State of North Carolina Coastal Management Program and Final Environmental Impact Statement

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

UNITED STATES

DEPARTMENT OF COMMERCE

FINAL

ENVIRONMENTAL IMPACT

STATEMENT

PROPOSED

COASTAL MANAGEMENT PROGRAM

FOR

THE STATE OF NORTH CAROLINA

Prepared by:

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NOTE TO READERS

The National Environmental Policy Act (NEPA) of 1969 mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal government agencies which significantly affect the quality of the human environment. It is the general policy of the Federal Office of Coastal Zone Management (OCZM) to issue a combined final environmental impact statement and program document.

Part I of the Final Environmental Impact Statement (FEIS) was prepared by the Office of Coastal Zone Management. Included in this section is a summary of North Carolina's Management Program which State officials have accepted as an accurate summary of the elements of the program that relate to the approval criteria in the CZMA. Part II of the DEIS is a description of the State's Coastal Management Program and was prepared by the State of North Carolina. Part III fulfills the NEPA requirements for a DEIS and was prepared by the Office of Coastal Zone Management, with some assistance from the State of North Carolina.

The Federal action contemplated is approval of the North Carolina Coastal Plan under Section 306 of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended. An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the program. In addition, the CZMA stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State management program.

For purposes of reviewing this proposed action, the key questions are:

- whether the North Carolina program is consistent with the objectives and policies of the national legislation;

- whether the award of Federal funds under Section 306 of the Federal Act wil help North Carolina to meet those objectives;

- whether the State management authorities are adequate to implement the State program, and

- whether there will be a net environmental gain as a result of program approval and implementation.

OCZM has made a preliminary assessment that the answers to these questions are affirmative. OCZM wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions. OCZM thanks those participating in the review of the North Carolina Program and this final environmental impact statement.

SUMMARY

( ) Draft Environmental Impact Statement
(X) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

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South Atlantic Region

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Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attention: John Phillips
3300 Whitehaven Street, N.W. (Room 330)
Washington, D.C. 20235

1. Type of Action

Proposed Federal approval of the North Carolina Coastal Plan

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Assistant Administrator approve the Coastal Plan of the State of North Carolina pursuant to P.L. 92-583. Approval would permit implementation grants to be awarded to the State, and require that Federal actions be consistent with the program.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the program will allow the State to better coordinate and more effectively implement existing State authorities for management of its coastal zone. The State will condition, restrict, or prohibit land and water uses in some parts of the North Carolina coast, while encouraging development in other parts. The impacts of the North Carolina Coastal Plan will be generally beneficial, although there may be some adverse, short-term economic impacts on coastal users, and the program will entail irreversible commitment of some coastal resources. The North

Carolina Coastal Plan will produce positive and negative impacts.

4. Alternatives Considered:

All alternatives would involve a decision by the Assistant Administrator for Coastal Zone Management to delay or deny approval of the North Carolina Coastal Management Program. Delay or denial of approval of the Program would most probably occur under the following conditions:

(1) If the areas subject to intensive management, called Areas of Environmental Concern (AECs), are not geographically broad enough.

(2) If the State's ability to insure State agency compliance with coastal policies in areas outside of AECs is insufficient.

(3) If local governments are not obligated to enforce the State-approved local land use plans.

5. List of all Federal, State, and local agencies and other parties from which comments have been requested:

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
    Department of the Navy
    U.S. Army, Corps of Engineers
    U.S. Air Force
Department of Energy
Department of Health, Education and Welfare
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Economic Development Administration
Environmental Protection Agency
General Services Administration
Marine Mammal Commission
National Oceanic and Atmospheric Administration
Nuclear Regulatory Commission
U.S. Coast Guard

State and Regional Agencies and Local Governments in North Carolina

Chairman of the 20 Coastal County Commissions

Coastal Area Mayors of Cities and Towns involved in planning and implementation under the N.C. Coastal Management Program
Coastal City Managers
Coastal County Managers
Coastal County Economic Development Commissions
Coastal Councils of Government
Coastal Plains Regional Commission
Coastal Representatives to the State Legislature
Coastal Resources Advisory Council Members
Coastal Resources Commission Members
Coastal Soil and Water Conservation Commissions
Department of Administration
- Chairman of Marine Science Council
- Office of Intergovernmental Relations
- Office of Marine Affairs
- Office of Policy Development

Department of Agriculture
Department of Commerce
- Chairman of Economic Development Commission
- North Carolina State Ports Authority
- North Carolina Utilities Commission

Department of Cultural Resources
Department of Human Resources
Department of Insurance
Department of Labor
Department of Natural Resources and Community Development
- Assistant Secretary for Community Development
- Assistant Secretary for Natural Resources
- Division of Community Assistance
- Division of Earth Resources
- Division of Environmental Management
- Division of Forest Resources
- Division of Marine Fisheries
- Land Policy Council
- Office of Plans and Programs
- Wildlife Resources Commission

Department of Transportation
North Carolina Secretary of State
North Carolina State University
- Agricultural Extension Service
- Sea Grant Program

State and Local Interest Groups

Association of County Commissioners
Audibon Society
Bath Historical Society
Cape Fear Technical Institute
Carolina Coastal Club
Carolina Power & Light Company
Carteret County Environmental Resources Commission
Carteret County Wildlife Club

Carteret Technical Institute
Coastal Carolina Community College
Coastal Chambers of Commerce
Coastal Plains Center for Marine Resources
College of the Albemarle
Conservation Council of North Carolina
Craven Community College
Duke University School of Environmental Management
Dunes of Dare Garden Club
East Carolina University School of Geology
Holden Beach Homeowners Association
Institute of Marine Sciences
League of Women Voters of North Carolina
Lower Cape Fear Historical Society
Marine Resources Center
    Bogue Banks
    Fort Fisher
    Manteo
New Hanover Clean Water Association
North Carolina Farm Bureau
North Carolina Home Builders Association
North Carolina Institute of Government
North Carolina League of Municipalities
North Carolina Petroleum Council
North Carolina Realtors Association
North Carolina State Grange
Pamlico - Beach Preservation Foundation
Pamlico Technical Institute
People to Preserve Jockey's Ridge, Inc.
Research Triangle Institute
Sierra Club: Cypress Group, Cape Fear Group, Research Triangle Group
Southern Shores Civic Association
Texas Gulf, Inc.
University of North Carolina - Chapel Hill Planning School
University of North Carolina - Wilmington School of Marine Sciences
Water Resources Research Institute
North Carolina Wildlife Federation
Weyerhaeuser Company

National Interest Groups

A.M.E.R.I.C.A.N.
AFL-CIO
American Association of Port Authorities
American Bar Association
American Bureau of Shipping
American Farm Bureau Federation
American Fisheries Society
American Forest Institute
American Gas Association

