasonable requirements as may be necessary to protect the public welfare, safety, health and ground-water resources (G.S. 87-84).

Water Quality - It is state policy to administer a complete program of pollution abatement and control and to achieve a coordinated effort of pollution abatement with other jurisdictions (G.S. 143-211).

It is also state policy that water bodies and stream segments will be managed according to their assigned best usage (G.S. 143-214.1).

It is state policy to encourage the planning and development of regional sewage disposal systems in order to provide a framework for comprehensive planning of regional sewage disposal systems and for orderly coordination of local actions

relating to sewage disposal, to make possible the most efficient disposal of sewage and to help realize economies of scale in sewage disposal systems (G.S. 162A-28).

Floodway Regulation - It is the public policy of the State of North Carolina to guide, coordinate and assist responsible local governments to designate as floodways the channels and portions of flood plains of all of the State's streams in which artificial obstructions may not be placed except with the provisions of this part. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent or minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas (G.S. 143-215.51).

Solid Waste Pollution - It is state policy to prevent nuisances and promote and preserve an environment that is conducive to public health and welfare by establishing standards to accomplish the maintenance of safe and sanitary conditions in and around solid waste disposal site facilities (G.S. 130-166.17).

Ground Absorption Sewage Disposal Systems - It is state policy to render ground absorption sewage disposal systems ecologically safe and to protect the public health by establishing regulations to prevent installation of such systems in a faulty or improper manner or in areas where unsuitable soil and population density adversely affect their efficiency and functioning so as to have a detrimental effect on the public health through contamination of the ground water supply (G.S. 130-166.23).

- Recreation and Preservation

Many of these policies also apply to industrial development as well.

It is state policy to assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas; plan and promote recreational and industrial developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents; coordinate the activities of local governments, agencies of the State, and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth; study the development of the seacoast areas and implement policies which will promote the development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast (G.S. 113-14.1).

Conservation of Natural Resources - It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and the political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty. (Environmental Bill of Rights, Section 5, Article 14 of Constitution of North Carolina)

Natural and Scenic Rivers - The General Assembly finds that certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational,

historic, fish and wildlife, scientific and cultural values of great present and future benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the State's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose (G.S. 113A-31).

- The CRC and DNER have not yet worked with the Departments of Agriculture and Transportation on policy statements specifically for Agriculture and Transportation uses. However, as the matrix indicates, certain environmental regulations are applicable (see matrix and case studies).

- Water Control Projects and Impoundments

It is hereby declared the public policy of the State of North Carolina to encourage development of such river and harbor, flood control and other similar civil works projects as will accrue to the general or special benefit of any county or municipality of North Carolina or to any region of the State (G.S. 143-215.39).

It is the public policy of the State of North Carolina to maintain minimum stream flows below (downstream) all major water control dams and impoundments in order to meet and maintain state stream water quality classifications (G.S. 143-215.25). It is also state policy to record the inflow of water into and release of water from such reservoirs of the district as may be designated (G.S. 139-35bl).

3. Matrix Relating Authorities and Policies to Activities

The matrix on the following page is for the purpose of identifying the authorities (regulations) that are applicable to each of the critical (permissible) uses included under North Carolina's management plan. The critical uses are listed in the vertical column on the left, and the authorities are listed in the horizontal column across the top. "X"s mark the authorities that apply to each critical use. (Five of the authorities are applied to certain types of areas, rather than specific uses. Therefore, all uses in these areas are subject to regulation unless they are exempted by the authorizing legislaiion or agency regulations. These regulated areas are capacity use areas, floodways, sand dune protection areas, and wetlands subject to dredge and fill regulations.)

Once the applicable authorities and the agencies that implement them are identified, more specific information concerning the standards, procedures, and exemptions under each of those authorities may be found in the "Inventory and Description of Authorities." The combination of standards applied to any particular use through the relevant authorities can thus be considered as a set of performance standards for that use.

CRITICAL USES / AUTHORITIES (DEPARTMENT)	Sedimentation Pollution Regulations	NPDES--Point Source Water Pollution Regulation (DNER)	Permits for Large Waste Disposal Systems (DNER)	Permits for Withdrawal in Capacity Use Areas* (DNER)	Regulation of Floodways* (DNER)	Diversion of Waters (DNER)	Regulation of Sand Dune Protection Areas* (DNER)	Prohibition of Oil Discharges into Waters (DNER)	Permits for Oil Refineries (DNER)	Permits for Air Pollution Sources (DNER)	Permits for Construction of Large Wells (DNER)	Permits to Dredge & Fill* (DNER)	Special Orders in Wetlands & Contiguous Areas* (DNER)	Regulation of Commercial Fishing (DNER)	Prohibition of Grazing on Outer Banks (DNER)	Permits to Drill for Oil & Gas (DNER)	Permits for Mining Operations (DNER)
Petroleum Refineries	X	X			X		X	X	X	X		X	X				
Large Water Wells				X			X				X	X	X				
Mining Operations		X		X	X		X			X	X	X	X				X
Livestock Feedlot Operations		X					X					X	X				
High-Rise Apartments or Hotels	X		X	X	X		X				X	X	X				
Industrial Parks	X			X	X		X			X		X	X				
Large Subdivisions	X		X		X		X				X	X	X				
Large Shopping Centers	X	X			X		X			X	X	X	X				
Energy Generating Facilities	X	X	X	X	X		X			X	X	X	X				
Bridges	X						X					X	X				
Commercial Ports	X	X	X				X	X		X		X	X				
Large Marinas		X	X				X	X				X	X				
Sewage Treatment Facilities	X	X	X		X		X					X	X				
Oil and Gas Wells		X			X		X			X		X	X			X	
Major Petroleum Storage Sites	X	X			X		X	X				X	X				
Livestock Grazing on Outer Banks							X					X	X		X		
Pesticide Application							X					X	X				
Large Dams		X					X					X	X				
Public Drinking Water Supplies & Systems				X			X				X	X	X				
Solid Waste Disposal Sites	X	X					X			X		X	X				
Large (Land) Drainage Operations		X		X			X					X	X				
Commercial Fishing														X			
Preservation of Historic Properties																	
Major Water Diversions						X											
State Parks							X					X					
State Forests																	
Preservation of Natural & Scenic Rivers																	
Public Accessways to State Waters & Beaches							X					X	X				
Development & Preservation of Estuarine Areas																	
State Roads	X						X					X	X				

CRITICAL USES / AUTHORITIES (DEPARTMENT)	Permits for Construction of Large Dams (DNER)	Regulation of Pesticide Application (DOAG)	Licensing of Power Generating Facilities (DOC)	Permits for Small Septic Tanks & Wells (DHR)	Permits for Public Water Supplies & Systems (DHR)	Regulation of Solid Waste Disposal Sites (DHR)	Acquisition & Management of Parks (DNER)	Acquisition & Management of Scenic Rivers (DNER)	Acquisition & Management of State Forests (DNER)	Disposition of Mineral Rights in State Lands (DOA)	Easements, Leases, Sales of State Land (DOA)	Acquiring Land for Public Access to State Waters (DOA)	Acquiring Land for Developing Waterways (DOA)	Acquiring, Managing, & Preserving Estuarine Areas (DOA)	Acquiring & Managing Historic Sites (DCR)	Development & Improvement of Harbors (DOT)	Acquiring Land & Regulating Road Construction (DOT)
Petroleum Refineries																	
Large Water Wells					X												
Mining Operations	X									X							
Livestock Feedlot Operations																	
High-Rise Apartments or Hotels				X	X												
Industrial Parks				X	X	X											
Large Subdivisions				X	X												
Large Shopping Centers				X	X												
Energy Generating Facilities	X		X	X													
Bridges											X						X
Commercial Ports				X									X			X	
Large Marinas				X							X						
Sewage Treatment Facilities																	
Oil and Gas Wells										X							
Major Petroleum Storage Sites																	
Livestock Grazing on Outer Banks																	
Pesticide Application		X															
Large Dams	X										X						
Public Drinking Water Supplies & Systems					X												
Solid Waste Disposal Sites						X											
Large (Land) Drainage Operations																	
Commercial Fishing													X				
Preservation of Historic Properties															X		
Major Water Diversions																	
State Parks							X				X						
State Forests									X		X						
Preservation of Natural & Scenic Rivers								X									
Public Accessways to State Waters & Beaches												X					
Development & Preservation of Estuarine Areas														X			
State Roads																	X

* DENOTES AN AUTHORITY THAT APPLIES IN SPECIFIED TYPES OF AREAS RATHER THAN TO SPECIFIED TYPES OF USES. IN THESE AREAS, ANY USE, EXCEPT THOSE SPECIFICALLY EXEMPTED BY STATUTE, IS SUBJECT TO THE REGULATION. AN X DENOTES THE USES THAT ARE LIKELY TO REQUIRE A PERMIT WHEN LOCATING IN THE REGULATED AREA.

ABBREVIATIONS FOR STATE AGENCIES & REFERENCES TO THE PAGES ON WHICH THE AGENCY'S AUTHORITIES ARE DISCUSSED IN DETAIL

DNER -- DEPARTMENT OF NATURAL & ECONOMIC RESOURCES P. 5-22 - P. 5-44
DOAG -- DEPARTMENT OF AGRICULTURE P. 5-49
DOC --- DEPARTMENT OF COMMERCE P. 5-49 - P. 5-51
DHR --- DEPARTMENT OF HUMAN RESOURCES P. 5-52 - P. 5-56
DOA --- DEPARTMENT OF ADMINISTRATION P. 5-44 - P. 5-49
DCR --- DEPARTMENT OF CULTURAL RESOURCES P. 5-52
DOT --- DEPARTMENT OF TRANSPORTATION P. 5-56 - P. 5-57

It is the public policy of the State of North Carolina to provide for the certification and inspection of certain dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of such dams; to prevent injuries to persons, damage to property and loss of reservoir storage; and to insure maintenance of stream flows below such dams of adequate quantity and quality (G.S. 143-215.24). Dams constructed and operated by an agency of the U.S. Government are exempt from this law.

4. Inventory and Description of Authorities for Managing Uses and Activities

(The following description of authorities is organized by first describing the pertinent state agencies and then the authorities that the agencies administer. Thus, the order of discussion of the authorities does not correlate with the preceding.)

North Carolina has over the past several years developed an extensive program of authorities which allows the State to influence the impacts of certain types of development considered to have potential to significantly affect the environment. This composite of authorities can be divided into two categories, which are differentiated based on the type of role that the particular authorities allows the State to play. The two categories of authorities are authorities that allow regulation, primarily of private uses; and authorities that affect government or government financed activities (state, local, and federal) through controls of acquisition, spending, planning, and review of projects. Regulation is the direct use of the State's police power to ensure that the regulated projects meet certain standards. This is the most direct form of authority that the State exercises over private development.

The power of acquisition is simply any statutory authority the State might have to purchase or to otherwise receive land for purposes that can contribute to managing land and water uses that directly and significantly affect coastal waters. This authority is, to the extent that land is purchased, a form of spending, but it is such a specialized form and provides such direct and complete control of the lands involved that it deserves separate treatment. The power to spend includes any authority the State has to spend money for building facilities for public use. Traditional examples that are particularly important to coastal management are roads, bridges, and port facilities. Planning and review functions include those authorities that allow State input into decisions that are made at other levels of government. These might include review of both federal projects or federal grants to localities in the coastal zone, where those projects or grants have the potential to directly and significantly affect coastal waters. This type of authority might also include any state input, standards, or guidelines affecting locally administered authorities that are important to coastal management. An example is the minimum standards set as the state level for septic tank regulations that are otherwise administered by the counties. This type of authority is less decisive and direct (from the State's viewpoint) than the others, but nevertheless offers real opportunities to apply state coastal management policies in the coastal zone.

To determine the potential of North Carolina's composite of authorities to effectuate the management policy for relevant land and water uses in the coastal zone, three factors must be considered. The first factor is whether the aggregation of authorities is sufficiently comprehensive or broad to allow management of a full spectrum of uses in the coastal zone that may directly and significantly affect coastal waters, and

which must therefore be managed to effectuate a coastal management program. The second factor concerns whether the combination of authorities applicable to each use allows consideration of those aspects of that use that are relevant and essential to the coastal management. More simply, does the authority allow consideration of the necessary factors to be an effective tool. The third factor is the capability of ensuring that the authority will be administered in conformance with North Carolina's coastal management policies, whenever the coastal zone is affected by the activity under consideration.

The following discussion begins to address these factors by describing the organizational structure of those state agencies that administer the pertinent authorities, and then listing and describing those authorities. The authorities are grouped under the agency and/or sub-agency responsible for its administration. The narrative description of each authority includes description and location of the regulated activity and the mechanisms for enforcing the authority. The purpose is to clarify the scope, breadth, and organizational relationship of the authorities. (The following two sections will then deal with the relationship between the authorities and the critical uses and the State's capability to ensure that the authorities are responsive to the appropriate state coastal policies.)

The first category of state authorities to be listed and described under each agency is regulatory authorities, because they are generally the most direct and decisive management tool by which the state can influence a wide range of private land and water uses that have the potential to directly and significantly affect coastal waters. At this juncture it is important to emphasize again the North Carolina approach to describing permissible uses in the coastal zone. In designated areas of environmental concern, priority uses

are determined by the standards or guidelines for development in each of the AEC categories. These standards vary for each type of AEC and are administered through the required permit process for development within AECs, eg. the CAMA permit.

Permissible uses outside of AECs are based on a very different assumption in that all uses are presumed appropriate unless subject to the following network of authorities. Where subject to such an authority, the permissibility of the use is then determined by the standards of the pertinent regulation(s). Thus, all uses are permissible outside of designated AECs in the 20 coastal counties unless a permit or other regulation or review authority applies to that use. Then the issue of permissibility turns on the standards required by the applicable permit or other regulation which in combination therefore establish the "performance standards" for the particular use in question.

(a) The Department of Natural and Economic Resources

This agency is responsible for administering by far the broadest range of authorities related to coastal management. Therefore, DNER has been designated by the Governor as the single agency to manage the program development and administration phases of North Carolina's coastal zone management program.

DNER was created by the Executive Organization Act of 1971 (Article 12, G.S. 143A), and its present composition and powers are defined by the Executive Organization Act of 1973 (Article 7, G.S. 143B). By combining the State's programs for economic development and management of natural resources in one department, DNER continues a long tradition of similar organization in North Carolina. These functions were first combined in the State Geological and Economic Survey from 1905 to 1924 and later in the Department of Conservation and Development from 1924 to 1974. The duties of the Department are "to provide for management and protection of the State's natural resources and environment and to promote and assist

in the economic development statewide" (G.S. 143B-276).

The Department is headed by the Secretary of Natural and Economic Resources, assisted by two assistant secretaries. As provided by G.S. 143B-10(a), the Secretary "may assign or re-assign any function vested in him or in his department to any subordinate officer or employee of his department."

The Department is functionally organized into eight divisions. These are the Wildlife Resources Commission (which is assigned to the Department for coordinating and reporting purposes only (G.S. 143B-281)), the Division of Environmental Management, the Division of Marine Fisheries, the Division of Forest Resources, the Division of Earth Resources, the Division of Community Assistance, the Division of Economic Development, and the Division of Parks and Recreation. In addition, DNER includes the Board of Natural and Economic Resources, the Wildlife Resources Commission, the Environmental Management Commission, the Marine Fisheries Commission, the North Carolina Mining Commission, the Soil and Water Conservation Commission, the Sedimentation Control Commission, the Wastewater Treatment Plant Operators Commission of Certification, and the Coastal Resources Commission; and a number of Councils and Committees.

The Department's basic program delivery mechanism is through its Divisions and the staff of the Wildlife Resources Commission. In order to facilitate contact with the Department and in order to move the point of initial contact with the Department closer to citizens and local governments, the Department operates seven field offices in Washington, Wilmington, Fayetteville, Raleigh, Mooresville, Asheville, and Winston-Salem. Each field office has a full complement of personnel in environmental management, community assistance, and economic development. Other functions of the Department are represented by assigned liaison personnel from other divisions.

The principal responsibility for administering CAMA is assigned by statute to DNER. The Department was designated by the Governor as the single agency to manage the program development phase of North Carolina's coastal area management program. Furthermore, the Department has also been designated as the single state agency to administer the State's program as required by 15 CFR 923.23. In addition, DNER is assigned statutory responsibility for pollution control, management of forests, fish and wildlife, and parks and recreation and for economic development and community planning. This unique scope of authority, achieved by virtue of DNER's wide array of constituent agencies, represents the potential for the kind of coordination that is necessary in a complex program such as coastal zone management. Thus, North Carolina's program is to a great extent located within a single implementing agency.

As might be inferred from the statutory mission of the Department, DNER administers a wide array of programs. These may be summarized as follows:

(i) Division of Environmental Management

This Division administers a comprehensive program of water and air quality control and programs of planning and enforcement to support these functions. The purpose of the program is to achieve and maintain for the citizens of North Carolina, a total environment of superior quality and to secure for the people the beneficial uses of water, air and integrally related natural resources. There are five principal subprograms within the Division:

Water Quality - administers programs designed to attain and maintain a level of water quality adequate for beneficial uses of the State's waters, but of a minimum quality, where attainable, which will provide for a balanced population of fish shellfish and wildlife.

Air Quality - administers a program designed to attain and maintain air quality equal or better than National Primary and Secondary air quality standards, and preserve the quality of presently clean air through development and implementation of a realistic "no significant deterioration" program.

Groundwater Resources - the purpose of this program is the identification, evaluation, development, and management of the State's groundwater resources.

Laboratory - provides analytical support to the air quality, water quality, and groundwater programs.

Enforcement - maximize compliance with water quality, air quality, land quality, and groundwater statutes and regulations.

The majority of the quasi-legislative, rule-making and enforcement authorities involved in the environmental management program are vested by statute in the Environmental Management Commission.

The specific authorities administered by the Division of Environmental Management pursuant to the North Carolina General Statutes are as follows:

-- Chapter 143, Article 21

This series of statutes provides the Division of Environmental Management with authority to direct various forms of water uses most likely to directly and significantly affect coastal waters. Specifically, G.S. 143-214.1 enables the Environmental Management Commission to classify the waters of the State and adopt standards applicable to each classification. Then in order to prevent degradation of these waters, certain regulations are authorized. G.S. 143-214.2 prohibits discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste into the waters of the State. Discharges, including thermal discharges, into

groundwaters or the Atlantic Ocean within the jurisdiction of the State are also prohibited.