American Hotel and Motor Association
American Industrial Development Council
American Institute of Architects
American Institute of Merchant Shipping
American Institute of Planners
American Littoral Society
American Mining Congress
American Oceanic Organization
American Petroleum Institute
American Shore & Beach Preservation Associaton
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
AMOCO
Ashland Oil, Inc.
Associated General Contractors of America
Association of Oil Pipe Lines
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Atomic Industrial Forum
Barrier Islands Coalition
Center for Law and Social Policy
Center for Natural Areas
Center for Urban Affairs
Chamber of Commerce of the U.S.
Chevron, USA, Inc.
Cities Service Company
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies
The Cousteau Society
Earth Metabolic Design Lab., Inc.
Edison Electric Institute
El Paso Natural Gas Company
Environmental Defense Fund, Inc.
Environmental Law Institute
Environmental Policy Center
EXXON Company, U.S.A.
Friends of the Earth
Getty Oil Company
Great Lakes Basin Commission
Great Lakes Tomorrow
Gulf Energy and Minerals, U.S.A.
Gulf Oil Company
Gulf Oil Corporation
Gulf Refining Company
Gulf South Atlantic Fisheries Development Foundation
Independent Petroleum Association of America
Industrial Union of Marine and Shipbuilding Workers of America

Institute for the Human Environment
Institute for Marine Studies
Interstate Natural Gas Association of America
Izaak Walton League
Lake Michigan Federation
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Massachusetts Petroleum Council
Mobil Exploration & Producing, Inc.
Mobil Oil Corporation
Murphy Oil Company
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Electric Companies
National Association of Engine and Boat Manufacturers
National Association of Home Builders
National Association of Realtors
National Association of Regional Councils
National Association of State Boating Law Administrators
National Association of State Park Directors
National Audubon Society
National Boating Federation
National Canners Association
National Coalition for Marine Conservation
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Farmers Union
National Federation of Fishermen
National Fisheries Institute
National Forest Products Association
National Governors Association
National League of Cities
National Parks and Conservation Association
National Petroleum Council
National Petroleum Refiners Association
National Realty Commission
National Recreation and Park Association
National Research Council
National Science Foundation
National Science Teachers Association
National Shrimp Congress
National Society of Professional Engineers
National Wildlife Federation
National Waterways Conference
Natural Resources Defense Council
The Naturel Conservancy
Nautilus Press
New England River Basin Commission
North Atlantic Ports Association

Outboard Marine Corporation
Resources for the Future
Rice University Center for Community Design and Development
Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Society of Real Estate Appraisers
Soil Conservation Society of America
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of California
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
United Brotherhood of Carpenters and Joiners of America
U.S. Power Squadrons
U.S. Conference of Mayors
Water Pollution Control Federation
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute
The Wildlife Society
World Dredging Association

6. This Final Environmental Impact Statement will be filed with the Environmental Protection Agency during the month of August 1978. Public comments should be submitted to the Office of Coastal Zone Management within 30 days after this document is delivered to the Environmental Protection Agency.

DEIS Comments/Responses

Editorial Changes: Editorial corrections have been incorporated into the program document and have not been individually addressed in the comment and response columns. Where suggested editorial changes are themselves incorrect, no response has been recorded.

All written comments received have been reproduced in their entirety in an attachment to the document. The following comments represent only a summary of the major substantive points raised concerning the State's program. The responses to each comment represent a complete and full statement of OCZM's position on the particular point raised.

Department of Agriculture
Soil conservation Service
(Davis) (5/18/78)

Comments

1. The State policy regarding forest lands satisfies our major concern of keeping forestry a viable sector of the economy and providing for nontimber values to the public (pages 104, 105, and 220).

2. The physical description of the Areas of Environmental Concern (AEC) is well done. A description of the second tier portion of the management zone would also be very useful.

3. Pages 69-71, Agriculture and Forestry. Most of this discussion is about agriculture. We suggest including information about the role of forestry in the economy as was done for agriculture in the second paragraph. The Division of Forest Resources, Department of Natural Resources, and Economic Resources should have appropriate material.

4. Chapter 4. A two-tier system is developed to manage desired levels of control: First Tier--AEC; and Second Tier--significant impacts outside the AEC. In our opinion, AEC's criteria are not stringent enough and priority of use is not restrictive enough.

5. Page 151, Inlet Lands. Figure 7 shows lands that have eroded during the past 25 years or that are predicted to erode in the future (implied 25 years). We suggest that 25 years is a very short time; consideration should be given to including a larger area. We question the advisability of any priority "to major public facilities."

6. Page 157, Ocean Erodible Areas. How does the landward distance of probable erosion resulting from a storm surge of a 25-year frequency compare with Federal Insurance Administration's 100-year frequency regulation? Since these lands are extremely dynamic, should structures ever be considered in these hazardous areas?

Department of Agriculture
Soil Conservation Service
(Davis) (5/18/78)

Responses

1. No response necessary.

2. Please refer to "description of environment affected" in Part III, Chapter One of the FEIS.

3. Please note changes to the text of the program document on those pages specified in your comment.

4. The AEC designation process as well as the priority of use listing are the result of a long and detailed research and subsequent public hearing process throughout the State. North Carolina feels that the criteria for designation of AECs best meet the needs of their State and their public hearings confirm this. OCZM believes that both the criteria for designation and the priority of use within these areas fully meet the requirements of the FCZMA. Also please refer to response #2 under the Department of Interior comment section.

5. The predictability of erosion rates in inlet areas is so difficult that longer range projection would not be useful. Revisions are being made, however, to these 25-year predictions. Please see p.184 for revisions regarding priority of use for planning and management purposes in "Inlet Lands".

6. Landward distance of probable erosion rates does not correspond with FIA flood projections. They are two different subjects that are not comparable. North Carolina feels that the State has a responsibility to limit public investment in these areas and that their responsibility regarding private development is limited to public education and information regarding potential risks.

Department of Agriculture
Soil Conservation Service
(Davis) (5/18/78)

Comments

7. Page 144, Coastal Wetlands. Perhaps word selection makes possible uses seem less restrictive than we think desirable. The items listed under lowest priority should be allowed only in very rare instances. (404 permits already do this on coastal wetlands.)

8. Page 150, Ocean Beaches. It is difficult to imagine granting permits for any construction of permanent or substantial structures (other than fishing pier, marina, etc.) on ocean beaches.

9. Page 158, Public Water Supply Well Fields. Clarify how there would be a "significant loss of public resources." Would the aquifer be lost by depletion, salt water intrusion, or some other way?

10. Page 168, The Application. "The standards for AEC's are rather general" gives reason for concern.

Department of Agriculture
Soil Conservation Service
Davis) (5/18/78)

Responses

7. North Carolina recognizes the concerns expressed by this comment. While these items will continue to be listed as uses of lowest priority, the State expects that such use(s) of coastal wetlands will rarely, if ever, occur.

8. Neither CAMA nor FCZMA requires an outright prohibition of such structures on ocean beaches; however, North Carolina considers use of ocean beaches for such construction highly improbable.

9. North Carolina considers ground-water (quantity and quality) to be a significant public resource and leaving this resource unprotected would most likely result in degradation of water quality.