G.S. 143-215.1 requires that a permit be secured by all persons desiring to make outlets into the waters of the State or otherwise become a "point source" for pollution of state waters, particularly including construction and alteration of sewage systems, treatment works, or other disposal systems. Actions upon permit applications may be based on criteria deemed necessary to prevent, so far as reasonably possible, any pollution or increased pollution of the waters of the State from additional or enlarged sources.

G.S. 143-215.2 authorizes the Environmental Management Commission to issue a special order pursuant to the above authorities (143-214.1 and 143-215) to any person who it finds responsible for causing or contributing to any pollution of waters of the State for which standards have been set.

The above statutes, specifically G.S. 143-213(24); 143-215, 143-215.1; and 143-215.3(a)(1), give the Environmental Management Commission authority to promulgate regulations for concentrated animal feeding operations. These regulations allow staff to determine whether concentrated feeding operations cause a discharge of pollutants to occur to surface waters of the State either through man-made ditches or other devices, or to surface waters which originate outside of and pass over, across, through, or otherwise come in contact with animals confined in the operation. A permit is required for any operation found to cause such types of pollution.

National Pollutant Discharge and Elimination System

The EPA is authorized through Section 402 of the Federal Water Pollution Control Act of 1972 to set up and administer a permit program for point source discharge. This can be

accomplished by a federal permit program or by certifying state permit programs if states can meet the criteria found in 40 CFR 124.

The combination of regulations pursuant to the authorities mentioned above have been found consistent with federal standards. Therefore, Environmental Management now implements the federally approved NPDES program whose standards essentially complement the existing state regulations. The NPDES program affords consistency of regulation to all persons discharging or proposing to discharge point source waste into surface waters. All state actions are subject to EPA veto when federal water quality standards are not adequately enforced.

A NPDES permit is required of any person who wants to:
- make any outlets into the waters of the State;
- construct or operate any sewer system, treatment works, or disposal system within the State;
- alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
- increase the quantity of waste discharged through any outlet or processed in any treatment works, or disposal system to an extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water, or to any extent beyond such minimum limits as the Commission may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;
- change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or

which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;

- cause or permit any waste, directly or indirectly to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order, or other appropriate instrument issued or entered into by the Commission under the provisions of this article;
- cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

G.S. 143-215.11 et seq. authorizes the Environmental Management Commission to designate water capacity use areas where the use of ground water or surface water or both is at a level to require coordination and regulation to protect interests and rights of residents or property owners, or the public interest. It must be determined that withdrawal of water from or discharges of water pollutants to the waters within the area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness

for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety, or welfare will result from increased or additional withdrawals or discharges.

G.S. 143-215.12 et seq. enables local governments to delineate 100 year floodways and to establish a permit program for development in those floodways. The Environmental Management Commission is authorized to designate such floodways as it deems necessary if the local government has not done so. The purpose of the permit is to prevent obstructions that will increase the danger due to flooding. Certain uses, such as forestry, agriculture, open recreational area, boat dock and ramps, lawns, dams, bridges, and streets are permitted as of right.

G.S. 143-215.350 authorizes the Environmental Management Commission to divert waters needed for human consumption, sanitation, and safety in times of emergency.

-- G.S. 104B-3 to 16, the Sand Dune Protection Act, enables coastal counties to prohibit destruction and alteration of sand dunes oceanward of a shore protection line unless a permit is obtained from the county. The Act also prohibits construction of groins, jetties, piers, and other similar structures unless a permit is obtained from DNER. Local Boards of County Commissioners may establish a shore protection line and to designate a shoreline protection officer to administer and enforce the permit system. Decisions made by the shoreline protection officer may be appealed to the County Commissioners (G.S. 104B-4). The Environmental Management Commission is empowered to establish shore protection lines and to designate shoreline protection officers in any county that had not adopted a sand dune protection ordinance by December 31, 1971 (G.S. 104B-6). The Environmental Management Commission is also authorized to give assistance to

counties in their shore protection program (G.S. 104B-15). DNER is authorized to prohibit construction of groins, jetties, piers, and similar structures without a permit (G.S. 104B-11).

-- Chapter 143, Article 21A

This series of statutes is called the Oil Pollution Control Act of 1973. G.S. 143-215.83 makes it unlawful to discharge oil into any waters, tidal flats, beaches or lands within the State, or into any sewer, surface water drain, or other waters that drain into the waters of this State, unless a permit for such discharge has been secured. A person responsible for such discharge is held responsible for removal and clean up of the affected area.

G.S. 143-215.95 et seq. gives the Secretary of DNER authority to issue or deny permits for construction of new oil refining facilities (G.S. 143-215.100) and for continuation of existing facilities (G.S. 143-215.101(3)). The Secretary may impose appropriate terms and conditions and may deny permits upon finding that such facilities will have adverse effects on wildlife or fresh water, estuarine or marine fisheries; on air or water quality; or on the public health safety and welfare which outweigh the project's benefits. The Secretary may require the installation of such facilities and protective measures as are necessary to prevent oil discharges to waters or lands of the State.

-- G.S. 143-215.105 et seq. authorizes the Environmental Management Commission to create standards and classifications for air contaminant sources. More specifically, G.S. 143-215.108 requires that persons engaging in specified activities likely to contravene air quality standards must apply for a permit. Denial of the permit requires a determination that permitting an additional source(s) or air pollution

will result in air pollution within the area contrary to the public interest, health, safety, and welfare, G.S. 143-215.109 requires a permit for complex sources. G.S. 143-215.110 allows issuance of special orders for existing pollution sources in areas for which air quality standards have been set.

-- G.S. 87-88 authorizes the Environmental Management Commission to issue permits for construction of wells with a capacity of greater than 100,000 gallons per day, or any wells in areas where ground water resources require protection for public welfare, health, and safety.

In addition to the above regulatory authorities, the Division of Environmental Management has the following advisory and planning powers:

-- Chapter 162A, Article 3 (G.S. 162A-26 to 30), known as the Regional Sewerage Disposal System Planning Act, authorizes the Division of Environmental Management to identify sewage disposal problems and plan for their solution on a regional basis. No state funds shall be dispersed for any sewerage disposal facility without first determining that the facility meets certain criteria in conformity with the State's regional planning approach.

-- G.S. 143-215.62 creates the Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund. This fund is for the purpose of making advances to counties and municipalities for advance work for hurricane flood protection and beach erosion precaution; acquisition of lands and rights-of-way or relocation of roads and utilities; and maintenance of constructed projects of the above types.

Before making such advances, the Board shall advise the local government as to the prospective efficacy of the proposed projects, the possibility of federal aid, and the extent of the financial burden that such a loan might be on local citizens.

(ii) Division of Marine Fisheries

The Division of Marine Fisheries and the Marine Fisheries Commission are responsible for management of the State's marine and estuarine fish and shellfish resources and have the authority to regulate the use of certain estuarine environments that are vital to the successful propagation of these species. The Division is required to administer and enforce all license requirements and taxes as set out in Article 14 of G.S. 113, to promulgate rules and regulations governing coastal fisheries and enforce them, to develop and improve the cultivation, harvesting, and marketing of oysters and clams, and to process, administer, and oversee all dredge and fill permit requests. The Marine Fisheries Commission is the rule-making body of the Division. As such, it is responsible for the promulgation of rules and regulations implementing the provisions of G.S. 113. The Division currently administers four programs:

Law Enforcement - The purpose of this program is to protect marine fisheries resources by enforcing the commercial and sports fishing laws and regulations in coastal waters as well as creating and maintaining public awareness of these laws and regulations so as to reduce violations. At present, about 50 inspectors patrol over 2,000,000 acres of coastal water and marsh, principally by small boats, augmented by several large patrol boats and two single engined seaplanes. In addition, these inspectors enforce departmental regulations pertaining to over 17,500 licensed fishermen and over 250 permitted dredge and fill activities. Inspectors also enforce restrictions within the more than 700,000 acres of water closed to shellfishing because of pollution. Over 650 violations of all sorts are found annually.

Research and Development - This program is responsible for obtaining biological and fisheries information needed to plan and implement intelligent fisheries

management programs for the oceanic and estuarine areas under the Division's jurisdiction. Estuarine inventory and monitoring is aimed at establishing nursery areas and documenting changes in fisheries populations. A shrimp management project enhances the possibility of harvesting more and bigger shrimp. The anadromous fish project accumulates information that will help in the management of those fish that swim up rivers to spawn. Staff are involved with North Carolina State University scientists in a lobster research project that is assessing the potential of the American lobster resource off North Carolina. Shellfish rehabilitation studies -- so as to increase the harvest of oysters -- concentrate on planting potential oyster-producing areas with shells for cultch material. The R/V DAN MOORE, the Division's sea-going research vessel, is used to locate, monitor, and research offshore fish stocks to increase actual or potential economic positions of commercial and sports fishing interests.

Estuarine Management - The purpose of this program is to implement the State dredge and fill law, G.S. 113-229. Through this work and effort it will reduce adverse alterations to the estuarine complex and to retain in a naturally productive state those areas of marsh and tidelands determined to be necessary for the sustained high yield of fish and shellfish. Standards and rules and regulations relating to dredge and fill work are adopted by the Marine Fisheries Commission, and the Commission hears appeals of staff decisions regarding permit applications.

Artificial Reefs - This program seeks to enhance fish populations by providing a desirable habitat by constructing artificial fishing reefs of suitable materials. It is anticipated that these reefs will enhance the quality of marine fishing, particularly for sports species.

The specific regulatory authorities administered by the Division of Marine Fisheries are as follows:

G.S. 113-229 authorizes the Department to require a permit for dredge and fill activities in estuaries, tidelands, marshlands, or state-owned lakes. This includes the Atlantic Ocean to a three-mile limit as well as bays, sounds, and rivers seaward of the dividing line between coastal and inland fishing waters as designated by DNER and the Wildlife Resources Commission. Permits may be denied if there would be significant adverse effect on the use of water by the public; the value and enjoyment of property of any riparian owners; public health, safety, and welfare; conservation of public and private water supplies; wildlife or freshwater, estuarine, or marine fisheries. Denials may be appealed to the Marine Fisheries Commission.

-- G.S. 113-230 authorizes the Secretary of DNER, with the approval of the Marine Fisheries Commission, to adopt, amend, modify, or repeal regulations restricting or prohibiting the dredging, filling, or otherwise altering of coastal wetlands (primarily defined as marshlands under G.S. 113-229(N)(3)) and contiguous areas for the purpose of promoting public safety, health, and welfare, and protecting property, wildlife and marine fisheries. Activities in coastal wetlands that can be affected by such orders include dredging, filling, or other alterations such as removal of materials.

G.S. 113-201 to 206 empowers the Marine Fisheries Commission to make regulations to improve cultivation and harvesting of oysters and clams in both public and private beds. The Commission may lease public bottoms that do not contain natural oyster and clam beds. The Commission may refuse a lease for any reason relating to the conservation of marine and estuarine resources. A leasehold shall be terminated for failure to comply with the regulations for cultivation and harvesting.

-- G.S. 113-128 et seq. sets out state policy and regulatory authority for commercial fishing in the coastal area. G.S. 113-131 states that "the marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources." (DNER has jurisdiction over the conservation of marine and estuarine resources.) Local fishing laws are abolished and state jurisdiction over the Atlantic is stated as 200 miles or where water depth reaches 100 fathoms, whichever is greater. Regulatory, licensing, and enforcement powers are established for coastal fisheries in G.S. 113-182. These include regulations of methods and equipment for taking fish; seasons for fishing; size limits and maximum quantities; opening and closing of waters for fishing; and the cultivation, harvesting, transport, etc. of all marine and estuarine resources.

(iii) Division of Earth Resources

The purpose of the Earth Resources Division is to survey, study, and evaluate the State's land and mineral resources and to protect the land resources of the State through the enforcement of mining, sedimentation, oil and gas conservation, and dam safety laws.

There are five major programs in the Division:

Mineral Resources - This program seeks to gather, evaluate, and distribute timely information on the topography, geology, and mineral resources of the State and to promote their wide conservation and use by industry, commerce, agriculture, and government agencies.

Petroleum - This program oversees the exploration, conservation, and development of any oil and gas that may occur within the State, while protecting the environment

and individual mineral owner equity.

Soil and Water Conservation - Promotes the conservation and wise utilization of the State's soil and water resources and provides flood protection for agricultural and urban lands of the State, while also developing recreational opportunities and water supplies for local government units. Statutory authorities derive from G.S. 139 and P.L. 83-566 and are discharged by the State Soil and Water Conservation Commission.

Geodetic Survey - Provides the basic geodetic control for use in accurate mapping and survey work.

Land Quality - Seeks to attain and maintain protection of land and waters of the State through controlling all mining operations and construction-related land disturbing activities and to assure the safety of all dams in the State, larger than 15 feet high or which impound more than 10 acre feet of water. Regulatory and quasi-legislative functions are performed by the Mining Commission and the Sedimentation Commission.

The regulatory authorities administered by the Division of Earth Resources are as follows:

-- G.S. 215.23 to 215.37 provides that before dam construction, repair, or alteration can begin, an application must be approved and a permit issued. While the purpose of this law is primarily to ensure the safety of persons and property directly threatened by the physical presence of impounded water, the legislation also recognizes the importance of the maintenance of minimum stream flows (G.S. 143-215.24). Thus, to be approved, applications must meet conditions which ensure safety and satisfy minimum stream flow requirements. Approval involves dam supervision and design by a qualified engineer, inspection, supervision over maintenance and operation and review by specified state agencies.

-- G.S. 74-46 et seq., the Mining Act of 1971, authorizes the Division to require permits and site inspections for all mining operations, to determine if the proposed operations will have adverse environmental effects. Where adverse effects are possible, the permit is either denied or approved with conditions or modifications to eliminate or minimize these adverse effects. Permits are subject to renewal at least every ten years and operations are inspected annually. During inspection, the perimeter of the mine and any adjacent drainage or waterways are examined to determine if any off-site damage is occurring or is likely to occur from any source of erosion or other pollution in the mine area. When a damage causing deficiency is found, the operator is notified and given 30 days to correct the condition. Reinspection is made at the end of that period to assure compliance.

-- G.S. 113-381 to 415, the Oil and Gas Conservation Act, is intended to assure that petroleum exploration is conducted in a manner that is economically efficient and which presents minimal threat of adverse environmental consequences. A permit to drill, once received, remains valid until the well is plugged and abandoned. Inspection consists of several visits to the well site during drilling by a Division representative. A division representative also inspects the well site after the drilling operation is complete to ensure that all rules and regulations have been complied with before bond is released.

-- G.S. 113A, Article 4, the Sedimentation Pollution Control Act of 1973, authorizes a Sedimentation Control Commission under DNER which is to set up rules and regulations for the control of erosion and sedimentation from land-disturbing activities. The Commission is further charged with developing a local erosion control ordinance and assisting local governments in the development of their own ordinances.

The Sedimentation Control Commission approves local erosion control projects and the sponsoring locality may then develop ordinances and other regulatory tools. The local ordinances must be at least as strict as the state statute. If the local government does not decide to adopt such ordinances, then the Division of Resource Planning and Evaluation in DNER shall enforce the state statute.

The Act authorizes both general and mandatory standards. The general standards apply to all "land-disturbing activity," which is any use of the land that results in a change in the natural cover or topography and that may contribute to or cause sedimentation. The Act appears, however, to exclude agricultural and forestry activities (G.S. 113A-52(6)). The Act includes mandatory standards for land-disturbing activities (G.S. 113A-57), including leaving an adequate buffer between such activity and a natural watercourse or lake area; the revegetation of sloped areas; and erosion control on land adjacent to any land-disturbing activity undertaken on a tract of greater than one acre.

(iv) <u>Division of Parks and Recreation</u>

This Division provides or assists in the provision of recreational opportunities to the people of the State and its visitors. The principal components of the program are the State Outdoor Recreation System, the State Zoological Park, and the Local Recreation Services Program.

State Outdoor Recreation System - Provides appropriate outdoor recreation opportunities to the citizens of North Carolina and its visitors in the form of State Parks, Recreation Areas, Natural Areas, Scenic Rivers, and trails, while preserving and protecting areas of outstanding natural, scientific, and scenic values.

State Zoological Park - Provides the people of North Carolina and its visitors a unique recreational and

educational experience by providing them with a total natural habitat zoo.

Recreation Consulting Services - Assists local units of government, private recreation groups, and individual citizens in the establishment and improvement of recreation services and opportunities.

The primary authorities exercised by this Division concern the acquisition and management of park and recreation sites.

-- G.S. 113, Article 2 outlines procedures to be followed in acquiring land for state parks. Land received by counties by tax sale may be received where suitable for park use. DNER may request a list of unredeemed tax delinquent lands and purchase them for an amount not to exceed the taxes due. A transfer of the deed must be approved by the Attorney General.

-- G.S. 113A, Article 3 authorizes classification of natural and scenic rivers that meet certain criteria. Once designated, the environmental quality of the rivers is protected. Regulations may be established to implement the Act. Land may be acquired in fee, or interests can be acquired by scenic easement, donation, exchange, and other means, but such acquisition is the final responsibility of the Department of Administration.

G.S. 113A, Article 4, the North Carolina Trails System Act, authorizes establishment of routes for scenic and recreational trails. These may be designated on state-owned lands, or land may be acquired in fee, by scenic easement, lease, and other means.

(v) Division of Forest Resources

The programs of the Division of Forest Resources are designated to develop and maintain on a perpetual basis the productivity of the State's forests with regard to timber,

watersheds, wildlife habitat, soils and outdoor recreation. The Division works to establish a proper balance of resource use and development so that the economic and sociologic needs for the general public, forest landowners, the timber products industries, and the national interest can be met. The Division's authorities derive from various sections of the General Statutes, chiefly Articles 2, 2A, 3, 4, 4A, 4B, and 5 of G.S. 113. In addition, the Division cooperates with the U.S. Forest Service in the administration of a number of federal forestry programs.

There are five major subprograms administered by the Division:

Technical and Administrative Support - This program provides the administrative, engineering, and technical development functions required to deliver the Division's programs in the field and to maintain the scientific integrity of the field programs.

Forest Protection and Management - The primary activities of this program are to protect the forests of the State from damage and destruction by wildfire, insects, and disease and to make the State's forests produce the maximum economic and social benefits by the application of forest management principles on a planned, continuous basis. Major activities are in forest fire control, forest management, and forest pest control.

Forest Tree Nurseries - The objective of this program is the mass production and distribution of high quality planting stock to private and public landowners for the artificial reforestation of the State's 8.5 million acres of understocked forest land and for regeneration of timber stands after harvest.

Forestation - This program offers the trained manpower, specialized equipment, and supervisory personnel needed to carry out the forestation practices recommended by the Forest Protection and Management staff or by private consulting foresters. All types of forestry services are available, but major emphasis is on conversion and preparation of sites for reforestation, tree planting, prescribed burning, and timber stand improvement.

State Forests - This program seeks to educate the public to the economic and social values of the forest resources of the state forests, and to observe the practices used to manage the forest for maximum development of those resources. There are six state forests throughout the State, none in the coastal area.

The primary authority exercised by this Division is the acquisition and management of state forests and demonstration forests.

-- G.S. 113-29 et seq. authorizes the purchase and acceptance of lands for such purposes. A transfer of deed must be approved by the Attorney General. Regulations may be set for the development and use of such lands.

-- G.S. 113, Article 2 provides for funding of forest land administration and protection, fire and insect control, forest development and consultation.

(vi) Division of Economic Development

Promotion of economic development statewide is one of the two major missions of DNER. This Division houses the staff that is chiefly responsible for meeting this statutory assignment. The purpose of the Economic Development program is to promote orderly and planned economic growth in the State and to raise the standards of living of the people of

the State. The goal is pursued through encouraging industry to move into North Carolina, promoting and aiding in the expansion of industry already located in the State, providing scientific and technical research support for North Carolina industries, and promoting tourist travel in the State through advertising and the operation of Welcome Centers. The major Division programs are:

Food Industries Development - The purpose of this program is to provide investments, jobs, and other benefits in North Carolina by developing food, seafood, agri-business, and marine-related industries.

Industrial Development - This program promotes the development and assists in the location and expansion of desirable industry and new capital investment in North Carolina, thereby increasing quality industrial jobs, per capita income, and State and county tax base.

International Development - This program promotes North Carolina in foreign countries by reverse investment, trade, tourism, joint ventures, and licensing opportunities.

Minority Business Development - The purpose of this program is to provide assistance to minority and disadvantaged businesses in order for them to establish a viable and competitive economic base.

Science and Technology - This program stimulates scientific and technological industrial development, promotes and supports scientific research and development, and assists in the application of scientific knowledge to benefit the State.

Technical Services - Provides research support and coordinates economic planning and strategy for major divisional programs.

Travel Development - Seeks to increase tourist expenditures in North Carolina, to create additional employment and personal income for those employed by travel and travel-

related industry, and to strengthen the overall economy of the State.

Community Development - Assists local governments and organizations and community leaders in creating job opportunities, expanding the tax base, and raising the per capita income.

The most important authority relating to the Division of Economic Development is G.S. 113-1 et seq. which describes generally the powers and duties of DNER. These include investigations of the natural, industrial, and commercial resources of the State.

(vii) Division of Community Assistance

This Division provides services to lead regional organizations, counties, and communities in on-going programs of local planning and management and criminal justice planning and to assimilate new aspects of community assistance as they are developed.

There are currently three principal programs in the Division:

Local Planning and Management Services - This program assists local units of government to develop and improve their planning and management capabilities in order that they may plan more effectively for future growth and development. Staff members in this program, working out of the Washington and Wilmington field offices, developed about 50% of the local government land use plans required by CAMA.

Law and Order - This program seeks to improve the law enforcement and criminal justice system in North Carolina. A Statewide Comprehensive Plan is developed by this staff consistent with the Governor's Law and Order Commission and the Law Enforcement Assistance Administration.

Recyclable Waste Removal - The goal of this program is to remove unsightly and hazardous reclaimable debris, primarily in 29 western and 45 coastal counties.

(viii) Additional Regulatory Authorities Administered by DNER

-- G.S. 113-24 protects waterfowl food growing in public waters by prohibiting sale or transportation of such aquatic plant foods.

-- G.S. 68-44 protects vegetation on the Outer Banks by prohibiting parties from allowing their stock to run at large. Outer Banks are defined to include all land separated from the mainland by water and bounded on one side by the ocean.

Despite the wide responsibilities of DNER, other state agencies have important programs that relate to management of the State's coastal area. These agencies have been involved during the planning phase of North Carolina's coastal management program and will continue to be involved as the program is implemented.

(b) The Department of Administration

The Department of Administration (DOA) works with, and provides administrative services to all departments, commissions,and boards within state government. As the administrative arm of the Governor's office, it performs central supervisory and management functions for state government. The Department carries out its responsibilities through six major programs: Program Planning and Fiscal Administration, Central Management Services, General Services, Human Resource Development, Special Commissions and Services, and Capital Improvements. Several DOA agencies and programs have close ties with coastal area management.

(i) The Office of Marine Affairs

The Office of Marine Affairs coordinates the planning and implementation of current and future state, federal, and local

programs relating to the coastal and marine resources of North Carolina. The Marine Science Council, responsible for bringing to the State's attention issues and problems relating to the development of coastal resources, is located within this office. The Council, consisting of 25 members who represent government, universities, and the private sector, identifies coastal resource use problems and studies proposals for related research to ensure relevance to state needs. The office also operates Marine Resources Centers at Manteo, Pine Knoll Shores, and Fort Fisher. These centers provide educational programs and research and extension facilities designed to further the State's goals and objectives in the development and protection of its coastal and marine resources. Because of its coordinative role in state government and because it has a nucleus of research staff, North Carolina's Outer Continental Shelf studies funded by OCZM has been subcontracted to the Office of Marine Affairs by DNER.

(ii) <u>The State Property Office</u>

The State Property Office supervises and regulates all transactions involving real property, including acquisition, easements, and disposition (this includes easements to fill on state-owned lands). The office acts as "real estate agent" for state agencies where acquisition of land or interests in land is involved. The State Property Office, upon recommendation from the CRC, is the agency that will actually acquire the lands or interest in lands authorized in G.S. 113A-124(c)(2).

(iii) <u>The Land Policy Council</u>

The Land Policy Council, although advisory directly to the Governor, is housed in DOA and served by a staff attached to the Division of State Planning. The Council (Article 9, G.S. 113A) is composed of 14 members and is charged with

preparing recommendations to the Governor concerning development of a state land policy, a system of land classification, and other policies and procedures relevant to land use. The work of the Land Policy Council with regard to land classifaction and the land policies of state agencies "insofar as it applies to lands within the coastal area" must "take account of and be consistent with" the guidelines developed under CAMA (G.S. 113A-108). The Secretary of DNER has served as a member of the Land Policy Council, and the Chairman and Vice-chairman of the CRC have met with the Council to ensure coordination between the two bodies.

(iv) <u>The Inter-governmental Relations Program</u>

This is the central point in state government for the coordination of federal, state, intrastate, and state-local activities. It develops capabilities to mobilize and manage state and federal resources more effectively to support state and local policy objectives. The State Clearinghouse that performs A-95 reviews on behalf of the State is a part of this program.

The Secretary of DOA is a member of the Coastal Resources Advisory Council.

The specific regulatory authorities administered by the DOA are as follows:

-- G.S. 146-3 to 146-15 is a series of statutes regulating the disposition of state lands. G.S. 146-6(c) authorizes the granting of easements to fill in submerged lands. Any owner of land adjoining any navigable water who desires to fill in the area must apply to the DOA for an easement. The applicant must also deliver to each adjoining riparian property owner a copy of the application.

Unless the DOA finds that the proposed easement will impede navigation; interfere with the use of the navigable

water by the public; or injure any adjoining riparian owner, the DOA is required to issue an easement to fill. Once the DOA allows the fill, it may sell the filled land and determine the amount of consideration to be paid. However, the selling of the filled land and the amount of consideration is conditional and subject to the approval of the Governor and the Council of State.

Upon approval of the sale by the Governor and Council of State, a deed is executed in the name of the State of North Carolina, signed by the Governor, and attested by the Secretary of State.

G.S. 146-7 authorizes the sale of timber rights. DOA may sell timber rights at such times, upon such consideration, in such portions, and upon such terms, deemed proper by the DOA and approved by the Governor and the Council of State.

G.S. 146-8 authorizes disposition of mineral deposits in state submerged lands. After DNER requests that a mineral deposit be sold, leased, or otherwise disposed, the request must be approved by the DOA, the Governor, and the Council of State. Any disposition of submerged mineral deposits must be made subject to all rights of navigation and to any other terms and conditions as may be imposed by the State.

G.S. 146-9 authorizes disposition of mineral deposits in state non-submerged lands. The DOA may sell, lease, or otherwise dispose of mineral rights at such times, upon such consideration, in such portions, and upon such terms deemed proper by the DOA and approved by the Governor and the Council of State.

G.S. 146-10 authorizes leasing of non-submerged state lands. The DOA may lease or rent non-submerged lands at such times, upon such consideration, in such portions, and upon such terms as it deems proper and approved by the Governor, the

Council of State, or by their designated agency.

G.S. 146-11 authorizes the granting of easements and right-of-ways in non-submerged lands. DOA may grant easements, right-of-ways, and other interests in state lands for the purpose of cooperating with the federal government; utilizing the natural resources of the State; or otherwise serving the public interest. The terms and consideration for such rights are also determined by DOA.

G.S. 146-12 authorizes granting of easements in submerged lands for other purposes. DOA may grant adjoining riparian owners easements in submerged lands for such purposes and upon such conditions as it deems proper. However, no easement in front of a tract of land can extend further than the deep water line established by the governing body of an incorporated town nor can such easements obstruct or impair navigation. All easements must be approved by the Governor and the Council of State.

DOA, with the approval of the Governor and the Council of State, can revoke an easement in submerged lands for other purposes if the grantee or his assigns violates the conditions of the easement.

-- G.S. 140-22.1 authorizes the acquisition of land. In order to carry out the duties of DOA as set forth in Chapters 143 and 146 of the General Statutues, DOA is authorized and empowered to acquire by purchase, gift, condemnation, or otherwise: lands necessary for public parks and forestry purposes; lands necessary to provide public access to the waters within the State; lands necessary for the development and preservation of the estuarine areas of the State; lands necessary for the development of waterways within the State; and lands necessary for acquisition of all or part of an area of environmental concern, asrequested pursuant to G.S. 133A-123.

(c) The Department of Agriculture

This Department's (DOAg) major duties relate to promotion of North Carolina's agricultural products, to research related to agriculture and to consumer protection in areas relating to agricultural commodities. The Department includes four major program areas: Administration, Agricultural Services and Development, Consumer Protection, and Education and Research. The Commissioner of Agriculture is a member of the Coastal Resources Advisory Council.

DOAg's involvement in CAMA has been chiefly through its representation on the Advisory Council. The Department represents the interests of farmers during all phases of program development. In addition, the Pesticide Board located in the Department is the governing authority for programs required under the State's pesticide laws.

-- G.S. 143-434-470 authorizes the DOAg to regulate the use of pesticides in North Carolina. Regulation of pesticide application may be direct, by establishing regulations concerning both the type of pesticide and the method or use, or indirect, by licensing of applicators. Regulations concerning the method of application may be those deemed necessary to prevent damage to plants, wildlife, fish, and aquatic life, and other persons, animals or beneficial insects. For further effectiveness in achieving these purposes, regulations should be related to such factors as the natural characteristics of affected land, the proximity of water, the properties of the pesticide itself, and the potential for runoff or mixing with groundwaters.

Regulations are administered by the Pest Control Division of the DOAg, in coordination with the EPA Office of Pesticides.

(d) The Department of Commerce

This Department's (DOC) major programs relate to supervision and regulation of financial and public utilities services,

to alcohol and milk industry regulations and to the provision of services to the State's labor force.

The State Utilities Commission, composed of seven members appointed by the Governor and subject to confirmation by the General Assembly, is located in DOC. It is the body charged with regulatory rates charged by utilities providing electric, telephone, gas, water and sewer services. The Commission also regulates transportation services, safety inspection of common carrier vehicles, utility franchising, and represents the State in related federal-state regulatory matters. The utility franchising element is of major concern to coastal management because it is the process by which franchises (Certificate of Public Convenience and Necessity) are granted to public utilities for electric generating and related facilities.

The Energy Policy Council was established in 1975 and placed in the Department. The Council is advisory to the Governor and General Assembly and does not have statutory authority over any operating programs of state government. It consists of 14 members including the Secretary of DNER, other agency heads, and legislative and public members. The principal duties of the Council are to develop an Energy Conservation Plan, an Energy Management Plan, an Emergency Energy Program, and an Energy Research and Development Program and to make recommendations regarding these to the Governor and General Assembly.

G.S. 62-110 to 118 authorizes the Utilities Commission to grant certificates of public convenience and necessity for construction of a generating facility. Although the projects are relatively few, the environmental consequences are very significant. The direct effect on the environment can very depending on the type and size of the plant. The secondary

consequences concerning influence on other development is of great importance.

When acting upon any facility for the generation of electricity, the Utilities Commission takes into account the applicant's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power, and other methods for providing reliable, efficient, and economical electric service.

Inasmuch as "work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities" is not development and therefore not subject to CAMA (G.S. 113A-103(5)(b)(3)), it is important to clarify the roles of the Utilities Commission and DNER with regard to facility siting. The Utilities Commission can only authorize a utility to construct a facility by ruling that there is a need for such a facility and consequently issuing a certificate of public convenience and necessity for its construction. Although such approvals are for a specific site, the ultimate approval for location of an energy generating facility at a given site lies with the Environmental Management Commission located in DNER. Thus, through its powers to regulate uses of air and water (Articles 21 and 21B, G.S. 143), and through specific authority to locate oil refineries (Article 21A, G.S. 143), the Secretary of DNER can determine where energy generating facilities are to be located. Neither Commission can override the other; both must approve a specific facility at a specific location before the facility can be built. It is also significant to note that there are no arbitrary exclusions of energy generating facilities of any sort from any area of North Carolina. Each case is decided on its own merits.

(e) The Department of Cultural Resources

The Department of Cultural Resources promotes cultural resources and provides services and programs in the arts, history and in any other area which will enhance and enrich the lives of North Carolina citizens. The Department's four major programs are Administration, Historic Resources, Art Resources, and Library Resources.

The Historic Services program staff administers the North Carolina Archives and History Act that "seeks to promote and encourage throughout the State knowledge and appreciation of North Carolina history and heritage." The Historic Sites Services and Archaeology sub-programs have strong ties to the coastal zone management program. Historical research is one of the major functions of the Historic Sites Services subprogram, and through the efforts of its staff, historic places have been identified meeting the criteria for AEC designation specified in G.S. 113A-113(b)(4)). Certain of these have been designated as IAECs.

The Secretary of Cultural Resources is a member of the Coastal Resources Advisory Council.

-- G.S. 121-9 authorizes the acquisition and administration of state historic sites. With approval of the Historical Commission, land may be acquired by purchase, gift, bequest, lease, etc. In cases of emergency, funds may be appropriated from a contingency fund or properties acquired by condemnation.

(f) The Department of Human Resources

This Department provides the necessary management, development of policy, and establishment and enforcement standards for the provision of services in the fields of general and mental health and rehabilitation with the basic goal being to assist all citizens to achieve and maintain an adequate

level of health, social and economic well-being, and dignity. The Department administers six major programs : Administration and Support, Promotion of Mental Health, Vocational Rehabilitation Services, Services for the Blind and Deaf, Physical Health Services, and Aid to Families with Dependent Children and Food Stamps. The Secretary of Human Resources is a member of the Coastal Resources Advisory Council.

Several DHR programs, all under the cognizance of the Commission on Health Services, are closely involved with coastal management.

(i) Shellfish Sanitation

The Shellfish Sanitation program strives to prevent the spread of disease from contaminated shellfish by controlling the sanitary production, harvesting, and marketing of shellfish before they are shipped. Shellfish Sanitation staff members inspect growing area waters and notify the Director of DNER's Division of Marine Fisheries that areas are to be closed when permissible pollution levels are exceeded. Staff members also detect and order elimination of sewage disposal violations along the coast. The Shellfish Sanitation staff is housed in DNER's Marine Fisheries building in Morehead City.

(ii) Salt Marsh Mosquito Control

This program reduces the number of salt marsh mosquitoes by providing assistance to local health departments and municipal control projects. Although mosquito control programs are exempt from the requirements of the State Dredge and Fill Act (G.S. 113-229), they are subject to the coordination requirements of CAMA (G.S. 113A-125(c)).

(iii) Water Supply Protection

This program ensures that existing and new public water supplies are constructed and operated in a manner which makes

them safe for use. Water supplies are protected by minimizing environmental health hazards that relate to location, design, construction, and operation of water systems. Any water system designed to serve over 10 persons must be reviewed prior to construction. Staff of this program provide the basic data required by CAMA (G.S. 113A-113(b)(3)(1)) when watersheds or aquifers presently serving as sources of public water supply, as identified by the Commission on Health Services, are proposed as AECs.

Statewide standards for installation of septic tanks that discharge less than 3,000 gallons daily are set by the Commission on Health Services. These regulations are enforced by local health departments. Inasmuch as regulations relating to septic tanks discharging more than 3,000 gallons daily are set by DNER's Environmental Management Commission, DNER and DHR have initiated an effort to develop a single set of standards to be jointly adopted by both Commissions. These standards have been approved by the Environmental Management Commission (September, 1976) and are in the late stages of consideration by the Commission on Health Services.

The Department of Human Resources administers the following regulatory authorities:

-- G.S. 130-157 et seq. authorizes the issuance of permits for septic tanks with a capacity of under 3,000 gallons by local health departments, in accordance with county health regulations. The Commission of Health Services has regulations adopted pursuant to G.S. 130-160, which require sanitary systems of sewage disposal, consisting of connections to a sewer system, approved septic tank system or sanitary privy. These regulations are enforced by local health departments with technical assistance from Health Services. It is under this authority that the county sanitarian also issues permits for water wells serving more than ten persons.

-- G.S. 130-166.22, the Ground Absorption Sewage Disposal System Act of 1973, requires that before commencement of construction or relocation of any dwelling, or the location or relocation of any mobile home, a permit shall be acquired from the local health department authorizing the use of a septic tank or other ground absorption disposal system. The permit shall be issued only after a field investigation shows that such a system can be installed on the site without violating the rules and regulations of the local board of health governing such installations.

-- G.S. 130-166.16 to 166.21, the Solid Waste Disposal Law, authorizes the Commission for Health Services to promulgate rules and regulations for disposal sites and for approving of sites pursuant to G.S. 130-166.16. The Department can also accept and distribute funds from sources including the federal government for providing solid waste disposal sites. In accordance with the federal Solid Waste Disposal Act (P.L. 89-272), EPA has established standards for solid waste disposal sites. These federal standards are administered along with the state standards by the Division of Health Services, DHR. Statewide standards for the establishment, location, and maintenance of solid waste disposal sites and facilities are set by the Commission for Health Services. Local governments and county health departments are generally responsible for direct regulation of these standards. Before a solid waste disposal site and facility can be utilized, the standards must be met and the site approved by the Commission for Health Services.