10. This statement was poorly written and does not convey the meaning intended, which is to explain our intent to use, for the CAMA application, a relatively simple application form that is presently also used for several other permits in coastal North Carolina. This approach will further permit coordination and simplification for coastal citizens and should in no way effect our ability to ultimately gather adequate information for a decision as each project demands. Please note changes to the text on the page specified in your comment.

Department of the Army
(Wilson) (5/26/78)

Comments

1. The North Carolina Coastal Management Program appears to suffer from many of the problems common to networking. The policies, authorities and general management strategy are difficult to comprehend and are likely to be difficult to implement. Many aspects of the program are discussed in the context of the state program, but fall short, leaving the linkages to the Federal program and requirements vague or confusing.

2. Permits.
a. P. 167. The program states that the AEC permit authority will be shared by the CRC and locals. However, if these permits are intended to be synonymous with consistency certifications, 15 CFR 930.18 states that a single state agency must be designated to receive and act on consistency determinations.

b. P. 173. Chart 4. The permit flow sheet should be revised to indicate how it interfaces with Federal permits. The purpose of this coastal management program is to implement the federal coastal zone management act. It is therefore essential to link the established state mechanisms to Federal procedures.

3. Consistency.
a. Consistency requirements and responsibilities are not described with sufficient specificity. The procedures and requirements for development projects and activities differ considerably from the requirements pertaining to licenses and permits. These should be separately addressed in the program according to the statutory requirements of CZMA, Section 307 and the regulations developed pursuant to that section.

b. P. 212. The program states "The state contact point for applicants may be the Office of Coastal Management, DNRCD, if parallel state permits do not exist or it may parallel the subject Federal permit." We refer to 15 CFR 930.18(a) requiring the designation of a single agency for receiving and reviewing consistency certifications. This must be accomplished prior to program approval.

Department of the Army
(Wilson) (5/26/78)

Responses

1. OCZM recognized some confusion might have existed in the original program document and the Program Summary was written to more clearly explain the management concept. Please refer to this Program Summary in Part I, Section D of the FEIS. OCZM believes this fully explains linkages between the State and Federal program as well.

2. a. The State Department of Natural Resources and Community Development will act as the single designated State agency pursuant to our regulations. In addition, any local permitting in AECs is reviewed for consistency by the State.

b. This comment does not reflect a full understanding of this flow chart. This flow chart is intended to summarize the procedure for getting a CAMA permit only. From this, Federal agencies and applicants are informed as to how they can participate in the permitting process. The Consistency Section is intended to more fully describe how the State level and Federal permitting systems interface. Please note revisions to the Consistency Section.

3. a. Please note all revisions made to the Federal Consistency Section of Part II, Chapter 6, FEIS.

b. Refer to comment response #2(a) above (Department of Army).

Department of the Army
(Wilson) (5/26/78)

Comments

c. P. 213. In the case of Federal development projects or activities, the Federal agency makes the final determination. In cases of assistance programs or licenses and permits, the State has final authority. The discussion of conflict resolution does not distinguish between these requirements.

4. National Interest. It is not clear from the program document that national interest has been or will be adequately considered.

a. Local land use plans - These plans should eventually address perceived needs of local interests for Federal navigation, flood control and hurricane and beach erosion control projects. To date, local land use plans do not address existing Federal projects and their need for maintenance. Therefore, during the land use plan update and amendment process, local planning agencies should be encouraged to include an evaluation of Federal projects for which they or the State are local sponsors, as well as to consider future needs in these areas.

b. AECs. North Carolina has developed the AEC in response to the CZMA element--areas of particular concern. However, these special management areas have been developed from a strictly environmental perspective to the detriment of economic development needs. In categories where facility development would be appropriate, construction is considered a secondary, never a primary, purpose. This imbalance is of concern as it relates to the national interest area of transporation, ports and navigation. We strongly recommend that port and related economic development zones be considered for inclusion in the coastal management program.

5. Second Tier Management (p. 174-175). Second tier management encompasses two approaches: direct state regulation and local land use plans. The document states that it will be a local responsibility to flesh out the framework and implement the plan. However, the CRC does not have the authority to require local governments to implement local plans. Therefore, no basis exists for requiring Federal consistency with these same programs. The Corps will make consistency determinations on the basis of enforceable state guidelines, only.

Department of the Army
(Wilson) (5/26/78)

Responses

c. Please refer to the revised Consistency Section.

4. National Interest

a. We agree. These plans should be updated to reflect these interests during the "Local Planning Guideline" review as mandated by CAMA. The Department of the Army should take an active role in the "Guideline" review and modification process to assure that your interests are incorporated in these guidelines for land use plan preparation.

b. OCZM believes that the State program has dealt adequately with economic development needs through other aspects of the program including the National Interest section in which Ports, Transportation and Navigation are listed as national interest activities. The State need not develop an AEC category for facility development in order to meet our requirements. Note NRDC response #9.

5. Consistency is based on enforceable state policies; local land use plans will apply to critical uses and to Federal agency public investment decisions. See revised consistency discussion in Part II, Chapter 6 of the FEIS.

Department of the Army
(Wilson) (5/26/78)

Comments

6. Amendments (p. 226-227). The AEC amendment process appears to be incomplete. It should be noted that all significant program modifications including added or modified policies, significantly different environmental impacts or significantly different intergovernmental relations will require full amendment procedure as per S. 930.81. Any modifications affecting consistency will be in this category.

7. Coordination. We commend the State of North Carolina on its coordination efforts. Excellent rapport has been maintained between the state and our field representatives.

8. Additional comments:

a. Page 89, Dredging and Spoil Disposal: Considerations of "fill" in estuarine areas should not be confined to dredged materials discharge. Considerations of "fill" activities should be more inclusive of filling, per se, and not peculiar only to discharge of dredged materials.

b. Page 141, (v) Emergency maintenance or repairs: The parameters of judgement used to determine what constitutes an "emergency" should be included. If not, the authority for such determination should be cited.

c. Page 145, Description: The definition of "coastal fishing waters" or "inland fishing waters" should be either presented or referenced inasmuch as they are definitive to AEC Estuarine Waters.

d. Page 150, AEC Ocean Beaches Description: The definition as stated defines where ocean beaches are located, not what they are. The definition should be expanded or restated.

e. On page 161, it appears that non-intensive recreational use is intended under the highest priority of use for public water supply well fields. This should be clarified since a distinction between "recreational" and "non-intensive recreational" use has not been made in describing priority of uses under other AEC classifications.

Department of the Army
(Wilson) (5/26/78)

Responses

6. We agree that modifications of the program affecting Federal consistency will be in conformance with Rules and Regulations. However, it should be noted that the official comment period on interim final rules and regulations is being held open until August 31, 1978.

7. No comment necessary.

8. (a) This discussion in no way limits the State's authority to control "filling" from any source of the estuarine bottoms or coastal wetlands. Rather, "dredging and spoil disposal" is discussed here as an activity of particular interest and concern in North Carolina. Filling from other sources is also controlled by the State.

(b) The Coastal Resources Commission has clarified by regulation (15 NCAC 7G .0206) what should be considered an "emergency" for the purpose of defining emergency maintenance and repairs which are not considered development and which, therefore, do not require a CAMA permit. This definition was not considered necessary for inclusion in the Draft EIS, but has now been added to the Glossary in the Final EIS.

(c) The separation between inland waters and fishing waters is established through agreement between the North Carolina Wildlife Resources Commission and the Marine Fisheries Commission. This line is represented on the maps contained in Appendix B.

(d) Please refer to the definition of Ocean Beach as contained in the AEC guidelines, Appendix B. Further information will be contained in the Beach Access planning element to be submitted to OCZM by October 1, 1978.

(e) Please note a further definition concerning priority of use on p. 191.

Clean Water Association of Coastal N.C., Inc. (Depland) (9/77)

Comments

1. The CRC was too timid in designating AEC.

2. Too much permit letting control was delegated to locals.

Clean Water Association of Coastal N.C., Inc. (Depland) (9/78)

Responses

1. Please refer to response #4 under USDA comment section. Also please refer to response #2 under the Department of Interior comment section; and response #6 under NRDC comment section.

2. A major focus of CAMA was to allow local governments the opportunity (under State-level authority and guidance) to exercise their full authority in dealing with problems of a local nature. The State has full authority for dealing with resources considered to be of State-level concern. Please refer to Part II, Chapter 5 (p. 172 of the DEIS) regarding local permit over-ride procedures by the State.

U.S. Coast Guard
(Phelps) (5/10/78)

Comments

A cleaner definition is needed of what national defense efforts are considered to be in the national interest. Such a definition should include reference to the Coast Guard and its responsibilities.

U.S. Coast Guard
(Phelps) (5/10/78

Response

The last paragraph on p. 216 (DEIS) and the text at the bottom of p. 220-221 (DEIS) should clarify for you which activities North Carolina considers to be matters of national interest. North Carolina has listed "national defense" as one matter of "national interest". Specific reference has now made to Coast Guard activities as an example of a national defense agency.

Dunes of Dare Garden Club
(Willett) (5/3/78)

Comments

1. The Dunes of Dare Garden Club has reviewed the State of North Carolina Coastal Management Program and Draft Environmental Impact Statement and supports approval of the plan by the Office of Coastal Zone Management. This is in accordance with our consistent support of the North Carolina Coastal Area Management Act.

2. On June 16, a year ago, we addressed a letter to your office expressing our concern over repeated proposals to construct a North-South highway, originating in the Currituck Banks and extending through the entire area. Particular attention has been given Transportation Policies of the Plan, page 107-108. Paragraphs 2 and 4. We strongly urge that these policies be considered to prevent construction of this highway.

Dunes of Dare Garden Club
(Willett) (5/3/78)

Responses

1. No comment necessary.

2. There are no current plans for this highway to be built. However, a project of this nature would indeed be reviewed with these policies in mind.

Department of Energy
(Langenkamp) (5/16/78)

Comments

1. The Department of Energy has reviewed the North Carolina Coastal Management Program and Draft Environmental Impact Statement. We concur in your proposed administrative action to grant Federal approval to this program, subject to the exceptions granted by Section 305(b) of the Coastal Zone Management Act (CZMA).

2. The North Carolina CZM program indicates intent for the State to prepare a handbook containing a permit system description. Energy facility siting regulatory requirements should be explicitly detailed in this handbook regarding each agency's responsibilities, authorities, and administrative procedures for permit issuance. We believe the handbook should include a description of procedures for resolution of potential conflicts arising from the permitting process.

Department of Energy
(Langenkamp) (5/16/78)

Responses

1. No comment necessary.

2. The handbook mentioned in the plan was not designed to fully describe all energy regulatory programs. Rather, this handbook will focus on permit procedures. The State will submit, by October 1, 1978, a planning process for energy facility siting in fulfillment of Section 305(b)(8). This information, along with information on conflict resolution contained in the Federal Consistency section of the document, should clarify any concerns you have.

Federal Energy Regulatory Commission
(Shuster) (5/18/78)

Comments

1. The relationship between uses and authorities remains unclear, particularly with reference to how "networking" of State authorities outside of AECs will be accomplished.

2. Gas facilities (present and future) need to be given greater attention in the FEIS and more clearly defined as to whether they would be considered "development".

3. Federal consistency procedures are unclear as well as the basis on which consistency determinations will be made.

4. The method described for protection of energy facilities as "uses of regional benefit" appears inadequate.

5. Environmental Impact Statement (EIS)
The brief EIS makes two assumptions about coastal energy facility siting which seem contrary to the policies of the Coastal Zone Management Act of 1972. Specifically, page 262 implies that the National Interest and Uses of Regional Benefit sections of the Act may facilitate development "which might otherwise be excluded from the coastal area." In contrast OCZM stated in the program approval regulations, published March 1, 1978, that "°adequate consideration° . . . is not synonymous with assuring that provision be made to assure the siting of energy facilities . . . . " OCZM also frequently points out that subsection 306(e)(2) prohibits only unreasonable restrictions or exclusions. On this basis, we recommend that the first paragraph on page 262 be deleted.

Federal Energy Regulatory Commission
(Shuster) (5/18/78)

Responses

1. Please refer to the Program Summary contained in the DEIS. Also refer to response #1 of the Department of Army comment section; also response #3 of the Department of Interior comment section.

2. Gas facilities are considered "development" except as regulated by other state agencies under existing state authority. Please refer to the Energy Facility Siting Planning Process for more complete information on gas facilities.

3. Please refer to the revised Federal Consistency section in the program document and, in particular, the discussion under "Criteria for Fedederal Consistency".

4. Please refer to response #9 in NRDC comment section. North Carolina anticipates using the "key facility designation process" as a method of State override where necessary.

5. Paragraph one on p. 262 is not posed as an argument for affirmative siting. Similarly, it is not the intent of this paragraph to argue that meeting National Interest and URB requirements will assure that provision is made for the siting of energy facilities in the coastal zone. We believe this paragraph should remain to help address the intent of Chapter IV of the North Carolina DEIS.

Department of Interior
(Miereotto) (5/26/78)

Comments

We find that the NCCP has the potential to be an excellent program. The passage and implementation of the Coastal Area Management Act (CAMA) and the promulgation of accompanying State regulations have been commendable developments in the national coastal management effort and clearly set a precedent for sound coastal management. Under CAMA, the State has designated a continuous coastal strip as an Area of Environmental Concern (AEC) and has designated other important coastal resource areas as AEC°s. We believe that the CAMA permit process used in AEC°s will provide effective, focused State management for many of North Carolina°s critical coastal resources. Generally, the State policies for these AEC°s and for the balance of the coastal zone are quite satisfactory and appear to adequately address those resource issues of interest to the Department. We are also pleased to see the establishment of a State Policy Task Force designed to address future coastal issues in a coordinated and comprehensive manner.