Non-regulatory authorities, in the planning and financial assistance category, provided by the Division of Human Resources are as follows:

-- G.S. 130-206 to 220 authorizes the Commission for Health Services and the Solid Waste and Vector Control Branch

of the Sanitary Engineering Sections of the Division of Health Services to facilitate local government mosquito control projects by providing matching funds and consultation, thereby controlling mosquitoes which are potential disease vectors and a nuisance to the public. These projects often involve water management projects for the permanent control of mosquito breeding and space applications of approved insecticides for control of adult mosquitoes. Local governmental units apply for state assistance at the beginning of each fiscal year. Local water management projects are inspected bi-weekly, and space applications of insecticides are inspected bi-monthly. Detection activities consist of surveillance of suspected heavy-breeding areas and trapping and identifying mosquito species.

-- G.S. 130-157 et seq. provides for inspection and regulation of public drinking water supplies, including watersheds, and the approval of water supply systems. Municipalities are authorized to condemn lands needed for water supply systems. G.S. 130-160 prohibits any person from defiling a public water supply. G.S. 130-161.1 requires drinking water supplies to be approved by the Commission. G.S. 130-165 requires all sewage and industrial waste to be treated before being discharged above any public drinking water supply.

(g) Department of Transportation

This Department's (DOT) duties include providing the necessary planning, construction, and maintenance of an integrated statewide transportation system. These responsibilities include highways, railroads, airports, bicycles, and the State Ports Authority. The Secretary of Transportation and one other member of his Department are members of the Coastal Resources Advisory Council.

Coordination between DOT and coastal management has been effected in several ways. First, DOT planners have reviewed all

local government land use plans and DNER maintains a review of DOT's seven-year plan for highway development. Second, DOT and the State Ports Authority are both subject to the requirements of the state Dredge and Fill Act (G.S. 113-229) and to the other general environmental regulation requirements of DNER.

-- G.S. 143-216 et seq. authorizes the State Ports Authority to develop and improve certain designated harbors so that they might better handle water-borne commerce. This may be done by improving facilities and portions of the waterways. The authority is also charged to cooperate with the federal government concerning war operations and other federal needs. The authority is given the general powers of an incorporated public agency.

(h) Department of Justice

This Department, headed by the Attorney General of North Carolina, performs essential legal services in the name of the State. Among its principal duties, the Justice staff provides legal services to state departments, including DNER, by instituting court actions, defending agencies and their Boards and Commissions. Justice attorneys act as counsel in all civil judicial proceedings and in administrative proceedings.

CAMA specifies (G.S. 113A-124(d)) that the "Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission."

Other statutory authorities important to coastal management but not administered by the above agencies are as follows:

-- G.S. 113A-135 authorizes the North Carolina Conservancy Corporation to purchase and develop lands for parks, recreation areas, and for general conservation, including lands to be maintained in their natural, unaltered condition. The corporation is governed by a nine-member Board of Trustees appointed by the Governor, Lieutenant Governor, and Speaker of the House. The Board has the power to acquire land, but cannot spend funds without approval of the Department of Administration. The Corporation is dependent on state-appropriated funds and does not have power to issue bonds.

-- G.S. 113A-1 to 10 establishes the North Carolina Environmental Policy Act which is modeled after the National Environmental Policy Act of 1969 (see below, Section V.C.L., National Environmental Policy Act of 1969). Like the federal statute, the State Environmental Policy Act recognizes the value of the human enviromment and requires state agencies to prepare detailed environmental statements for every "recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and programs significantly affecting the quality of the environment of this State."

The Act also specifies that copies of environmental statements, together with comments made by agencies with jurisdiction by law or special expertise, be submitted to the Governor, to agencies designated by the Governor, and to multi-county regional agencies, and that they shall follow the North Carolina clearinghouse review process (see below, Section V.B.22., A-95 Review). Copies must also be made available to localities, institutions, and the public (G.S. 113A-4).

Authority to review state environmental statements was assigned to the Council on State Goals and Policy, an executive board of prominent citizens created by the Governor of North Carolina in 1972.

(j) Authorities Relating to Interstate Regional Interests

Several interstate bodies have been established by North Carolina and adjoining (and other) coastal states for the purpose of studying and resolving problems of mutual concern in order to promote better management of coastal resources by cooperative decision-making and policy formulation. Some of these bodies, and the interests they represent, are as follows:

(i) The Atlantic States Marine Fisheries Commission

In 1949, the Atlantic States Marine Fisheries Commission was established in order to promote the better utilization of the fisheries (marine, shell, and anadromous) of the Atlantic seaboard, by developing a joint program for the promotion and protection of such fisheries and by the prevention of their physical waste from any cause. The Commission has the power to recommend the coordination of the police powers of the several states to promote the preservation of fisheries; the Commission is also directed to consult with and advise the pertinent administrative agencies in the participant states on problems connected with fisheries.

(ii) North Carolina-Virginia Water Resources Management Committee

In 1974, the North Carolina-Virginia Water Resources Management Committee was established for the purpose of promptly resolving water quality and use problems arising in areas common between the two states. Identified problem areas needing cooperative planning include common river basins, coastal hazard areas, groundwater withdrawal areas, and potential reservoir developments. As called for in the arrangement established by the two states, each state will work directly with its political subdivisions in matters involving Committee action or interest. The Committee is authorized to invite representatives of federal, state, or local agencies, or

representatives of any public or private interest to attend its meetings and to participate in any way the Committee deems necessary or desirable. The Committee is directed to submit reports when and as required to keep both Governors informed of Committee activities.

(iii) North Carolina-South Carolina Water Resources Management Committee

In 1976 a virtually identical (to the above) arrangement was established between North and South Carolina.

(iv) The Coastal Plains Regional Commission (CPRC)

The Coastal Plains Regional Commission is a Title 5 Commission serving northern Flordia, Georgia, South Carolina, North Carolina, and southern Virginia, made up of the governors of the states it serves. The CPRC was established for the purpose of improving the standards of living in the coastal portion of these states by promoting economic development and land use planning.

The Commission participated directly in North Carolina's coastal management program initially by providing funds for local planning to demonstrate the feasibility and value of local planning. The Commission, as well, has funded public participation elements of the management program and has cooperated with DNER in offering community assistance.

C. Monitoring and Conflict Resolution (Coordination/ Networking of Authorities)

It should be re-emphasized at this point that North Carolina has chosen a two-tiered approach to coastal zone management in recognition of the need for two levels of management in the coastal zone. The first level consists of comprehensive management of practically all uses in those areas most vital to coastal waters (AECs); the second level consists of less stringent management of uses outside of those vital areas.

Concerning management of the first tier, the CAMA permit gives the CRC single dispositive regulatory mechanism with which to implement coastal policy. Therefore, although coordination with other agencies is desirable for the sake of administrative efficiency, no networking with other agencies is needed to provide the CRC with sufficient authority. The less vital nature of the non-AEC areas leads to the reasonable conclusion that it is not necessary, though it is certainly desirable, to have an executive order or administrative agreement requiring every authority to be administered in compliance with coastal management policies. Instead, North Carolina's program will depend initially on a combination of statutory mandates, and the administrative processes established pursuant to those mandates, to ensure such consistency. Those mandates and processes are strong enough to ensure that state (and most federal) projects, acquisition, expenditures, and review processes involving land and water uses in the coastal area will be consistent with coastal management policies. This is because CAMA explicitly requires that state policies concerning use and disposition of lands in the coastal area shall be consistent with the State Guidelines. However, the CAMA mandate for consistency of the relied-upon state regulatory authorities (primarily permits) affecting the critical land uses is not as strong in that it requires only that the CRC be apprised of, consulted with, and given an opportunity to comment on the continuing administration of the pertinent permit programs; but there is no requirement that those programs be changed according to such comments. However, it is North Carolina's contention that the interaction through consultation, combined with the standards and policies that each individual permit program is required statutorily to follow, is sufficient to ensure that these regulatory programs are working both individually and in combination toward accomplishment of this State's coastal policies.

Not enough

Need MOUs

The following discussion is intended to identify and explain the statutory mandates and administrative processes being relied upon to provide the network for North Carolina's authorities outside of AECs. Finally, four case studies of development projects are included to show how these authorities can act in concert to consider and manage the impacts of the developments in question.

(a) Networking of authorities affecting state programs of acquisition, spending, and project review and planning

The status of the State Guidelines in relation to state policies has been explained elsewhere. However, the following advisory opinion from the North Carolina Attorney General's office should re-emphasize their role as a vehicle for state policy:

> "Section 113A-107(a) clearly provides statutory authority for the CRC to adopt guidelines for the entire coastal area. That section reads as follows:
>
> > 'State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the Coastal Area Management System as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Such guidelines shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.'
>
> Thus, as long as the Guidelines are consistent with the goals of the Act as set forth in Section 113A-102, the Commission appears to have wide latitude in establishing policy via the State Guidelines not only with AECs, but throughout the entire coastal area. Particular attention should be given to the provisions of Section 113A-102(b)(4)(i) through (vii) which provide guidance as to which concerns the guidelines should address.
>
> It is clear from Section 113A-108 that 'any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines

adopted under this article, insofar as lands within the coastal area are concerned.' Thus, if the State guidelines adopted by the CRC address land use policies in areas other than AECs, other State departments and agencies would be required to be consistent with these policies in their use of land throughout the coastal area. How this consistency would be achieved as a practical matter is open to conjecture. Your suggestion that the State Environmental Policy Act might provide a suitable mechanism certainly merits consideration.

Section 113A-108 also provides that 'any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area.' It is obviously also very problematic to determine what effect the adoption of broad policy guidelines by the CRC would have on any future State land classification system.

As a practical matter, the adoption of broad policy guidelines by the CRC might have its greatest effect on the State Management Plan developed pursuant to the Federal Coastal Zone Management Act.

As you noted in your paper, such guidelines might have a significant effect in determining questions of 'federal consistency.' If written into the official State Management Plan, such guidelines might also have a more direct and immediate impact upon State government action affecting the coastal area."

As the Attorney General's opinion suggests, the State Environmental Policy Act is the mechanism that will be used to implement the consistency requirements of CAMA regarding land use related activities of state agencies. That Act establishes the following requirements for the process of environmental impact analysis of state agencies:

§113A-4. Cooperation of agencies: reports; availability of information.

The General Assembly authorizes and directs that, to the fullest extent possible:
(1) The policies, regulations, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and
(2) Any State agency shall include in every recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and

programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;
b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
c. Mitigation measures proposed to minimize the impact;
d. Alternatives to the proposed action;
e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Director of the Department of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions, and individuals, upon request.

§113A-5. Review of agency actions involving major adverse changes of conflicts.

Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c.1203.s.5.)

In simple terms, all state projects meeting the statutory definition will be submitted to the environmental impact review process. The CRC and its staff will use the opportunity to

comment on whether the project is consistent with coastal policies as stated in the State Guidelines and incorporated in the local plans. If the proposed project is found inconsistent, comments to that effect will be conveyed to the responsible agency. If the agency disagrees or ignores the CRC's determination, the final decision is made by the Governor or his designated agency. It would, of course, be ideal to have the Governor agree officially that the CRC's decision on consistency with local plans should be given either a determinative or at least a presumption of correctness. But at the present, in the absence of such an official statement, the CRC nevertheless has legal basis for contending that its opinion should be given special consideration. This contention arises from the previously cited Legislative directive in CAMA requiring that "State land policies governing the acquisition, use, and disposition by State departments and agencies" be consistent with the adopted guidelines, and the fact that the CRC was the agency entrusted with development and interpretation of those guidelines. Thus, a very strong case can be made that the Legislature intended that the CRC should be the primary agency to determine consistency. The CRC and DNER will continue to pursue further clarification of the consistency determination process.

(b) Networking of authorities affecting federal projects, programs, spending, etc. is to be accomplished under authority of the federal consistency provisions of the CZMA, using primarily the A-95 process. (Federal consistency is discussed in detail in this document.)

(c) Networking of regulatory authorities, primarily permit programs affecting critical uses

The consistency provisions of CAMA relied on to manage state programs of acquisition, spending, and project review

and planning do not clearly apply to agency regulatory programs that affect land and water uses in the coastal zone (although a weak legal argument could be made to the contrary). North Carolina therefore does not rely on those provisions to ensure that those regulatory programs will be administered in a manner consistent with the coastal policies set forth in this plan. However, the following statutory mandates and administrative processes provide a networking that is adequate to give DNER and the CRC input into the administration by other agencies or authorities that affect the critical uses in the coastal zone.

(i) The CAMA explicitly directs state agencies to adhere to the following requirements to ensure coordination of environmental regulatory permits in the coastal zone:

> "From and after the 'permit changeover date,' all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed, or terminated except after consultation with the Commission.
>
> (c) Within the meaning of this section, 'existing regulatory permits' include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and G.S. 143-215.2 or any other permits, licenses, a authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to G.S. Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; restricted use pesticide permits issued pursuant to G.S. 143-440(b), pesticide applicator licenses issued pursuant to G.S. 143-452 for persons who may apply

pesticides within the coastal area, and regulations concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the State Board of Health of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and G.S. 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the State Board of Health pursuant to G.S. Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to G.S. Chapter 110, Articles 14A or 14B; permits, approvals, authorizations and regulations issued by the State Board of Health pursuant to Articles 23 or 24 of G.S. Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, regulations, approvals or certificates issued by the State Board of Health relating to septic tanks or water wells; oil or gas well regulations and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to G.S. Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of state forest lands, state parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or G.S. 113A-61; and any permits, licenses, authorizations, regulations, approvals or certificates issued by any state agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date." (G.S. 113A-125)

This statutory directive clearly requires all state agencies to inform and consult with the CRC concerning all aspects of the continuing administration of the critical regulatory permits. This gives the CRC ample opportunity to analyze each program for consistency with coastal policies, and advise the appropriate agencies of any inconsistencies, although the CRC has no authority to force changes in the administration of the programs.

(ii) The DNER is statutorily required "in the process of exercising its powers to promote the development of commerce and industry, to conduct an evaluation in conjunction with other state agencies having environmental responsibilities of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina" (G.S. 113-15.2) This is a clear Legislative directive that the proper agencies be consulted concerning impacts of new industrial development. The CRC and those parts of DNER responsible for this management plan should certainly be considered as "state agencies having environmental responsibilities." "Expanding industry or manufacturing plant" would include a great number of the uses outside of AECs listed as having potential to affect coastal waters. This statutory authority can therefore be used by the CRC to exercise input concerning consistency with coastal policies of many new uses locating in the coastal zone.

(iii) The local land-use planning process, particularly land classification, is a tool for ensuring that uses outside of AECs are consistent with state policies. As explained in more detail earlier in this document, the local plans are required to be consistent with the State Guidelines, which in turn incorporate or are consistent with state coastal management policies. This is, from the state level viewpoint, an admittedly imprecise networking tool because the State does not have authority to directly enforce the plans outside of AECs. Nevertheless, the CRC does have the following statutory authority to review local enforcement mechanisms for consistency with the local plans:

> "All local ordinances and other regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land use plans and, if the Commission

> finds any such ordinance or regulation to be inconsistent with the applicable land use plan, it shall transmit recommendations for modification to the adopting local government." (G.S. 113A-111)

As the statutory language indicates, this authority is of advisory nature and does not authorize the CRC to change local ordinances and regulations outside of AECs. However, it must be remembered that North Carolina's coastal management program is a delicate balance of the proper roles and responsibilities for both state and local governments. It should also be pointed out that this system of shared responsibilities is just beginning to function with regard to coastal resources. Positive management tools must be encouraged as a complement to regulatory powers, for it is only through exercising both positive as well as negative authority that the state can make long-term progress in the management of its coastal resources. The land classification system is a significant tool for guiding growth. Fifty of the fifty-two coastal localities have drawn up plans and are committed to carrying out future activities in conformance with these plans. The CRC is continuing to work with local governments in formulating local implementation and enforcement programs that are consistent with state policies not only as they affect AECs, but also as they affect critical activities or areas which are not designated AECs but which do have the potential to directly and significantly affect coastal waters.

The State of North Carolina has full and final regulatory authority over all activities in AECs except those that are exempt from the definition of development by G.S. 113A-103. There is no need for networking with other agencies' programs or authorities in order to sufficiently manage uses in AECs. AECs include all navigable coastal waters, the wetlands

around estuarine waters, navigable waters outside of the estuarine system, land areas bordering the ocean and inlets, and a 75-foot buffer zone on all estuarine shorelines. The CRC therefore controls practically all activities in all water areas in the entire coastal zone and a buffer zone around all estuarine and marine water that is at least 75 feet wide. By reviewing development in, on, or through this zone by means of the CAMA permit, the CRC has thorough, comprehensive and unified authority to manage most land and water uses that directly and significantly affect coastal waters.

The authorities that are relied on to manage uses outside of AECs are broad both in scope and number. Many of these authorities are required by the previously mentioned statutory directives to be consistent with state policies. Others are statutorily required to move toward consideration of and coordination with coastal policies. Also, for the first time, a comprehensive first step has been taken to work toward local planning, implementation, and enforcement practices that are consistent with comprehensive coastal management policies.

Finally, it is important to realize that regardless of the existence of formal mechanisms for networking, most of the authorities relied upon are required by statute to apply policies, standards, and practices that are consistent with this State's coastal management policies. Furthermore, there has been and will continue to be voluntary cooperation between involved agencies. For example, after seeking and receiving recommendations from the CRC, the Division of Health Services recently strengthened its septic tank regulations to include a 100-foot setback requirement from shellfish (SA) waters and a 50-foot setback requirement from all other waters. Another example of cooperation is the state 201 Task Force's agreement to not approve 201 facility

plans that are inconsistent with local land use plans until the inconsistency is resolved. This means that local 201 facilities, which are important determinants of local growth patterns and therefore a very important use, will be located consistent with the local plans. Thus, the state policies, as reflected by the local plans, will be considered in 201 plans.

D. Case Studies Applying Authorities to Critical Coastal Uses

The following are case studies of four types of development which have taken place in the North Carolina coastal zone. These types of development are considered critical and therefore are permissible uses subject to the coastal zone management program. The purpose of these case studies is to demonstrate in some detail how the various state environmental regulations combine to consider and, where necessary, mitigate the adverse environmental impacts of such major projects. Using the information in Chapter 5 of this document, (ie. the list of critical uses, matrix, and inventory of authorities) a similar type of analysis can be applied to all critical uses in North Carolina's coastal zone. Two facts should be noted: first, the uses for the case studies were not chosen because the State has most impressive control, but rather are controversial projects recently proposed and/or constructed in the coastal zone; second, the case studies are not limited to analyzing only those authorities of more recent origin that would be applied if the project were built after North Carolina's coastal zone management plan goes into effect (ie. the permit changeover date).

(1) A Nuclear Power Plan

(a) Project Description and Location

The Brunswick Nuclear Power Plant has two boiling water nuclear reactor steam generators which are cooled by brackish water from the Cape Fear River. Each unit is

designed for an utlimate output of 2436 MWT. Buildings house equipment for the processing of radioactive wastes, handling of fuel, power generation, cooling systems, electrical distribution, research, and administrative offices.

The plant is located in Brunswick County, approximately 2.5 miles north of Southport and approximately 9,000 feet west of the Cape Fear River. The building site is located among cultivated fields and wooded areas with the intake and discharge canals intersecting Dutchman and Nancy's Creeks. Also, an ocean outfall pumping station has been established 1.5 miles west of Fort Caswell which is located at the mouth of the Cape Fear Estuary.

(b) Potential Impacts on Public Water Supplies

- Loss of potable water from aquifers to cooling canals;
- Salt water intrusion into shallow aquifers;
- Contamination of adjacent well water supplies by chemicals and radioactivity from lateral seepage of cooling water;
- Long-range lowering of the water table.

(c) Potential Impacts on Coastal Waters

- Destruction of marshland and loss of the marshlands benefits such as food production (detritus), pollutant filtering action, shoreline stabilization, and wildlife habitat, etc.;
- Blockage of natural drainageways by filling activities;
- Sedimentation, siltation and increased erosion of canal banks;
- Diversion of consistent freshwater flow to the estuary;
- Thermal discharge to ocean via cooling canals (an increase of 18° F above ambient coastal water yearly temperature);
- Change in species composition (homesites) at end of outfall pipe;
- Change in marine life migration patterns (they follow canal waters instead of river waters) could affect spawning;

- Fish larvae are killed from heated intake waters (long term effect on marine fisheries production not yet known);
- Adult marine life are impinged on intake screens.

Major Permits Obtained by Carolina Power & Light Company for Construction and Operation of the Brunswick Steam Electric Plant

Federal Permits	Agency	Environmental Objective
AEC Construction	Atomic Energy Commission	Insures plant design is safe and in tune with the site's geology, climatology, meteorology, seismology, hydrology, and topography
404 Permit	Army Corps of Engineers	Protection of traditional public rights of navigation, fishing, hunting, and boating in all navigable waters and their tributaries
Construction Permit for Work in Navigable Waters	Army Corps of Engineers	Evaluates the effect excavation of botton materials will have on marine life and public resources
State Permits		
Certificate of Public Convenience & Necessity	Utilities Commission	Demand/supply analysis with a look at public benefit
Waste Water Discharge (Circulating Water)	DNER, DEM, Water Quality Section	Evaluates the effects of the heated cooling waters on public waters under state jurisdiction
Dewatering in Plant Area	DNER, DEM, Ground Water Section	Considers site construction effects on ground water quality
Well Construction	DNER, Div. of Resource Planning & Evaluation	Considerations on public health and possible contamination of ground water supplies and effects on private well yields
Waste Water Disposal (Sewage effluent)	DNER, DEM and Div. of Health Services	Evaluates impacts on stream quality from discharges of sewage effluents
Water Quality Certificate	DNER, DEM, Water Quality Section	Examines quantity and quality of proposed discharge of cooling waters

Dredge and Fill Permit for Work in state-owned Lake and Estuarine Waters (circulating water)	DNER, Div. of Marine Fisheries	Controls needless dredging and filling work within biologically productive waters; minimizes the destruction of wetland and wildlife habitat, and protects commercial fishing resources
NPDES	DNER, DEM, Water Quality Section	Implements federal water quality standards
401 Permit	DNER, DEM	Regulation of siltation resulting from filling activities in surface waters (401 of FWPCA)
Fill Permit	DOA (State Property Office)	Easements to fill and obstruction to navigation in state waters

All of the potential environmental impacts were addressed and evaluated during the two and one-half year span that it took CP&L to obtain all of the necessary permits. Out of the 14 major permits obtained, approximately nine of them impact or directly influence coastal waters.

The cooling canals have been in operation for the past two years and there has been no supportive evidence, to date, that confirms any of the four potential impacts to public water supplies. These impacts were analyzed by the Water Quality Section (DEM) and the Division of Health Services very extensively before permits were issued that could have affected the public health, safety and welfare.

The major impacts on coastal waters and their biological components were analyzed by the Division of Marine Fisheries, Division of Environmental Management, and the Corps of Engineers. These permits were processed and nine potential impacts were reviewed by a multitude of other agencies that have administrative agreements with the original three field survey agencies. This complex permit procedure could now fall within the review and coordinated approach of permit

processing under CAMA, either through the federal consistency provisions of the CZMA or the permit review authority of CAMA.

Many aspects of the development plan and construction of cooling canals have the greatest environmental effects on AECs. Plans the CRC can review and comment on to the Utilities Commission or other involved agencies are impacts that are inconsistent with standards for the involved AECs. Also the CRC shall serve as watchdogs of those negative impacts and undesirable features of a project that may be inconsistent with pertinent local land use plans.

(2) Construction of a Highway Project on the Outer Banks

(a) Project Description and Location

Bogue Banks, approximately 25 miles long and between .2-1.0 miles in width, comprises one of a system of sand barrier islands along the coast of North Carolina and is representative of those barrier islands associated with North Carolina's coast which are not in federal ownership. This barrier island is bounded on the south by the Atlantic Ocean and on the north by Bogue Sound and associated marsh. Two inlets, one on either side of the island, separate it from its neighbors.

The island itself falls entirely within the local jurisdiction of one of the 20 coastal counties and is not intensively developed. Most of the development is limited to a resort community on the eastern end with most other development confined to and associated with four small communities interspersed along the island's length. In addition, numerous vacation homes are located intermittently along the island. Although not heavily populated year-round, Bogue Banks has become a popular vacation resort during the summer months, drawing vacationers from all over the State. However, even though a heavily traveled area during these months, the island is served by one major highway - a two lane highway

containing undesirable curves, needing repaving over much of its length, and having traffic lanes some two feet narrower than present road standards require.

Because of these deficiences, the Department of Transportation proposed to undertake a rehabilitation project which would include upgrading the existing road. In places this would necessitate the removal of island vegetation. Also proposed was a relocation of portions of the highway which would entail transversing through sand dune and marsh areas.

Because the project is to be a federal-state cooperative effort, authority for planning and construction of the project rests at the state level with the Department of Transportation.

(b) Environmental Impacts

A highway project of this magnitude has the potential to impact coastal waters in a variety of ways; however, careful planning and adequate regulatory controls can help mitigate the environmental damages. In general, impacts associated with highway construction which could have a direct effect on coastal waters can be classified into two categories: those that occur during and as a result of construction activities, and those that are ongoing in nature. Listed below is a more detailed description of these impacts.

Impacts occuring during and as a result of construction activities: (1) pollution from sedimentation and erosion; due to the barrier island being relatively narrow, sediments not controlled on site have an increased probability of entering coastal waters. Effects: direct effect on water quality; increased turbidity, decreased light penetration; destruction of shellfishing areas; potential filling in or critical marsh and wetland areas; (2) destruction of native vegetation; due to right of way requirements, the possibility of impinging on native vegetation such as dune grasses, maritime shrub thicket, or forests exists. Effects: localized changes

in the quality of coastal surface or ground water through destruction of the buffering and filtering capacity to coastal waters that vegetation provides; localized changes in the quantity of water that coastal waters receive; alteration of the Coastal water cycle, potentially releasing too much fresh water too quickly into surrounding waters in the mid-salinity range.

(3) destruction of barrier island marsh; alteration of this system affects coastal waters by affecting water quality through increased turbidity, decreased light penetration and siltation effects; destruction of habitat; changing the depth of configuration of adjacent water areas, thus changing important drainage and/or circulation patterns.

(4) destruction of barrier island dunes; effects to coastal waters include destruction of an energy dissipator to storms; destruction of a natural sand storage system to the beach; short-circuiting of the beach berm offshore bar system.

Impacts that are ongoing in nature: non-point source pollution from highway run-off. Effects to coastal waters: toxic metal build-up in marsh sediments; potential shellfish contamination; potential habitat alteration; pollutant invasion of the water table due to inability of soil to trap pollutants.

Before any highway project of the sort described above can proceed, there are permits which must be obtained and/or procedures which must be carried out. In the case of the proposed action, these can be generally classified under three headings: "Federal Permits/Regulations", "State Permits/Regulation", and "Internal Regulations". Listed below are the permits and regulations applicable to a federal aid highway project which is undertaken at the coast.

Federal Title	Administered by	Environmental Objective
National Environmental Policy Act 1970 (NEPA)	EPA	For "Federal actions significantly affecting the environment" an EIS must be filed which describes environmental impacts of proposed action, adverse environmental impacts which cannot be avoided, mitigation measures, alternatives to the action, relationship between short and long term uses of environment.
Federal Water Pollution Control Act Amendments (Sec.404)	Army Corps of Engineers	Before any dredging or filling activities take place in waters of the U.S. (including wetland areas) a permit must be secured.
Department of Transportation Act (80 Stat. 931)	Department of Transportation	No project which requires the use of any publicly owned land from a public park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance will be approved unless no feasible alternative exists, and such program includes all possible planning to minimize harm.
Demonstration Cities and Metropolitan Development Act 1966 (Sec. 204), and Intergovernment cooperation Act 1968 (title IV)	Office of Management and Budget	Establishment of a project notification and review system to facilitate coordinated development planning on an intergovernmental basis. Coordination of federal development projects with state, regional, and local development planning. Main coordination process used by N.C. DOT for highway projects (with regard to coordinating with state agencies).

State Title		
Federal Water Pollution Control Amendments (Sec. 401)	DNER (DEM)	Any project filling in natural bodies or marshes must obtain a 401 certificate. Discharge into surrounding waters must have a 401 certificate.
Permit to Dredge or Fill in or about Estuarine Waters (G.S. 113-229)	DNER (Division of Marine Fisheries)	Before any excavation of fill work takes place in any estuarine waters, tidelands, marshlands, or state-owned lakes, a permit must be obtained (issued along with Corps 104 permit)
Sedimentation Pollution Control Act of 1974 (G.S. 113A-50)	DNER (DEM)	Commission requires sedimentation control plans for land-disturbing activities. Agencies within government can submit a plan for approval to Commission. If so approved, it will administer the monitoring phase - (in N.C. DOT has approval - thus monitoring authority).
Protection of Sand Dunes along Outer Banks G.S. 104B3	DNER	Sand dune cannot be damaged or destroyed. No vegetation on dunes can be destroyed.
Internal Title		
Federal Highway Procedure Manual #7-7-2 (regulations for NEPA implementation)	DOT	Presents guidelines for the implementation of NEPA, including environmental assessment, coordination procedures, public hearing requirements, administrative procedures, etc. Under the section "Description of alternatives" - must include an analysis of the relative consistency of the alteration with goals and objectives of any urban plan that has been adopted by the community concerned. (would include CAMA land use plans)

Through the combination of its policy and permit requirements, North Carolina has a handle on guiding such projects as highway development along the coast. More specifically, various environmental policies have been developed and are carried out through various means to mitigate impacts which can directly and significantly affect coastal waters.

For example, many of the negative impacts that potentially affect coastal waters during highway construction can be related to sedimentation and erosion problems. However, it is state policy that "the control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare." For that reason (through the Sedimentation Control Act 1973) any agency such as DOT which engages in land-disturbing activities must meet certain mandatory standards in order to minimize the detrimental effects from pollution by sedimentation. Through the submission of approved sedimentation control plans (which must incorporate such provisions as revegetation, controlled cutting, etc.) impacts such as those previously discussed are kept to a minimum. One drawback, however, is that with an approved plan an agency is permitted to monitor its own project without any additional outside monitoring as well. The DNER/CRC will review sedimentation plans and regulations used by state agencies in the coastal area and comment where necessary on how the policies therein can be made more consistent with coastal management policies.

It is also a policy of North Carolina to keep from damage, destruction, or removal the natural and constructed dunes providing a protective barrier against the actions of sand, wind and water along the Atlantic Ocean front, in particular the Outer Banks. To enforce this policy the Sand Dune Protection law requires a permit for any alteration of a dune. A requirement for this permit, however, is to prove

that the work will not "materially weaken" the system. Local governments can adopt sand dune ordinances as well which must meet the guidelines set forth. In this way the impacts which highway location in this area would impose can be minimized. The CRC will regulate frontal dunes as an AEC, and will encourage and aid localities to adopt CRC standards for dune areas outside of frontal dunes.

With regard to marsh destruction or alteration the consort of both federal and state policies provide a strong mechanism for protection. It is a policy of North Carolina that its marshlands are valuable natural resources yet vulnerable to impacts from man's activities. For this reason a permit must be secured before "any excavation or filling project takes place in any estuarine waters, tidelands, marshlands, or state-owned lakes." Provisions for a permit require that mitigating measures be taken to assure minimum impacts to coastal waters. Wetlands have been designated an AEC under CAMA. The CRC therefore sets standards and requires a permit for development in wetlands, and has the authority to deny permits based on policies and standards that are broader than those permissible under the state Dredge and Fill Act. Thus the CRC is authorized to deny permits for roads based on secondary impacts, thereby implementing policies concerning the location and stimulation of development.

At present there are no direct state regulations with regard to vegetation destruction in areas other than dunes; however, sediment control policies do stipulate revegetation procedures for areas which have been subjected to land-disturbing activities. In this way impacts resulting from the loss of vegetation (sedimentation, erosion, run-off, etc.) can be maintained at least indirectly.

As already indicated, the combination of the CAMA provisions (especially through state regulation of AECs) and an overall approved state management plan will provide perhaps the most effective leverage to control development projects. Frontal dunes, ocean beaches, excessive erosion areas and inlet lands are potential AECs tied in under the heading "Ocean Hazard Areas." As such, they as a group will be subject to direct regulation through permits by the CRC. In these areas it will be the policy of the CRC to reduce unreasonable danger to life and property; therefore, general use standards for these areas require strict conformance to the standards set forth. However, the most important standard is the one which states, "no construction or placement of major public facilities to be supported by state funds, including but not limited to roads and sewer and water lines, will be permitted in hazard areas." In effect, this statement assures that development involving major highway location will be guided outside these fragile areas.

Furthermore, thoroughfare plans or other aspects of the local plans that are relevant to location of roads may be used by the CRC in commenting on a proposed road project outside of AECs or in denying a permit within AECs. Thus the local land use plans will take on significant importance in setting policies for and reviewing road projects.

In summary, it appears that North Carolina has an adequate handle on the mechanisms needed to regulate uses that could affect coastal waters. There are gaps that exist; however, new provisions which go into effect as a result of CAMA can help overcome these. Many of these mechanisms already exist - both the regulatory mechanisms which require permits and the review mechanisms. To effectively control projects such as major highway development on the coast, the CRC will actively pursue coordination on a formalized basis with various departments as authorized by CAMA. This will allow input concerning such vital programs as sedimentation control plan

reviews and sand dune ordinance implementation. An active involvement in both the NEPA and A-95 review processes will be undertaken as well.

(3) A Large Mining Operation

(a) Project Description and Location

The project is an open pit mining operation located in Beaufort County in close proximity to the Town of Aurora, population 675, and the Pamlico River, the major tributary to the Pamlico Sound. It will remove phosphate deposits situated between 40 to 50 feet of over burden and an artesian aquifer located within the Castle Hayne Formation. The mining area will cover approximately 2,200 acres over 20 years and will yield up to 3 million tons of phosphate rock per year. Operation will require the depressurization of the ground water system at a rate of 35 MGD which will be pumped into clay settling ponds covering 1200 acres and then into the Pamlico River by two channels, one 8,000 feet long and 35 feet wide, and the other 5,500 feet long and 24 feet wide. Also, a 25,000 foot long barge canal and turning basin will be constructed with upgrading of roads and electrical transmission necessary for servicing.

(b) Potential Impacts to Regional Water System

Removal of vegetation will significantly increase sedimentation rate to estuarine waters.

Ground water containing clay size to colloidal size particles will also contribute to the sediment load of the Pamlico River.

Additional sources of phsophorus and to a much lesser extent nitrogen could significantly impact aquatic productivity by forcing some type of algal bloom.

Use of and resulting impacts to nearby creeks will exclude these areas as potential aquatic nursery areas;

The depressurization of groundwater resources at a rate of 35 MGD by this operation, combined with the additional extraction of 32 MGD by a similar mining operation and the extraction of up to 20 MGD by a farming operation, could draw saline water into the system, thus contaminating this potable water source.

(c) Permits Required

Federal Permit	Issuing Agency	Environmental Objective
To Discharge Wastewater (NPDES) (Federal Water Pollution Control Act Amendments of 1972)	EPA	Insure compliance with water quality standards
Excavate and/or Fill (River & Harbor Act of 1899; Federal Water Pollution Control Act amendments of 1972)	Army Corps of Engineers	Protect the nation's waters
State Permit		
Water Use Permit (G.S. 143-215.15)	DNER, DEM, Water Quality Section	Management of water withdrawal and uses in designated capacity use areas
Discharges to Surface Waters (G.S. 143-215.1)	DNER, DEM, Water Quality Section	Control of sources of water pollution
Dam Safety (G.S. 143-215.30)	DNER, DEM, Land Quality Section	Provide for certification of dams in the interest of public health, safety, and welfare
Mining (G.S. 74-50)	DNER, DEM, Land Quality Section	Insure reasonable provisions for protection of surrounding environment and for reclamation of the area affected by mining
To Construct and Operate Emission Sources (G.S. 143-215.108)	DNER, DEM, Air Quality Section	Control of discharge of air contaminants into the atmosphere

Ex[illegible]vate and/or Fill (G.S. 113-229)	DNER, Division of Marine Fisheries, Estuarine Studies Section	Conserve and protect the estuarine resources, including fish, wildlife and associate habitat
Well Construction (G.S. 87-88)	DNER, Division of Resource Planning and Evaluation	Provide for certification of well construction designs in the interest of public health, safety, and welfare

(d) Goals and Objectives Stated in the Beaufort County Land Use Plan

The Beaufort County Land Use Plan states two goals that directly apply to the phosphate mining operation; the first of these is to protect the quality and natural setting of the county's waterways and the second is to encourage the further development of phosphate mining while ensuring that the natural environment and life style of Beaufort County is protected. In addition to these goals specific objectives are listed to clarify their intent:

- To oppose any land using project or development such as mining or damming of the river which cannot be shown by competent studies to have no harmful impact on the natural setting environmental quality of our waterways.
- To encourage that open-pit mining remain on the south side of the river for the foreseeable future.
- To oppose mining of the rivers and creeks until a competent study can be conducted as to the impact of such mining.
- To zone existing unincorporated residential areas to protect them from undesirable land uses.
- To encourage incorporated towns to exercise land use controls to protect their residential areas from undesirable land uses.
- Mining should not be allowed to jeopardize the ground water supply of the area.