1. A major issue of concern to the Department is the relationship between the North Carolina Governor°s Executive Order and the "networked" State authorities that will be used to regulate critical uses in non-AEC areas. Where the statute creating a regulatory program contains broad and general standards and criteria, the administering State agency will probably have sufficient discretion to make decisions consisent with the Executive Order. However, where an agency°s discretion is limited and its mandate narrow, it may not have the ability to follow the Executive Order requirements. Accordingly, we recommend that, prior to the issuance of the Final Environmental Impact Statement (FEIS), the State undertake and complete an analysis of these networked authorities to determine if they contain standards and criteria broad enough to permit State agencies to make decisions based upon the mandate contained in the Executive Order. In each case the determination should be accompanied by a concurring statement from the agency administering the statute or by a concurring opinion from the agency administering the statute or by a concurring opinion from the State Attorney General. If any law is found to be unsuitable for networking as a result of this analysis, North Carolina should develop an approach to remedy the inadequacy.

Department of Interior
(Miereotto) (5/26/78)

Responses

No response necessary.

1. The Interior Department illustrates its concerns on this point by hypothesizing a state well permit act under which the agency must grant a permit if a limited number of narrowly drawn criteria are satisfied. The main problem illustrated by this hypothetical is not that of specific criteria, but that of compelled agency action whenever certain criteria, however general or specific they may be, are met.

After reviewing Appendix C of the program document in response to the Interior Department°s comment, OCZM has found two situations similar to that of the hypothetical well permit act. The first of these concerns the grant of easements to fill in navigable waters, described on page 200 of Appendix C; the second concerns the pesticide registration statutes described on page 204. In each case, an easement or registration must apparently be granted by a state agency if certain criteria are met, notwithstanding the provisions of local programs or the local planning guidelines. OCZM does not consider the existence of these statutes to be a serious threat to implementation of the program. A state permit to fill in navigable waters will generally not be sufficient to allow filling to commence in the absence of a Corps of Engineers permit; and the filling will in most circumstances not be economically profitable unless a state permit to fill in estuarine waters, marshes, and tidelands can also be obtained. The permitting agency has wide discretion in the issuance of permits of the latter type, as

Department of Interior
(Miereotto) (5/26/78)

Comments

2. Another major concern of the Department is that the designation of AEC°s under CAMA has been limited and, as a result, important coastal resources including high marsh, freshwater wetlands, wooded swamps, submerged aquatic grassbeds and entire coastal barrier islands have not been afforded this special State regulatory protection. We believe that additional AEC designations are warranted and, accordingly, we will work with the State during program implementation to make additional AEC nominations and provide information useful for their evaluation.

Department of Interior
(Miereotto) (5/26/78)

Responses

outlined on pages 181-182 of Appendix C.

Because agricultural activities are controlled by the program primarily through the CAMA, dredge and fill and erosion control permits, it may be that pesticide registration will take place notwithstanding the provisions of local plans or the local planning guidelines. It should be noted, however, on page 204 of Appendix C, that the potential environmental effects of pesticides submitted for registration are subject to broad review before registration is compelled under the statutory provisions.

There are, in addition, three areas in which the ability of state agencies to comply with the local plans and guidelines may be limited by specific statutory and regulatory criteria that are argueably intended to be the exclusive basis for agency action. These are the control of water discharges, described on pages 167-168 of Appendix C; air pollution abatement, described on pages 174-175; and the establishment of public water supply systems, described on pages 215-217. OCZM believes that, in most instances, uses having potential effects that would violate the programs and that cannot be controlled under the three statutory schemes just listed will be subject to other regulatory statutes allowing such control.

Apart from these five instances, OCZM considers the standards for agency action described in Appendix C to be sufficiently broad and open-ended that they will not pose obstacles to full implementation of the local plans and guidelines in the areas outside AECs under the executive order. Because the wide range of circumstances in which these standards will be applied is largely open to conjecture, however, OCZM does not believe that certification by each state agency that its standards for action will not present compliance with the program would justify the expense and delay that such certification would entail.

2. High marsh is included in the definition of the coastal wetlands AEC which is found on page 93 of Appendix B, and submerged aquatic grasses are covererd by the definition of Public Trust AECs (Appendix B., p. 96) and by the estuarine waters definition (Appendix B, p. 94).

Although freshwater wetlands are covered in part by the coastal wetlands AEC designation, most of the freshwater wetlands and wooded swamps are not subject to CAMA permitting. Only a part of the barrier island system is within designated AECs, but this part forms a buffer around the island°s

Department of Interior
(Miereotto) (5/26/78)

Comments

We recommend that the definition of the "coastal wetlands" AEC be broadened to include high marsh wetlands and coastal wooded swamps and that all coastal freshwater wetlands, and submerged aquatic grassbeds be given protective AEC status. Entire barrier islands should also be afforded additional AEC regulatory protection.

The Department is also concerned about certain activity exemptions in AEC°s including: (1) roadway maintenance; (2) utility repair, maintenance, and upgrading; (3) the construction of facilities for the development, generation and transmission of energy; and (4) large agricultural operations (appendix A, pages 4-6).

We are concerned that North Carolina°s coastal waters are inadequately protected from the effects of agricultural runoff. We believe that any drainage canals proposed for construction in an Area of Environmental Concern should be regulated by CAMA permit even if no part of the ditching would take place in the wetlands.

Department of Interior
(Miereotto) (5/26/78)

Responses

edges which controls the potentially most damaging uses to the islands. AEC categories pertaining to barrier islands include beaches, primary dunes, inlet lands, ocean hazard areas, and public water supply well fields. Together these categories represent strict control over the most environmentally sensitive positions of the islands. Outside of AECs, the critical uses listed in Chapter III of Part II of the FEIS which could have severe impacts on the islands, are controlled by State authority with permit decisions required to be made in accord with coastal policies, found in Chapter III, Part II, Coastal Guidelines (found in Appendix B) and with the local land use plans.

The North Carolina Program recognizes that barrier islands, freshwater wetlands and wooded swamps are valuable natural resources. Future designation of AECs to cover some of the barrier islands and freshwater wetlands and wooded swamps will be considered by the CRC and the suggestion that Interior work closely with the State in this regard to make additional nominations and provide information useful for their evaluation is much appreciated.

Concerning those activities that are exempt from AEC permitting; roadway maintenance, and utility repair, maintenance and upgrading will occur within existing rights of way with limited impact on coastal resources. Facilities of this type must be repaired quickly as any time-consuming permit requirement would be extremely burdensome. Agricultural and forestry operations are exempted from AEC permitting but by their very nature do not generally occur in AECs. These activities occurring near but outside of AECs do have impacts upon the AECs.

These activities occurring near but outside of AECs do have impacts upon the AECs. These impacts will be controlled by CAMA permits and by the State Dredge and Fill Law which require that any ditching in coastal wetlands comply with the associated AEC guidelines and with Dredge and Fill guidelines. As some ditching is critical for the viability of these activities this control will mitigate direct and significant impacts on coastal waters. In permitting ditches, both the impact of ditch excavation on the estuary as well as the effects of the additional flow into the estuarine system will be considered. (See the response to NRDC comment #6.)