(e) Summary

The impacts of the mining operation on the water systems can be controlled through the combination of existing permit and review procedures. The goals and related objectives will be juxtaposed for consistency with each project using state or federal funds and will be a key criteria item when evaluating the CAMA permit and any related permits at the state level.

More particularly, the impacts are controlled by the following program. Two permits are used to mitigate the potential impact on groundwater quality. The first, a "water use permit" is required in designated capacity use areas to assure that the water is not consumtively used. The second, a "well construction permit," is required to assure that contaminants including chloride do not affect groundwater quality.

Two permits are used to mitigate the potential impacts on surface water quality. The first, a "discharge to surface waters permit," is required to protect water quality by controling sources of pollution. The second, a "excavate and/or fill permit," is required to protect the aquatic biota and associated habitat areas of the estuary. These two permits are state counterparts to the federal NPDES permit and the federal Excavate and/or Fill Permit.

The CRC's authority to review the involved permits for overall impact and consistency with the pertinent local plans will allow more comprehensive consideration of such projects. Furthermore, CRC regulation of wetlands allow broad control over connections that can be made into estuarine waters. This authority is broad enough to include consideration of secondary impacts, thus increasing the factors upon which denial of a permit can be based. The policies and goals of the local land use plan can be considered in disposition of such a permit request.

(4) A "Superfarm"

(a) Project Description and Location

Open Grounds Farms, Inc. plans to eventually farm an entire 50,000 acre tract of coastal land. Presently, logging and clearing operations are underway near a previously cleared tract of pasture land. The owners propose to maintain some 8.5 miles of the "through canal" from the pasture region to US 70 at Nelson Bay. The maintenance, 28' wide by 66' deep, is necessary due to small trees and shrubs along the canal bank and general siltation within the canal. Primarily, the entire length of canal is confined to high ground wooded areas, with the exception of the West Fork Creek and East Fork Creek locations. Corn-soybean rotation and winter wheat will be the major crops. The land may also be used as pastures and feedlots for cattle and hogs.

At West Fork Creek, the canal and associated roadbed crosses some 500' of black needlerush (Juncus). All spoil material at this location is to be placed on the adjacent roadbed. A new bridge, 80' long by 25' wide, is to be constructed across the creek. The structure is to have a vertical clearance of 5' above MHW, with 8' horizontal clearance between pilings. A new "tee" canal is proposed at East Fork Creek to promote bottom drainage. The new canal is to be 250' long by 25' wide to a depth of 6', and will connect to the main canal. The resulting spoil material is to be placed on the adjacent high ground. Three drainage gates are to be placed at the canal/creek junctions - one on either side of West Fork Creek, and one at East Fork Creek.

Maintenance is also to be conducted on a canal which connects to the head of Southwest Creek. The canal is to have a top width of 25' with a depth of 6'. Again, the entire work area will be through wooded high ground with the exception

of the canal/creek junction. A 76" diameter culvert which connects the existing canal with the creek is to be replaced. The culvert is necessary due to an access road which now crosses at the canal/creek junction. A drainage gate is to also be installed at this location.

(b) Environmental Setting

This "superfarm" project is located in eastern Carteret County. The tract involves some 50,000 acres bounded by SR 1300 on the west, South River and Turnagain Bay on the north, U.S. 70 on the east, and International Paper on the south. The property was purchased by Open Grounds Farms, Inc. The land is known locally as the Open Grounds due to the large expanse of stunted pond pine and myrtle which dominate the site. Repeated forest fires throughout the tract, coupled with poor drainage, have apparently prevented the majority of the property from producing heavy timber. The only major alteration of the tract has been the clearing of approximately 4 square miles of farmland near the western side of the property. The farm was used primarily as pasture land for a dairy operation, but has been dormant for the last several years.

(c) Environmental Impacts

Among the environmental concerns that significantly and directly affect the coastal waters and surface water quality are surface water run-off, fertilizing techniques, modification of the ecosystem, and disposal of animal wastes.

Surface water run-off from a large scale farming operation presents several major environmental concerns when viewed in the context of an estuarine system. The increased freshwater run-off may reduce the salinity level of estuarine waters to the extent that these waters will no longer support oyster production or the development of larval and juvenile stages of certain mid-salinity species. And the increased

entrance of suspended solids into the estuary may inhibit or deter a healthy marine environment. However, organic soils such as the ones here add fewer suspended solids than the mineral soils unusally associated with agriculture.

The changes in the land caused by drainage and field preparation decrease the ability of the ecosystem to perform valuable functions such as water table maintenance, water filtration, and wildlife habitat. The lowered water table reduces groundwater recharge and accelerates saltwater intrusion. Vegetation is removed and is no longer available to trap and store nutrients and pollutants. The effect of such activities on wildlife seems to be the increase of more common species and a further threat to rare and endangered species.

Disposal of animal wastes is probably the primary threat posed to the coastal environment by the emerging superfarms. Huge concentrated livestock operations have already been established on some of the large farms.

(d) Permits Required

Federal Permit	Issuing Agency	Provisions
Federal Water Pollution Control Act §301	EPA	EPA may set effluent standards on all point source discharges other than dredged materials into navigable waters including agricultural wastes and concentrated animal feeding operations
NPDES	(certified state program)	
Dredge & Fill	Army Corps of Engineers	Permit authority over dredged materials in the "waters of the U.S." (expanding to full scope of authority by timed phases)

State Permit		
CAMA	Coastal Resources Commission	Major or minor development permits are required for activities in AECs involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel, or minerals; bulkheading, driving of pilings; clearing of alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal. (limited exemption that does not apply to agricultural activities that require a dredge and fill permit.)
Dredge & Fill	Marine Fisheries	A permit must be obtained prior to the commencement of any excavation or filling project in any estuarine waters, tidelands, marshlands, or state-owned lakes.
NPDES	Environmental Management Commission (EMC)	The discharge into surface waters and the operation or construction of waste water facilities discharging into surface waters require a permit
Capacity Water Use Act	EMC	Any person desiring to withdraw, obtain, or utilize surface waters or groundwaters or both in excess of 100,000 gallons per day in an area designated as a capacity use area by the EMC must obtain a permit

State Water Quality Act	EMC	A permit must be obtained for constructing any outlet into the water of the State
Animal Feedlot Regulation	EMC	Control of the disposal of the waste of animals held in concentrated areas

(e) Summary

The Estuarine System - Water quality of the estuarine system may be affected by the intrusion of waters from farm drainage ditches and canals. The important concerns here are the maintenance of the minimum salinity level necessary to support estuarine species and of the general water quality standards.

These concerns are presently addressed by programs administered by the EMC and will also be addressed by the regulations of CRC when its permit-letting authority becomes operative. EMC standards require that the waters flowing into estuarine system not cause the estuarine waters to exceed the water quality standards set for that body of water. In addition, estuarine waters are proposed for AEC designation by the CRC. As such, the connection of farm drainage ditches with estuarine waters will require a permit from the CRC. The CRC may place certain conditions on the grant of any permit so that any increased turbidity, reduced salinity, or other regative impacts are minimized.

Another major source of pollution to the estuarine system is run-off from animal feed lot operations. Standards and permit requirements administered by EMC and EPA control such point source discharges by the requirement of an NPDES permit. The great potential impact of such an operation and the growing importance of this method of animal husbandry to superfarm projects indicate the value and necessity of such controls.

Ecosystem - Ecosystem modifications caused by drainage and field preparation decrease the ability of the ecosystem to perform valuable functions such as water table maintenance, water filtration, and wildlife habitat. These problems are subject to varying degress of control and are subject to the authority of several agencies.

The control of water table maintenance and prevention of salt water intrusion are within the authority of the EMC. The EMC may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters (G.S. 143-215.13d). Through the declaration of a capacity use area, the EMC has the authority to control the volume of water used by competing interests. Such control ensures protection of subsurface water supplies and the prevention of salt water intrusion due to ditching and drainage of farmlands.

CHAPTER 6 PROCESSES FOR ONGOING MANAGEMENT

A. Amendment of the State Guidelines

The CRC's authority to amend the State Guidelines provides the mechanism for continuing development of state policies for the coastal zone. The purpose of this subsection is to describe the process whereby those amendments will be made.

As has been emphasized elsewhere in this document, the State Guidelines developed by the CRC pursuant to CAMA are a primary vehicle for setting and implementing state policy for land and water uses in North Carolina's coastal zone. CAMA emphasizes this policy-making responsibility in describing the Guidelines as

> "statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Such guidelines shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.
>
> The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such staff assistance as it requires by the Secretary of Natural and Economic Resources and the Secretary of the Department of Administration, together with such incidental assistance as may be requested of any other state department or agency."

> "The Commission may from time to time amend the State Guidelines as it deems necessary. In addition, it shall review such guidelines each five years after the effective date of this Article in accordance with the procedures for adoption of the original guidelines, to determine whether further amendments are desirable. Any proposed amendments shall be submitted to all cities,

counties, members of the General Assembly and lead regional organizations in the coastal area, and may be distributed to such other agencies and individuals as the Commission deems appropriate. All comments and recommendations of such governments, agencies, and individuals shall be submitted to the Commission in writing within 30 days of receipt of the proposed amendments. The Commission shall review and consider these written comments and thereupon may by rule reject or adopt the proposed amendments or modify and adopt the amendments. Certified copies of all amendments shall be filed with the Secretary of State and the Principal Clerks of the Senate and House. Amendments shall thereupon be mailed to each city, county, members of the General Assembly and lead regional organizations in the coastal area and to such other agencies and individuals as the Commission deems appropriate. Copies shall be made available to the public through the Department of Administration."

Thus the Legislature has clearly given the CRC authority for continuing development of North Carolina's coastal policies, an authority the CRC can exercise at any time new policies are deemed necessary to improve this State's coastal management program. It is important to note that the Guidelines include standards and policies for development in AECs, and it is through the Guidelines amendment process that these standards and policies can be changed as deemed necessary by the CRC.

The above exerpts from the CAMA outline the procedures to be followed by the CRC in amending the Guidelines. Notice must be given to local governments and regional organizations, and members of the General Assembly. In addition, the CRC will consult informally in advance with all interested state and federal agencies. Those agencies will then be given formal notice of the final proposed amendment 30 days before

the public hearing. The agencies will thus have 30 days to comment and further consult with the CRC on the proposed amendment. Agency comments may also be presented at the public hearing before final amendment of the Guidelines. This process is the formal method of consultation with affected federal agencies and their input should be given during the announced 30-day period and/or at the public hearing.

B. Land Use Planning

1. Land Use Plan Amendment

The CAMA establishes the following procedural requirement for all land use plan amendments:

> The land use plan may be amended only after a properly held public hearing. Notice of the public hearing must appear at least 30 days prior to the public hearing and must state the date, time, place, proposed action, and that copies of the amendment may be viewed at a particular office in the county courthouse during the designated hours. The notice must appear at least once in a newspaper of general circulation in the county." (113A-110(e))

The CRC has not yet established a procedure for review of the local amendments but has indicated that any such procedure will incorporate the following principles.

The CRC will be notified of and given the opportunity to review all substantial local amendments. However, it is impractical and unnecessary to review minor or technical amendments. Therefore, when the governmental unit amending the land use plan deems the amendment sufficiently insubstantial, it may request a waiver of the formal amendment procedure when giving notice to the Executive Secretary. The Executive Secretary shall make such determination in accordance with specific CRC standards and policy and promptly post written notification to the local government.

As has been emphasized elsewhere in this document, the local land use plans are an important aspect of North Carolina's

management plan. These plans represent a joint effort by the State and the localities to promote wise planning in the coastal area. These plans are required to be consistent with the State Guidelines to ensure that they reflect good planning techniques and are compatible with general state policies for the coastal area. All of the submitted local plans have been reviewed by the CRC and found consistent with the Guidelines. Section 110(d) of CAMA provides that the land use plan may be amended as a whole by a single resolution or in parts by successive resolutions. The successive resolutions may address geographical sections, county divisions, or functional units of subject matter. There will undoubtedly be amendments by the localities, and the question arises as to what authority and/or procedure the CRC can exercise to ensure that the amendments are consistent with the State Guidelines.

Once a proposed amendment is determined to be substantial, a process similar to the following will be followed. The Executive Secretary shall receive written notice of the public hearing, a copy of the proposed amendment, and the rationale for amendments 30 days prior to the public hearing. When notice of a public hearing is received, the staff can review the proposed amendment and forward such comments along with the proposed amendment to Commissioners from that area. After comment by such Commissioners, staff may modify the original comments to reflect Commission concerns and respond to the local government noting any reservations, suggestions, or general consistency. The Commission or CRAC representative from the area may appear at the public hearing to express certain concerns. The Commission will then determine whether the finally proposed amendment is consistent with the Guidelines and notify the locality of the decision.

2. Updating and Implementing Local Plans

(a) Updating

As mentioned in earlier sections of this plan, the Act states that the Commission"may from time to time amend the State Guidelines as it deems necessary. In addition, it shall review such guidelines each five years after the effective date of this Article". Furthermore, the CRC has required in the Guidelines that "the local land classification maps must be updated every five years." The CRC therefore, will establish a procedure for reviewing the local plans for consistency with any major changes in the Guidelines. The exact process for such review has not yet been determined, but it is likely that submission of local plans or the pertinent parts therein for updating will be required at the end of the five year period and then only if the amendments are substantial. The CRC will then review the local plans and approve or comment on the consistency of the plan with the Guideline changes. At the same time, the updated local land classification plans will be reviewed for consistency with any Guideline changes, requirements, or new policies properly established by the CRC.

(b) Implementing

Local governments, and not the CRC, are directly responsible for implementing the local plans. However, the following passages from CAMA indicate the Legislature's intent that the CRC should monitor and assist local implementation.

> "No local ordinance or other local regulation shall be adopted which, within an area of environmental concern, is inconsistent with the land use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within

> the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land use plan, it shall transmit recommendations for modification to the adopting local government." (G.S. 113A-111)

The CRC intends to continue working with local governments to better effect good coastal management techniques. For example, the CRC has stated in the State Guidelines the policy that the local land classification map "will serve as a basic tool for coordinating numerous policies, standards, regulations, and other governmental activities at the local, state and federal level...The (land classification) System provides a guide for public investment in land...The System can also provide a useful framework for budgeting and planning for the construction of community facilities such as water and sewer systems, schools, and roads... In addition, such a System will aid in better coordination of regulatory policies and decisions... Finally, the System can help provide guidance for a more equitable distribution of the land tax burden."

It is the intention of the CRC to provide the greatest possible technical and funding assistance to localities to develop better techniques for implementing the above planning and management concepts. Particular emphasis will be placed on techniques that have potential to positively affect coastal waters or other critical coastal resources or uses.

C. Geographic Areas of Particular Concern

1. Introduction

North Carolina's coastal management program recognizes three types of geographic areas of particular concern (GAPCs). Each are distinguished by the management strategy selected for the protection of these critical resource areas. These

distinctions are based upon the premise that all GAPCs are not appropriately managed through any one technique. The management strategy must be fitted to the degree of control necessary for the protection of the GAPC resources.

The three strategies selected are: (1) designation and regulation of AECs by the CRC pursuant to the CAMA (G.S. 113A-113); (2) designation and management of GAPCs for preservation and restoration by state and local governments; and (3) designation and management of GAPCs through local initiatives.

Although the three GAPC types are not mutually exclusive (i.e. certain categories of AECs may also be considered GAPCs for preservation and restoration), the various GAPC management strategies reflect the opinion that the degree of importance and the most appropriate management scheme is not necessarily identical for all GAPCs.

AECs, which by definition are of statewide significance, have been included within a management strategy that ensures protection through the State's police powers (see Chapter 4). On the other hand, GAPCs that are designated for preservation and restoration, because of their unique qualities and limited extent, will often be maintained in an inviolate state that requires the use of positive incentives rather than regulations. Finally, GAPCs that are to be designated and managed by local governments are not considered essential to the protection of the estuarine system. Yet they are important coastal resource management areas. Consequently, the management strategy is adjusted to allow the local governments to creatively participate in GAPC protection through local initiatives.

The AECs are extensively discussed in Chapter 4. In keeping with the theme of this Chapter, the remaining two types of GAPCs and the AEC amendment process will be discussed

in this section. The amendment process and the GAPCs for preservation and restoration as well as the GAPCs protected by local initiatives represent a new and continuing aspects of our coastal management program.

2. The AEC Amendment Process

In order to realize the full advantages of the AEC protection strategy, periodically the effectiveness of the program must be examined and adjustments made that reflect the dynamic conditions of the coast.

"Have the restrictions imposed by the permit program effectively implemented the management objectives? Are AECs geographically too restricted to protect the resource values or unnecessarily expansive? Should the use standards be modified to deal with unexpected changes in economic or social conditions?" These questions need to be answered and the proper adjustments made in the management of AECs. The CAMA has provided for this flexibility by stating that

> "the Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered." (G.S. 113A-115(c))

This amendment process allows the CRC to consider at any time changing or adding AECs as it deems necessary to accomplish the objectives of CAMA. The statutory procedural requirements for any new designations include a public hearing in each county in which lands to be affected are located; 30-day public notice of such a hearing; and consideration by the CRC of submitted evidence and arguments. In addition, notice shall be given to any state agency, citizen, group, etc. As with State Guidelines amendments the CRC will informally notify and seek input from all

interested federal agencies. Finally, all such agencies will also be sent the final proposed AEC designation, and will be given 30 days to comment. This process constitutes the formal consultation process regarding a change in the state management plan, a federal agency input should be provided before the final date set for public hearing.

3. Areas for Preservation and Restoration

The second major category of GAPCs discussed is areas designated for preservation and restoration. GAPCs included under this heading are dealt with somewhat differently from other GAPCs because of their special values or limited extent. The regulatory mechanisms developed for other coastal zone resources may be inadequate to maintain or to achieve the levels of quality desired for these areas. If preservation precludes use or so restricts the use of property that it deprives its owner of "the practical use thereof" regulations achieving preservation could conceivably constitute an unconstitutional "taking" of land. Less restrictive incentive devices such as tax incentives can be used to encourage landowners to restore an area's conservation, recreational, ecological or esthetic values; but the provision of incentives alone will not ensure restoration.

As required in Section 306(c)(9) of the FCZMA, North Carolina's management program includes "provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values." These provisions, in our management program, utilize "existing" (other than CAMA) authorities, exercised by local governments and various state agencies, in combination with the mechanisms established in CAMA for coastal area management.

(a) Existing Elements of the Program

There have been programs aimed at the preservation of valuable natural resource lands underway for a number of years in the State. The Division of State Parks, in DNER, acquires such lands for use as State Parks, Recreation Areas, or Natural Areas depending on their particular physical characteristics, their value in terms of rarity, and the needs of different geographical portions of the state. While Natural Areas are the only areas specifically designated for preservation, lands acquired for use as State Parks or Recreation Areas are usually afforded more protection from conflicting or detrimental uses than land use regulations alone could provide them.

In the State's coastal zone, several areas have already been acquired and incorporated into the State Parks program. These areas include Goose Creek, Merchant's Mill Pond, Jockey's Ridge, Carolina Beach State Park, Fort Macon, Bogue Banks (Roosevelt) Natural Area, Fort Fisher, Brunswick Town, White Oak River Gameland, Gull Rock Gameland, Pamlico Point Gameland, Bald Head Island marshes, several oyster management areas and nursery management areas.

In addition to the traditional activities of the State in preserving State Parks, North Carolina initiated a program recently that promises to protect more adequately the areas of the State that are characterized by unique natural features. Through the cooperative efforts of the Nature Conservancy, the Bureau of Outdoor Recreation, the Babcock Foundation, the Z. Smith Reynolds Foundation and DNER, the preservation of natural areas has for the first time gained significant stature. The Natural Heritage Program sponsored by these concerned organizations and agencies will in the near future complete an initial inventory of natural areas, establish a procedure for identifying the sites of highest priority and explore the preservation techniques available to the State. Certainly this program will assist in the preservation of unique coastal natural areas.

(b) Elements of the Program Established by CAMA

CAMA authorizes the CRC to

> "recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area" (G.S. 113A-124(c)(2)).

More specifically CAMA (G.S. 113A-113(b)(4)) authorizes the designation as AECs the following:

> "Fragile of historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:...
>
> (v) Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;
>
> (vi) Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
>
> (vii) Areas containing unique geological formations, as identified by the State Geologist;"

Those categories of land and water designated AECs by the CRC include the three areas listed above termed Areas That Sustain Remnant Species, Complex Natural Areas and Unique Geologic Formations. As a group these areas are termed Fragile Natural Resource Areas and are defined in the State Guidelines as areas "containing environmental or natural resources of more than local significance where uncontrolled or incompatible development could result in major or irreversible damage to natural systems, scientific or educational values or aesthetic qualities".

All three of these categories are considered to be of a fragile character that may often require compensation to the property owners for effective protection. Consequently, each will be included within our preservation and restoration program.

In addition to the above categories of AECs that will be included in the preservation and restoration program, estuarine and marine sanctuaries may receive similar protection and management. Presently, North Carolina is investigating three possible sites for the establishment of an estuarine sanctuary for inclusion in our program.

Finally, the Commission through its power to recommend to the Secretary of Administration the purchase or condemnation of lands may effectively influence the decisions of State government regarding the siting of future key facilities. The location of state ports, energy facilities, bridges, roads and other facilities whose sitings are provided for through the right of eminent domain are all clearly incorporated into the Commission's program of preservation and restoration.

4. Local Government Initiatives for Special Management Activities

Other areas within the coastal boundaries besides AECs and areas for preservation and restoration are also important for similar reasons but are not felt to be of such critical importance to require direct state management at this time. The CRC intends to encourage and support local governments in identifying and managing such areas in a manner consistent with established coastal management objectives. These areas represent a lower priority of GAPC than AECs and areas for preservation and restoration. Special management activities should be construed to also cover efforts by local governments to improve existing regulatory standards for management of development where it is determined that more stringent management practices would be desirable. Examples of areas that local governments may wish to develop special management programs for are: maritime forests, historic places, secondary dunes, areas which are or may be impacted by key facilities, and other areas identified by the CRC as potential GAPCs. In these areas

local governments may wish to apply more stringent management practices because established CAMA development standards, septic tank regulations, erosion control ordinances, building codes, etc. are not felt to be adequate because of unusual local conditions.

In this portion of the program, local governments and local citizens will decide the desirability of developing special strategies for resource management. The Commission's role and the role of the state management agency will be to develop broad policies, assist local governments upon request to identify and develop such areas and management strategies, to review the locally developed program to determine consistency of the local program objectives with the established coastal management objectives, including the local land use plans and CRC policies, to determine that the management strategies proposed by local governments are satisfactory and adequate to meet their established objectives, to approve or reject the local program based on its appropriateness and potential effectiveness, to assist the local government in funding the undertaking, and to generally monitor the local administration for its effectiveness.

In summary, the establishment of a locally controlled program for identification and management of GAPCs represents an effort by the State of North Carolina to limit state management to only those critical areas of overriding state and national interest, and to encourage local management in areas that are not so critical but that nevertheless merit special management practices. The establishment of stricter standards for existing regulations is an attempt to encourage local initiative in improving on minimum state standards, where such improvement can be justified due to special local conditions.

D. Coordination With Other Government Programs

1. Permit Coordination

The CRC has accepted from the North Carolina Legislature the responsibility for continuing to work toward "developing a better coordinated and more unified system of environmental and land use permits in the coastal area." These efforts will provide the CRC with a means of input into other permit programs for the purpose of encouraging their consistency with the State's policies for land and water uses in the coastal zone.

The authority to consult with other permitting agencies is found in the State CAMA and in the consistency provisions of the Federal CZMA. The CAMA specifically states:

> "From and after the 'permit changeover date', all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed, or terminated except after consultation with the Commission."

The Act then goes on to list over twenty State permits subject to this coordination and consultation requirement, and empowers the CRC to add to the list "any permits, licenses, authorizations, regulations, approvals, or certificates issued by any State agency pursuant to any environmental protection legislation that may be enacted prior to the permit changeover date." (G. S. 113A-125)

The Federal CZMA dictates that each federal agency conducting or supporting activities directly affecting the coastal zone shall do so consistent with approved State management programs to the maximum extent practicable, and that no

license or permit shall be granted by a federal agency until consistency with the approved State management programs is certified.

The manner in which the Federal consistency provisions will be utilized by the State will be discussed elsewhere in this plan. The relationship between the CAMA permitting process in AECs and other permit programs has also been discussed elsewhere. Therefore, the remainder of this section may be at times redundant, but is nevertheless necessary to comprehensively summarize the Commission's policies and recommendations for coordination of permits in the coastal zone.

The problems as identified by the CRC, and the recommended approaches for solving them are as follows:

(a) Problems

(i) Dredge and Fill Permits

Most people engaged in coastal area development are aware of the dredge and fill program, and as a result of continuing efforts by the Division of Marine Fisheries, information on dredge and fill and advice on filing applications are easily accessible. However, much criticism and confusion in coastal area permit-letting processes has resulted from the fact that both the State and Federal governments frequently require separate permits for the same type of development activity. The confusion most often has been compounded because different standards, methods and timetables have been employed by the reviewing agencies operating out of Raleigh and Washington.

The criticisms stated most frequently deal more with the Federal dredge and fill program than with that of the State, and especially with the claimed delay in receiving Federal permits, with applications for Federal permits being rejected without on-site inspections or interviews with the applicants, and with having applications summarily rejected without offering assistance in effecting changes which might render them acceptable.

The State Department of Natural and Economic Resources and the U. S. Army Corps of Engineers have worked closely in attempts to coordinate and simplify, and considerable improvement has been noted. However, since other Federal agencies such as the Fish and Wildlife Service figure heavily in the determination of whether a Federal permit will be granted, and since the Federal process generally takes considerably longer, the frustration for applicants remains.

(ii) Locally Administered State Permits

A general lack of consistency appears to exist in two instances where State-mandated permits are issued by local authorities under ordinances or regulations adopted by local government. In the first of these, permits required under the sand dune ordinances, there is wide variance from county to county as to the extent of the geographical areas affected, and there appears to be little consistency in the degree of enforcement. In the second, septic tank permits, with which thousands of coastal property owners are involved each year, there appears to be a lack of clarity in standards applied to different areas, clearly calling for a clarification of State directive before consistency can be achieved locally. (The Coastal Resources Commission has consulted with and made recommendations to the Commission for Health Services concerning recent revisions to the State Laws and Rules for Ground Absorption Sewage Disposal Systems of 3,000 Gallons or Less Design Capacity. Recommendations that were adopted included minimum setback requirements of 50 feet from all surface waters and 100 feet from all wells and productive shellfish waters. Such receptiveness and cooperation by the Commission for Health Services to the recommendations of the Coastal Resources Commission has therefore resulted in a positive step toward establishing adequate and consistent septic tank standards in the coastal area.)

(iii) State Permits in General

Many people interviewed expressed the hope that State and Federal governments could tell them what they can do with their property, rather than what they cannot do.

Another frequently expressed suggestion was for the preparation of guidelines covering the whole gamut of coastal permits, which would provide the potential applicant with information on which permits he might need and how he should go about applying for them.

Within State government there seems to be general reluctance within departments or agencies to turn over permit letting authorities to some other branch of government, but there is general agreement that some sort of permit coordination mechanism is needed at a sufficiently high level to insure comprehensive coordination among all State departments.

The need for providing specially trained permit coordinators on a regional basis has also been suggested, especially within those departments with extensive permit letting responsibility.

Finally, the requirement in the Coastal Area Management Act (CAMA) for State agencies to coordinate and consult with the Coastal Resources Commission in the issuance of existing regulatory permits within the coastal area will inevitably introduce a new element in permit letting which should be anticipated prior to the date the new process becomes operative.

(b) Recommendations

(i) As a step toward the ultimate goal of a unified permit system, consideration should be given to combining three exclusively coastal permits now being handled separately and merging them with the CAMA development permits. Two of these, the dredge and fill permit and the coastal wetlands orders, are State administered. The third, sand dune protection permits, are administered by the coastal counties. In accomplishing such a merger, it would appear logical to make it

effective on the permit changeover date. Such changes might require amending legislation. The intent of such a merger of permits would be to unify and simplify procedures and not to eliminate any existing authority, and various affected statutes should be carefully reviewed in order to preserve all existing powers and to conform them as nearly as possible with the CAMA procedures.

- Merger of the dredge and fill permits and coastal wetlands orders involves programs that are now State administered. It is recommended that these programs should remain State administered, and that any necessary amendments be made to the CAMA definitions of "major" and "minor" developments. Merger of these two permits with the CAMA permit is an important step toward consolidating State authorities so that North Carolina will be in the strongest possible position to obtain delegation of the Federal dredge and fill permit if Congress chooses to enable such delegation.

- Merger of the sand dune permits involves a program that is now locally administered with State technical assistance. It is recommended that the program in essence remain locally administered under the Coastal Act procedures, unless projects affecting sand dunes exceed the minor development size limits as prescribed by the Coastal Act.

(ii) Federal-State Coordination

- A potential means of accomplishing Federal-State coordination lies in the consistency provisions of the Federal Coastal Zone Management Act of 1972.

- Therefore, the Coastal Resources Commission recommends that the State of North Carolina put itself in position to take maximum advantage of the consistency provision of the Federal Coastal Zone Management Act by using the permit coordination mandate in CAMA to pursue consolidation and coordination of key State permit programs affecting this State's coastal zone.

- The general recommended goal is to coordinate Federal and State regulatory programs in the coastal area in such a way as to emphasize the strengths of both levels of government, to avoid duplication or conflict, and to eliminate unnecessary red tape for permit applicants. Means for achieving these goals may include delegation of Federal functions to State agencies with appropriate safeguards, withdrawal of Federal agencies from fields occupied by State agencies, and sharing of functions in an efficient and mutually agreed fashion. Particular emphasis should be placed on consolidating the CAMA permit for development in Areas of Environmental Concern and the State dredge and fill permit program in order to pursue delegation of the Federal dredge and fill program to the State.

- It is recommended that the Coastal Resources Commission staff continue to explore with the U. S. Office of Coastal Zone Management the optimum degree of Federal-State permit coordination that may be achieved, so that recommendations can be relayed to the Commission for appropriate action.

(iii) State-Local Coordination

The Coastal Resources Advisory Council, and especially those members representing the 20 coastal counties as well as coastal cities and multi-county planning districts, should be asked to consider with the Commission the degree to which State-Local Coordination can be accomplished in the following areas:

- The need, if any, for coordination procedures among existing local permits (e.g., city and county permits, or permits administered by separate independent local boards such as the county health board and the board of county commissioners).

- The proper relationship of local building permits, zoning permits and other land use permits to CAMA development permits. Attention should be paid to the possibility of bringing all of these permits under one administrative program,

particularly where they apply to development in AECs. Bringing these permits under the same administrative program as the CAMA permit will (a) promote consistency of standards and therefore prevent duplication where the programs overlap, and (b) enable the local government to use Federal coastal management funds to administer, in addition to the CAMA permit, any other permit programs that adequately contribute to management of land and water uses that directly and significantly affect coastal waters.

(iv) Master Application Form

- A master application form should be developed, so that permit applicants can at one time provide all the application information needed and be handed all of the appropriate forms. The master application should include a project description form to assist the applicant in providing the information necessary to determine which permits are required.

- Initially the form should cover all permits administered by the Department of Natural and Economic Resources, including the coastal land development (CAMA) permit. As rapidly as possible sections should be added to the master form to cover environmental permits administered or supervised by other State agencies, such as the Commission for Health Services.

- At an early date locally administered CAMA permits (minor development permits) should be incorporated in the master form package, with other local permits being added as the coordination process develops.

- Every effort should be made to directly include some or all Federal permits in the package.

(v) Permit Application Offices

- Initially the field offices of the Department of Natural and Economic Resources will be responsible for receiving permit

applications and interviewing applicants. Local governments should be incorporated into the permit application system as rapidly as the appropriate local officials can be trained to carry out effectively the interviewing and permit-routing functions.

- It would be logical and desirable to extend the functions of the "designated local official" (who administers minor development permits under CAMA) to include responsibility for permit coordination at the local level. This would give an opportunity for CAMA minor development permits to be coordinated with other local land use and environmental permits, and for all of these local and CAMA permits to be checked at one place for consistency with the local land use plans.

(vi) Information Handbook

Because of the complexity of the permit processes, an informational handbook should be prepared for wide distribution setting forth in a clear and concise manner basic facts on all State regulatory permits. The handbook should include comprehensive and easily understandable instructions for each permit program setting forth the procedures for application, requirements for permit approval, and locations where further information can be obtained.

(vii) Staffing Requirements

The Legislature has charged the CRC with responsibility for conducting continuing studies addressed to "developing a better coordinated and more unified system of environmental and land use permits in the coastal area" and this report is the result of such studies. If these recommendations are to have meaningful results, it would appear essential for the Commission's continuing studies to be directed toward monitoring the effectiveness of the steps it has recommended.

The Secretary of Natural and Economic Resources and the Secretary of Administration will therefore provide adequate

provide adequate staff support to continue to monitor and coordinate the administration of environmental and land use permits in the coastal area of North Carolina.

(viii) Method of Consultation, Coordination and/or Consolidation of State Environmental Permits in the Coastal Area

The CAMA states that no environmental or land use permits are to be issued in the coastal area without consultation and coordination with the CRC. The following is the CRC's decision on the type of review that should be given to the various permit programs that are potentially important to the coastal zone:

(i) The following programs involve a large volume of permits for exclusively coastal activities, and apply to areas that will be substantially covered by the Coastal Area Management Act permit process in Areas of Environmental Concern. Therefore the consequences of the program to the coastal environment, particularly AECs, are very important. It is recommended that these programs be administratively consolidated with the CAMA permit program prior to the "permit changeover" date. After monitoring administrative consolidation, the Commission will make appropriate recommendations for any necessary statutory consolidation.

(a) Dredge and fill permits (G. S. 113-229) and Coastal Wetlands order (G. S. 113-230).

(b) Permits and licenses for the use of State-owned lands (G. S. Ch. 146).

(c) Sand dune permits (G. S. 104B-4).

(ii) The following either involve or potentially involve a very large volume of permits, but are not exclusively coastal although they are important to the coastal environment. These programs do not actually involve letting individual permits at the State level. Instead, the State sets minimum regulations for local permit programs or review criteria for activities or programs administered by other State agencies. Therefore, it is recommended that the responsible agencies consult with the

Coastal Resources Commission concerning any changes in State regulations which relate particularly to the coastal area or any approvals of plans or programs by any local government or State agency.

(a) State Board of Health regulations concerning septic tanks and water wells (G. S. Ch. 130).

(b) Regulations concerning erosion control plans (G. S. 113A-60 or -61).

(iii) The following programs involve a low volume of permits and therefore a small administrative burden. However, each project involves potentially high adverse impacts on the coastal environment. Therefore, it is recommended that the Coastal Resources Commission review each project individually.

(a) Certificates of convenience and necessity for utilities (G. S. Ch. 62).

(b) Oil or gas well regulations or orders (G. S. 113-391).

(c) Capacity use area permits and orders to prohibit discharges or withdrawals (G. S. 143-215.13 and 215.15).

(d) Water diversion authorization (G. S. 143-354).

(e) Floodway ordinances (G. S. 143-215.54).

(f) Oil refinery permits (G. S. 143-215.100).

(iv) The following programs involve a moderate volume of permits and administrative burdens, with moderate potential for adverse impacts on the coastal environment. It is therefore recommended that the CRC staff review these permits, report periodically to the Commission, and comment to other agencies after consultation with the Commission.

(a) Water supply, drainage and sewerage plan approval (G. S. 130-161.1 and -161.2).

(b) Mosquito control permits and approvals (G. S. Ch. 130, Arts. 23 and 24).

(c) Solid waste disposal site approvals (G. S. Ch. 130, Art. 13B).

(d) Well construction permits (G. S. 87-88).

(e) Water quality permits, special orders and certificates (G. S. Ch. 143, Art. 21, Part 1).
(f) Air quality permits, special orders and certificates (G. S. Ch. 143, Art. 21B).
(g) Mining operation permits (G. S. 74-51).
(h) Dam safety approvals (G. S. 143-215.28).