Facilities for the generation and transmission of energy are only exempted from CAMA when other laws apply. The Public Utilities Commission and DNRCD°s Environmental Management Division have various authorities but do not have control over the aspects of siting "that are regulated by" AEC guidelines. (See the discussion under NRCD comments #5.)

Department of Interior
(Miereotto) (5/26/78)

Comments

It is our understanding, however, after reviewing the DEIS and discussing the program with appropriate officials of the Office of Coastal Zone Management, that no local ordinances are required to be developed as a result of the formulation of the North Carolina program. These plans will not be uniformly enforceable on all governmental entities and private parties. Specifically, we understand that they are not relevant for Federal consistency purposes and that consistency determination must be made solely on the basis of State coastal policies. Furthermore, we view these local plans as "enhancement" in nature for purposes of meeting the requirements of the Federal Coastal Zone Management Act of 1972 (CZMA), but understand that State agencies must be consistent with them to the extent that they do not conflict with State guidelines.

3. Finally, we wish to emphasize our concerns regarding the monitoring of State agency actions for compliance with the Executive Order. The process for monitoring regulatory, proprietary and financial assistance activities of State agencies should be explained in detail. Equally important is a description of the procedure that will be followed when the coastal management staff or the Coastal Resources Commission detects an agency action which is inconsistent with a coastal policy. This description should explain how and within what timeframe a conflict will be presented to the Secretary or the Governor for resolution.

Department of Interior
(Miereotto) (5/26/78)

Responses

Consistency is based on enforceable state policies; local land use plans will apply to critical uses and to Federal agency public investment decisions. See revised consistency discussion in Part II, Chapter 6 of the FEIS.

3. At the present time, the Coastal Zone Program receives copies of and has an opportunity to comment on all State permit applications prepared for the coastal area. During the Program implementation, the Coastal Management staff will be notified of proposed State regulatory, proprietary and financial assistance activities to take place in the twenty coastal county area. In most cases, this notification will be accomplished through the A-95 process, but in situations where A-95 does not apply, specific agreements will be developed between DNRCD and other agencies to ensure that the Coastal Program is notified of all relevant State actions.

State actions, including regulatory decisions, would normally be reviewed within a 30-day period. When the Coastal Program staff detects that an agency action is inconsistent with Coastal policies, guidelines or with the local land use plans, the Secretary of DNRCD will be notified. If the Secretary concurs with the opinion of the Coastal staff, based on his review of Coastal policy, he will bring the conflict to the Governor's attention at the weekly cabinet meeting for resolution. The Governor has specifically recognized that the Coastal Program policies are an expression of State policy and will determine if the proposed action is consistent with Coastal policies. In these situations, the Governor will appoint a member of his staff to initiate mediation between the Coastal Program and the other State agency. If the action is found to be inconsistent, the Governor will notify the relevant cabinet official to change the action to ensure compliance with Coastal policies. Any disagreements within DNRCD would be handled in a similar manner with the Secretary determining whether an action is consistent with Coastal Policies.

Department of Interior
(Miereotto) (5/26/78)

Comments

4. Coastal policies
It would be beneficial to Federal agencies and to the public if the final NCCP mentioned that incorporation of future coastal policies would occur through the amendment or refinement process, in accordance with the Department of Commerce regulations, 15 CFR Part 923, sections 923.81.

Comments on specific policies are as follows:

a. Residential, Commercial and Second Home Development
The State policy for these uses should be expanded to include appropriate land uses for "coastal flood plains".

b. Mining
The State policy should make explicit that there may be instances where mining will not be permitted or where mining plans may need to be modified to accommodate the State's environmental coastal policies. At the same time, the State should add a mining policy to identify mining or extraction areas for future development and use.

c. Highways
Highway construction in AEC "estuarine shoreline" areas should be strongly discouraged by the NCCP.

d. Energy Generating Facilities
The State should develop and present a clear set of policies concerning energy generation, facility site selection and environmental protection.

e. Drainage and Coastal Wetlands
To further the State's role in marshland protection and management, we recommend that the State undertake a 306 work task to: (1) study the effects of wetland drainage and ditching for insect vector control; (2) study the "Open Marsh Water Management" technique for mosquito control; and (3) develop and environmentally sound policy for such activities. We will be glad to assist the State in defining the scope and intent of these studies.

f. Hydrology
The State should consider how best to provide protection to bodies of fresh water near the coast which often mark the zone of coastal ground water discharge. This may be an appropriate resource for AEC designation.

Department of Interior
(Miereotto) (5/26/78)

Responses

4. Your request is reflected in Part II, Chapter 6 of the FEIS.

a. The CRC is working closely with local governments to ensure that local plans contain policies related to coastal floodplains.

b. If requests for mining related permits cannot meet AEC guidelines or other environmental controls, they will not be permitted. Future mining extraction areas are unknown at this time. The economic importance of mining has been mentioned in Part II, Chapter 3 of the FEIS. It should be pointed out that sand and gravel and clay mining also contribute to the economy.

c. Highway construction in "estuarine shorelines" will be discouraged. This use is not listed as either a first or a second priority. (See page 100 of Appendix B.)

d. These policies will be included in the 305(b)(8) planning element to be submitted prior to October 1, 1978.

e. This is an important problem in North Carolina coastal areas. Interior's interest is appreciated and North Carolina intends to work closely with Interior to ensure that this problem is addressed under the 306 implementation phase of the program. (See response #2 to Ray M. Spencer & Son comment section.)

f. North Carolina will consider the needs of further protection of bodies of fresh water near the coast during 306 implementation and would like to work closely with Interior to determine if further AEC designations are warranted.

Department of Interior
(Miereotto) (5/26/78)

Comments

With reference to estuaries, these areas need further definition beyond the general definition incorporated from CAMA (p. 94, Appendix B) to describe water areas included as "AEC Estuarine Waters" (pp. 145-147).

The reference to the public well field areas as AEC°s (p. 158 and figure 11) leaves the remainder of the aquifer free of CAMA regulation. "Critical uses" which impact the aquifers within the coastal boundaries must be subject to State regulation.

g. Ground-water Recharge Areas
P. 29, para. 2 and p. 139, numbered item 3. The AEC concept in CAMA appears to call for adequate protection of ground-water qualities in areas important to water supplies. However, as applied in practice only two or three shallow well fields appear to have been designated as AEC Public Water Supply Well Fields. We note that ground-water pollution is a serious problem in the coastal areas (pp. 85-86) and, therefore, believe that the State must explicitly state how it intends to protect aquifers not currently designated as AEC°s.

h. Historic and Cultural Resources
The Department believes that the NCCP does not adequately "address the problem of how to support a comprehensive program for identification and preservation of valuable cultural resources in the coastal area" (page 80).

Procedures on how the NCCP will support a comprehensive program for identification and preservation of cultural resources in the coastal zone should be outlined rather than merely stating that there is a need for such a program.

We recommend that the Coastal Resources Commission consider including properties determined eligible for inclusion in the NRHP under criteria for selection of AECs (page 30).

Because the Coastal Zone Management program is a Federally subsidized program, it is subject to the National Historic Preservation Act of 1966, as amended (NHPA), and Executive Order 11593. We note that this comment was not addressed in the summary of the Department of the Interior comments on the draft (CMP) pages 347349, Appendix D). Pursuant to both the NHPA and Executive Order 11593, the effects of Federally assisted projects on historic and cultural properties that are listed in or eligible for inclusion in the NRHP must be evaluated in consultation with the SHPO and the Advisory Council on Historic Preservation.

Department of Interior
(Miereotto) (5/26/78)

Responses

Please refer to response 7(c) of the Army COE comment section.

Defined "Critical Uses" are subject to management as outlined in Part II, Chapters 3 and 5 of the FEIS. As entire aquifers are not regulated by AEC permits, additional nominations will be considered in the future.

g. This is not perceived to be a problem at the present time. DNRCD°s Division of Health Services was consulted on the designation of these AECs and concurred with these selections. Ground water pollution may be a problem in the future and if this proves to be the case, more well fields can be designated by the CRC as AECs. State control over critical uses also controls potential impacts.

h. At a meeting on June 15, 1978, DOI and OCZM agreed to work together to develop additional guidance as to how CZMPs can incorporate the requirements of Section 106 into management programs during program implementation. OCZM will provide North Carolina with the necessary guidance as it becomes available.

OCZM is not obligated to require North Carolina to survey historic buildings, structures, etc., which meet the criteria or inclusion into such identification and inventory procedures as the National Register of Historic Places.

However during earlier stages of program development, North Carolina had given a certain critical areas designation to cultural, historic, etc., locations within the coastal zone. The State Department of Cultural Resources suggested that the coastal program would probably be best advised not to so designate such places because the current National Historic Register designation process imposes no regulation on such properties and that coastal program designation might prohibit further designation because of fear of unnecessary regulation and removal of properties. Participation in this Federal National Historic Register process has been voluntary to date and the Department of Cultural Resources suggested that adding a regulatory aspect to this program would not be beneficial.

Department of Interior
(Miereotto) (5/26/78)

Comments

1. Recreation and Beach Access
While the North Carolina program generally addresses the need to provide park and recreational opportunities in the coastal zone, inadequate attention is given to the many problems associated with public beach access.

5. National Interest
The Department believes that the national interest section of the NCCP is commendable as it specifically addresses the need to balance conflicting uses involving the various national interests. We are especially pleased to see that the program addresses endangered flora and fauna and believe it will aid in promoting their conservation and protection. Also, there are provisions in the plan for the future designation of coastal areas which sustain threatened and endangered species as AEC°s.

The NCCP must contain criteria sufficient to insure compliance with the requirements of the Endangered Species Act so that approval of the NCCP by the Department of Commerce satisfies its obligation under Section 7.

In regard to the national interest in transportation, ports and navigation, the program states: "These facilities serve a national economic need among others and nothing in our management plan will arbitrarily restrict or unnecessarily interfere with these important activities." (Pg. 217 - emphasis added). We believe this section should be modified to note that these activities must be balanced with their potential environmental impacts and their consistency with the program°s coastal policies.

Department of Interior
(Miereotto) (5/26/78)

Responses

1. The problems associated with public beach access will be addressed in the 305(b)(7) planning element to be submitted to OCZM for approval prior to October 1, 1978.

5. No comment necessary

North Carolina°s program has an AEC nomination category for "areas that sustain remnant species". In addition, under DNRCD there is the Wildlife Resources Commission which administers the Endangered Species Act for North Carolina and this commission is closely tied together through DNRCD and the Executive Order to this program. This Commission has signed a cooperative agreement with Fish and Wildlife to ensure proper implementation of Section 6(c) of the Endangered Species Act.

OCZM believes that the balance between the national interest in transportation, ports and navigation activities and environmental impacts and consistency with coastal policies is implicit. There is also a national interest (as articulated in the North Carolina DEIS) in preservation of the environment and this balancing of development pressures versus environmental protection is clearly articulated throughout the program document.

Department of Interior
(Miereotto) (5/26/78)

Comments

6. Federal Consistency
Our review of the proposed Federal consistency process for Federal activities and development projects significantly affecting the coastal zone indicates that the draft program does not clearly identify to what State agency Federal consistency determinations should be submitted (pg. 211). The final program should specify the State agency responsible for receiving and reviewing the proposed Federal consistency determinations.

7. Draft Environmental Impact Statement
While the draft environmental impact statement (DEIS) is concise and no significant adverse environmental impact would appear to result from Federal approval of the State program, the brief 25-page DEIS does not provide an adequate evaluation of environmental impacts of the proposed action to support this conclusion. Impacts are commonly expressed in terms that are excessively general and abstract. For example, the needs, purposes and objectives of policies are commonly given in lieu of an evaluation of the environmental impact of policy implementation. Also, more detailed description of the coastal zone flora and fauna, with emphasis on key economic and ecological indicator species and their habitat should be included. This, in turn, would allow for a more comprehensive evaluation of the impacts of the proposed action.

8. On page 105 item 6, It is declared that State policy supports drainage in the coastal zone as an aid to development. We understand that in North Carolina the practice has been to connect drainage ditches to the nearest natural stream or estuarine bay which may cause adverse effects on estuaries. Given that "Estuarine Shorelines" are designated as AECs, the State should address how existing drainage connection practices will be changed to avoid these adverse effects.

9. On page 141, items vii and viii refer to activities that have been "grandfathered" into CAMA. The language related to the initiation and completion of a development and language related to what constitutes approval or recording of utilities, roads or related facilities is vague. These terms should be clarified in the document.

Department of Interior
(Miereotto) (5/26/78)

Responses

6. Please refer to the revised Federal consistency section in Part II, Chapter 6. Also refer to response 2(a) of the Department of the Army comments.

7. OCZM believes that the environmental impact statement developed for the North Carolina Coastal Management Program adequately addresses the anticipated impacts of this program. Additional information on coastal zone flora and fauna can be obtained from regional offices of relevant federal agencies (e.g., U.S. Fish and Wildlife). OCZM does not believe a more thorough analysis of coastal zone flora and fauna is appropriate in this document. Very detailed information and research was relied upon in developing coastal policies for the coastal zone as defined. North Carolina will help any interested parties in obtaining more complete information, where necessary.

8. The State is presently undertaking a program to encourage countywide drainage planning that should alleviate many of the negative environmental effects of drainage. Through an overall drainage plan specific sites for connecting canals to the sounds can be selected that minimize the negative effects of drainage. In addition it allows the State to select the best alternative network configuration that minimizes the number of connections to open water.

9. The CAMA's lack of explicit standards for the "grandfathering" is common in statutes. Specificity will be added in the next year by adoption of rules and regulations of the Coastal Resources Commission.