(v) The following programs involve a relatively large volume of permits and administrative burdens, and relatively low potential adverse environmental impacts on the coastal environment. It is therefore recommended that the CRC review these permit programs on an annual basis only.
(a) Pesticide applicator licenses and regulations and restricted use permits (G. S. 143-440, -452, -458).
(b) Shellfish sanitation permits (G. S. Ch. 130, Arts. 14A and 14B).

2. Project Review and Consistency Determination

(a) The Basis

"The Congress finds that ... The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with federal and local governments and other vitally affected interests, developing land and water use programs for the coastal zone,..." (Coastal Zone Management Act of 1972, P.L. 92-583 Section 302(h)). Congress declared as a national policy in the Coastal Zone Management Act (CZMA) that the development and implementation of management programs by the states should be encouraged in order that the full prerogatives of these states could be realized and the protection of coastal resources effectuated (Section 303(b)).

The CZMA represents a unique opportunity for coastal states to demonstrate their capabilities and willingness to manage responsibly the coastal land and water resources of the states. Federal consistency provisions in the CZMA are the best evidence of the extent of the opportunity. Section 307(C)(1), (2), and (3) provide respectively that:

1) Federally supported activities directly affecting the coastal zone shall be conducted consistent with approved management programs to the maximum extent practicable;

2) development projects undertaken by federal agencies in the coastal zone shall be consistent with approved management programs to the maximum extent practicable; and

3) that no license of permit shall be granted by a federal agency until the State finds that the project is consistent with the approved management program or the Secretary of Commerce finds the activity is consistent with the objectives of the CZMA.

Section 307 of the Act contains these and other provisions that assure the states that federal grant programs, permits, and federal development projects in the coastal zone will to the maximum extent practicable be consistent with the states' management programs.

(b) National Interest

Associated with the states' expectations of federal consistency is the states' responsibility to recognize and consider national interest issues in their management programs. Section 306(c)(8) of the CZMA requires that "the management program provides for adequate consideration of the national interests involved in the siting of facilities necessary to meet requirements which are other than local in nature."

The reciprocal nature of federal consistency has been recognized by the State of North Carolina. We are proceeding through consultation with federal agencies to define the interrelationship of our management objectives and the interests of the nation. Continuing federal consultation will ensure that North Carolina's management program adequately addresses the concerns of the

federal agencies and that the coastal management goals of the State are considered in planning and conducting of federal activities. In fact, North Carolina desires that this document function as additional impetus to furthering a meaningful dialogue on these issues.

(c) Federal Consistency - State Policy

In judging the consistency of federal actions with coastal management objectives, it is imperative that a clear enumeration of the State's policies be available. The foundation of effective federal consistency is, indeed, a clear declaration of the State's policies and positions regarding coastal resources.

The policies incorporated into North Carolina's coastal management program will act as a benchmark in evaluating consistency of federal action and activities within the State.

Policies in North Carolina's management program are derived from four sources:

1) Areas of environmental concern policies and standards (Chapter 4),

2) Local land use plans (discussed in Chapter 2),

3) Statements of policy contained in the State Guidelines and authored by the Coastal Resources Commission,

4) The policies of the State as developed by various state agencies having valid interests in coastal resources.

Determination of the consistency of federal actions with policies from each source varies in difficulty with the source. Determination of consistency is a relatively simple task if federal activities occur within AECs or areas qualifying as AECs on federal property (AECs are not an official designation for permit purposes

outside the coastal zone). The AEC policies and standards are explicit and are therefore easily interpreted for consistency. Activities qualifying as development (G.S. 113A-103(5)) in the coastal zone require a permit. The obtainment of a CAMA permit is prima facie evidence of consistency.

A simple analysis of the compatibility of federal activities with the goals, objectives, and land classification scheme contained in the local land use plans is relatively easy. This analysis should ensure consistency with local objectives.

The relationship of federal activities with the policies of the State Guidelines and other state agency policies is more obscure and the policies more subtle. A detailed examination and analysis of federal programs and their interaction with state policies will be pursued further in our future federal consultation sessions.

(d) Methodology for Determining Federal Consistency

Various mechanisms exist that may be relied upon to provide adequate notices and descriptions of federal actions and activities that directly affect the coastal zone. All federal projects that significantly affect the environment presently require documentation in the form of Environmental Impact Statements. These in conjunction with the review of all negative declarations on federal projects will allow an analysis of the consistency of major federal actions with coastal management policies

The OMB Circular A-95 will be utilized to notify the State of federally sponsored activities affecting the coastal zone. The circular requires that applications for federal grant programs having a significant impact on state and local government interests

be submitted for review by A-95 clearinghouses. Federal development proposals are similarly covered through A-95 review.

A-95 review will allow the State an early opportunity to comment on and involve itself in determining consistency. This is advantageous even for projects ultimately requiring an AEC permit since it affords the State the advantage of:

1) anticipating the form of activities eventually requiring a permit,

2) entering into project planning and design in order to alleviate or mitigate unacceptable actions under the AEC permit standards, and

3) promoting the objectives of coordinating the State's regulatory machinery.

Therefore, it is anticipated that a thorough review of A-95 circulars for projects within AECs will occur. Projects outside AECs will be reviewed through the A-95 process on a selected basis.

Permits and licenses issued by federal agencies will be reviewed through existing permit review procedures, A-95 circulars or arrangements yet agreed upon. This again is a subject that will receive attention in our federal consultation sessions.

(e) Federal Actions, sponsored activities, and permits of interest to the State

A preliminary list of those federal actions, sponsored activities and permits of particular interest to the State in determining consistency with coastal management goals is included on the following pages.

(f) Federal Licenses and Permits

AGENCY	LICENSES AND PERMITS
Army Corps of Engineers Dept. of Defense	-Permits required under Sections 10 & 11 of the River and Harbor Act of 1899 -Permits required under Section 103 of Marine Protection, Research & Sanctuaries Act of 1972 -Permits required under Section 404 of the Federal Water Pollution Control Act of 1972
Coast Guard Dept. of Transportation	-Permits for bridges, causeways, pipelines over navigable waters required under the General Bridge Act of 1946; Rivers and Harbors Acts of 1894, 1899 and 1906; 33 CFR 114, 115, 117 -"Deep-water ports" permits
Bureau of Land Management Dept. of Interior	-Permits required for off-shore drilling
Nuclear Regulatory Commission	-Licenses for siting, construction and operation of nuclear power plants, required under the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974, and the National Environmental Policy Act of 1969
Federal Power Commission	-Permits required for construction and operation of power facilities and transmission lines required under Section 4(e) of the Federal Power Act -Permits for construction, operation and maintenance of interstate pipeline facilities required under the Natural Gas Act of 1938

(g) Federal Actions

1) All actions occurring within or adjacent to areas of environmental concern

2) All purchases, sales, or leases of federal real property above 20 acres in size

3) Construction of major facilities (20 acres or 60,000 square feet)

4) All actions of regional or interstate significance

5) Activities on federal property that result in significant impacts to the coastal zone

(h) Federally Supported Activities

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
10.409	Dept. of Agriculture	Irrigation, Drainage, and Other Soil and Water Conservation Loans (Exceptions: Loans to grazing associations to develop additional pasturage and loans for purchase of equipment)
10.410	Dept. of Agriculture	Low to Moderate Income Housing Loans
10.411	Dept. of Agriculture	Rural Housing Site Loans
10.414	Dept. of Agriculture	Resource Conservation and Development Loans
10.415	Dept. of Agriculture	Rural Rental Housing Loans
10.418	Dept. of Agriculture	Water and Waste Disposal Systems for Rural Communities
10.419	Dept. of Agriculture	Watershed Protection and Flood Prevention Loans
10.422	Dept. of Agriculture	Business and Industrial Development Loans (Exception: Loans to rural small businesses having no significant impact outside community in which located)
10.423	Dept. of Agriculture	Community Facilities Loans

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
10.424	Dept. of Agriculture	Industrial Development Grants
10.901	Dept. of Agriculture	Resources Conservation and Development (Exception: small projects costing under $7500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems)
10.904	Dept. of Agriculture	Watershed Protection and Flood Prevention
11.300	Dept. of Commerce	Economic Development - Grants and Loans for Public Works and Development Facilities
11.407	Dept. of Commerce	Commercial Fisheries Research and Development
12.101	Dept. of Defense	Beach Erosion Control Projects
12.106	Dept. of Defense	Flood Control Projects
12.107	Dept. of Defense	Navigation Projects
12.108	Dept. of Defense	Snagging and Clearing for Flood Control
*	Dept. of Commerce	Local Public Works Capital Development and Investment Act of 1976 projects
P.L.93-318	Dept. of Health, Education, and Welfare	(Section 161) Construction of Academic Facilities
14.001	Dept. of Housing and Urban Development	Flood Insurance (Applications for community eligiblity)
14.112	Dept. of Housing and Urban Development	Mortgage Insurance - Construction or Rehabilitation of Condominium Projects
14.115	Dept. of Housing and Urban Development	Mortgage Insurance - Development of Sales-Type Cooperative Projects
14.116	Dept. of Housing and Urban Development	Mortgage Insurance - Group Practice Facilities
14.117	Dept. of Housingnand Urban Development	Mortgage Insurance - Homes
14.118	Dept. of Housing and Urban Development	Mortgage Insurance - Homes for Certified Veterans

* New Program

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
14.119	Dept. of Housing and Urban Development	Mortgage Insurance - Homes for Disaster Victims
14.120	Dept. of Housing and Urban Development	Mortgage Insurance - Homes for Low and Moderate Income Families
14.121	Dept. of Housing and Urban Development	Mortgage Insurance - Homes in Outlying Areas
14.122	Dept. of Housing and Urban Development	Mortgage Insurance - Homes in Urban Renewal Areas
14.124	Dept. of Housing and Urban Development	Mortgage Insurance - Investor Sponsored Cooperative Housing
14.125	Dept. of Housing and Urban Development	Mortgage Insurance - Land Development and New Communities
14.126	Dept. of Housing and Urban Development	Mortgage Insurance - Management-Type Cooperative Projects
14.127	Dept. of Housing and Urban Development	Mortgage Insurance - Mobile Home Parks
14.128	Dept. of Housing and Urban Development	Mortgage Insurance - Hospitals
14.129	Dept. of Housing and Urban Development	Mortgage Insurance - Nursing Homes and Related Care Facilities
14.134	Dept. of Housing and Urban Development	Mortgage Insurance - Rental Housing
14.135	Dept. of Housing and Urban Development	Mortgage Insurance - Rental Housing for Moderate Income Families
14.137	Dept. of Housing and Urban Development	Mortgage Insurance - Rental Housing for Low and Moderate Income Families, Market Interest Rate
14.138	Dept. of Housing and Urban Development	Mortgage Insurance - Rental Housing for the Elderly
14.139	Dept. of Housing and Urban Development	Mortgage Insurance - Rental Housing in Urban Renewal Areas
14.141	Dept. of Housing and Urban Development	Nonprofit Housing Sponsor Loans - Planning Projects for Low and Moderate Income Families

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
14.146	Dept. of Housing and Urban Development	Public Housing - Acquisition (Turnkey and Conventional Production Methods) (New construction only)
14.154	Dept. of Housing and Urban Development	Mortgage Insurance - Experimental Rental Housing
14.156	Dept. of Housing and Urban Development	Lower Income Housing Assistance Program
14.203	Dept. of Housing and Urban Development	Comprehensive Planning Assistance
14.218	Dept. of Housing and Urban Development	Community Development Block Grants - Entitlement Grants
14.219	Dept. of Housing and Urban Development	Community Development Block Grants - Discretionary Grants
14.702	Dept. of Housing and Urban Development	State Disaster Preparedness Grants
15.400	Dept. of the Interior	Outdoor Recreation - Acquisition, Development and Planning
15.600	Dept. of the Interior	Anadromous Fish Conservation
15.605	Dept. of the Interior	Fish Restoration
15.611	Dept. of the Interior	Wildlife Restoration
15.904	Dept. of the Interior	Historic Preservation
20.102	Dept. of Transportation	Airport Development Aid Program
20.103	Dept. of Transportation	Airport Planning Grant Program
20.205	Dept. of Transportation	Highway Research, Planning, and Construction
20.500	Dept. of Transportation	Urban Mass Transportation Capital Improvement Grants (Planning and construction only)
20.501	Dept. of Transportation	Urban Mass Transportation Capital Improvement Loans (Planning and construction only)
20.505	Dept. of Transportation	Urban Mass Transportation Demonstration Grants

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
20.506	Dept. of Transportation	Urban Mass Transportation Demonstration Grants
20.507	Dept. of Transportation	Urban Mass Transportation Capital and Operating Assistance Formula Grants
28.002	Coastal Plains Regional Commission	Coastal Plains Technical and Planning Assistance
49.002	Community Services Administration	Community Action
49.011	Community Services Administration	Community Economic Development
64.114	Veterans Administration	Veterans Housing - Guaranteed and Insured Loans (GI Home Loans)
66.001	Environmental Protection Agency	Air Pollution Control Program Grants
66.027	Environmental Protection Agency	Solid Waste Planning Grants
66.418	Environmental Protection Agency	Construction Grants for Wastewater Treatment Works
66.419	Environmental Protection Agency	Water Pollution Control - State and Interstate Program Grants
66.426	Environmental Protection Agency	Water Pollution Control - Areawide Waste Treatment Management Planning Grants
66.432	Environmental Protection Agency	Grants for State Public Water System Subdivision Programs
66.433	Environmental Protection Agency	Grants for Underground Injection Control Programs

E. Research and Program Development

1. Introduction

The principle goal of the North Carolina Coastal Area Management Act is to "provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values" (G.S. 113A-102(b)(1)). Resource management connotes the capability to influence, direct and control the vital steps leading from the perception of a resource allocation problem to the implementation of an effective solution to that problem. An important aspect of resource management and therefore a subject of North Carolina's management plan is the sponsorship, direction and utilization of research concerning coastal resource management problems.

The realization that applied research can provide answers essential to the resolution of many critical coastal land use issues is becoming increasingly prevalent. However, if coastal North Carolina is to realize the potential benefits of applied research, research efforts must be coordinated and directed and the results must be applied. This is one of the purposes of the coastal management plan and one of the objectives of North Carolina's coastal zone management agency.

2. Research and Technical Assistance Role of CZM Agency

The effectiveness of North Carolina's coastal management program depends to a large degree on the adequacy of technical assistance and training that can be supplied to permit officers at both the state and local level and the success of research efforts in solving resource problems. The means available to North Carolina's CZM agency for accomplishing these goals include direct sponsorship of technical support and research through federal Coastal Zone Management funds and the coordination of existing research funding programs.

3. Research Sponsorship

Section 310 of the Coastal Zone Management Act of 1972 as amended provides funds to establish a program of research, study and training to implement management objectives. The monies made available through this section are to be used for conducting research and training in order to enhance both the broad program objectives of Coastal Zone Management on an interstate, regional or national basis (Section 310(a)) and the participating states' coastal management objectives (Section 310(b)). Section 310(a) creates a funding source to be administered by the Associate Administrator for Coastal Zone Management, NOAA, that will be utilized for solving research and technical assistance problems of a national perspective. North Carolina's participation in the development and operation of this program will be largely advisory. The state CZM agency will communicate to NOAA possible research subjects of interstate and national concern, assist the

Associate Administrator in prioritizing subjects for 310(a) support and generally ensuring that the State's OCZM interests are represented in NOAA's proposed 310(a) program.

Section 310(b) offers a more definite and demanding role for the CZM agency that is the administration of a funding program supporting research and technical assistance for enhancing the coastal objectives of the state. The functions of the CZM agency in administering this aspect of our coastal management activities includes:

1) continual assessment of CZM technical assistance and research needs within the State;

2) prioritization of State needs and assignment of adequate funding levels;

3) development of 310(b) grant requests to reflect desired research activity; and

4) administration of the State's grants program (review of research and assistance proposals, administration.of funds, monitoring of progress and dissemination of the results of research).

The CZM agency will have an additional responsibility to administer research grants through Section 305 and 306. Although the duties of the agency will be similar for research funded through either 305, 306 or 310 the distinction between these sections is the essential nature of 305 and 306 research to the coastal management plan and program. 310 research, on the other hand, is anticipated to be more technical in nature and applied to coastal resource management problems instead

of being required for establishment or implementation of the State's management program.

These functions will require that the CZM agency establish itself as a coordinative technical assistance and research support body for CZM activities.

4. Coordination

Besides the assistance and support made available through the FCZMA there are various state supported research programs dealing with coastal resource management issues, e.g. Sea Grant, CPRC, WRRI and others.

North Carolina's CZM agency because of its general responsibility in coastal management will attempt to coordinate the activities of these programs so as to maximize their contributions in solving coastal problems. This may be accomplished by establishing the CZM agency as the central state government body responsible for conducting evaluations of proposed coastal research and for expressing the state's opinion as to the utility of each proposal in satisfying CZM objectives.

Through this organizational arrangement duplication of research can be minimized and the State can insure that the subjects proposed for research will be relevant to the resource management objectives of State. Additionally, the CZM agency can be a convenient contact point for agencies interested in the results of research efforts because of its established role in coastal research.

5. Program and Policy Development

The CZM agency has a greater responsibility in promoting coastal management objectives than merely sponsoring research

and providing technical assistance. It must also ensure the State can respond to the resource management problems of the coast through both established and new governmental programs. Therefore, the CZM agency will continually be relied upon to evaluate the relationship of state activities and coastal zone management objectives. This evaluation may result in suggested organizational or administrative adjustments in existing or new programs.

It is certain that many new governmental programs will develop because of the State's coastal management activities. Examples of these programs include the Estuarine and Marine Sanctuaries Program, Beach Access program, Shoreline Erosion program and Energy Facilities Siting. The State's CZM agency will be relied upon to design the appropriate administrative and organizational arrangements needed to execute the new or expanded state objectives associated with the coastal management program.

Finally, the CZM agency will serve an important function in prompting the development of state policies essential to coastal management. It is the direct responsibility of the Coastal Resources Commission to utilize the State Guidelines in establishing state policy regarding coastal resources. In addition, the CZM agency will periodically upon discovering the lack of clear state direction suggest policy statements to the appropriate governmental body.

In this manner the CZM agency can bridge the obvious gap between perception of a coastal resource problem and the stimulation of effective governmental action. The CZM agency

in summary clearly has the ability to orchestrate the efforts of state government in resource management from the conceptual to the problem resolution stage.