League of Women Voters
of New Hanover County
Wilmington, N.C. 28401
(Jordan) (5/3/78)

Comments

1. The League of Women Voters of New Hanover County (a coastal county) commend the State of North Carolina for its implementation of the Coastal Area Management Act. We believe in years to come this Plan will protect coastal life and resources in their delicate balance without sacrificing economic development which is also needed.

2. Our concern comes with the implementation of CAMA; more specifically the enforcement of the Land Use Plans, which each coastal county was required to draw up. These are beautiful documents, but how many counties have adopted new ordinances in compliance with their Land Use Plan? In other words, made them legally binding and enforceable.

League of Women Voters
of New Hanover County
Wilmington, N.C. 28401
(Jordan) (5/3/78)

Responses

1. No response necessary.

2. While Local ordinances are not currently required to be consistent with adopted local LUPs, the State has committed itself to providing technical and financial assistance to localities so that they can revise their ordinances to come in line with adopted plans.

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

Listed below are the major areas in which, in the opinion of the commentators, the North Carolina Program is deficient in complying with the Coastal Zone Management Act and the applicable regulations:

1. The program fails to clearly substantiate that there are sufficient policies of an enforceable nature to provide comprehensive control within the coastal zone. The distinction between enforceable policies and those which are of an advisory or enhancement nature should be clarified.

2. Certain of the AEC guidelines, especially those for estuarine systems and fragile coastal natural resource areas, are not specific enough to provide clear direction and predictability for decision making in the management program.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

1. The Program did fail to clearly differentiate between enforceable and advisory policies. Program aproval will be based solely on those policies that are enforceable.

The policies of the Land Policy Council are examples of advisory policies and have not been considered in assessing the approvability of the North Carolina Program. Part II, Chapter Three, of the FEIS has been changed to clearly reflect that the Land Policy Council's policies are presently of an advisory or enhancement nature.

2. The AEC guidelines provide the decision-maker with a clear and specific set of criteria on which to base permit decisions. Guidelines for the estuarine system do allow some flexibility in permitting to ensure that water dependent uses can be accommodated in the coastal area. These guidelines are contained on pages 92-101 of the Appendices, and give highest priority to the protection and coordinated management of the estuarine system. Each particular category of AEC within this system has its own management objective and set of priorities. The coastal wetlands AEC has protection of coastal wetlands as a management objective with highest priority of use for wetlands conservation and second priority use given to water dependent activities. A wide range of unacceptable uses is also listed.

The Estuarine Waters and Estuarine Shorelines AECs have specific management objectives and priorities of use which are compatible with the goal of protecting the estuarine system, and the Public Trust Areas have a management objective and specific use standards of sufficient detail to provide for predictable decisions.

The Fragile Coastal Natural Resource Areas guidelines, which can be found on pages 110-115 of the Appendices, outline the designation process for the natural area categories and the management objectives and use standards for each. As these sites will be nominated in the future and as the sites will have varying characteristics, a lower level of policy specificity for permit decisions is required. The CRC will develop specific policies for each site that is designated in accord with management objectives and use standards.

Natural Resources Defense Council
(Curry) (5/28/78

Comments

3. The program does not clearly demonstrate that the networking of existing authorities is sufficiently broad to implement oastal policies and control critical uses.

The importance of showing that the individual authorities have been tied "into a comprehensive framework that addresses more than the individual responsibilities of each agency" is especially important in the North Carolina program, because many of the State policies were drawn from the language of existing statutory authorities.

4. The exemption of most agricultural and silvacultural activities from the AEC permitting requirements prevents the program from being able to control all significant land and water uses within the coastal zone and within AECs in particular.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

3. The matrix found in Part II, Chapter 5, clearly outlines that the Program has control over a broad range of activities. This authorities matrix delineates the regulatory control that State agencies have over critical uses but does not tie in with the State Guidelines and the local land use plans. As discussed in Part II, Chapter 5 of the FEIS, State agency decision-making must be made in accord with the policies contained in Chapter III, Part II (which are contained in law) as well as with the State Guidelines and the local land use plans. State agencies are required by an executive order to adhere to the Guidelines and to the local land use plans.

4. The North Carolina Program will control all known direct and significant impacts resulting from agricultural and silvacultural activities in the coastal area. The most important of these impacts are associated with the construction of ditches for the purpose of draining agricultural and forest land. These ditches will necessarily open into estuarine coastal wetlands and will require a CAMA permit. As spelled out in policy (6) found in Chapter 3, Part II of the FEIS, such ditches are "acceptable only where there will be no significant adverse effect on...wildlife or fisheries, or on other valid aspects of the public health, safety, and welfare as determined by the CRC or the State of North Carolina."

In its permitting of these ditches, both the impacts of the excavation as well as the effects of this additional flow into the estuarine system will be considered.

A second control is the North Carolina Pesticide law which regulates the use and application of pesticides according to State and Federal standards.

There are certain impacts that are not fully controlled by the Program. These include the adverse effects associated with surface water runoff, flow of suspended solids and fertilizers and nutrient flow. At present the extent and severity of these impacts are unknown, but better information should be forthcoming from the 208 program. The Coastal Program will coordinate with the Section 208 planning process and will incorporate appropriate best management practices for non-point source pollution when the 208 plans are complete.

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

5. The program does not clearly state that an energy facility proposed for siting within an AEC would be bound to obtain an AEC permit.

6. The number and type of AEC categories does not include all fragile areas within the coastal zone that should be designated as Geographic Areas of Particular Concern.

The commentators believe that there are a number of generic categories of areas in the North Carolina coastal zone which cannot be appropriately managed except as AECs. Examples of such areas include barrier islands, submerged aquatic grasslands, marshes, mudflats, and secondary dunes.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

5. CAMA exempts from the definition of development energy facilities "to the extent that such activities are regulated by other law or by...the State Utilities Commission". The Utilities Commission is responsible for establishing the need for electric generating facilities and issuance of a certificate of public convenience prior to construction. DNRCD's Environmental Management Division is responsible for ensuring air and water quality permits for such facilities. Various aspects of the siting of such facilities are not controlled by laws other than CAMA and thus would be controlled by the AEC permitting process.

6. There are certain critical areas which NRDC believes are not included in the AEC designation; examples mentioned were barrier islands, submerged aquatic grasslands, marshes, mudflats and secondary dunes. All salt marsh is included under the coastal Wetlands AEC category which defines coastal wetlands as "any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides" and also lists plant species common to both high and low marsh areas. Mudflats are covered under the Public Trust AEC which is defined, in part, as "all natural bodies of water subject to measurable lunar tides and lands thereunder to the mean high water mark". Aquatic grasses are encompassed within an AEC under the same Public Trust definition as well as by the definition of estuarine waters. Secondary dunes are not specifically included within an AEC but are included in many instances under the definition of the Ocean Hazard AECs in the Inlet Land and Ocean erodible categories. Inlet lands, which migrate extensively, include primary and, in many instances, secondary dunes (refer to p. 104 of Appendix B) and ocean erodible areas which are measured from the frontal toe of the primary dune and would frequently include a row of secondary dunes as well as the primary dune line (see pp. 104 and 105 of Appendix B). Inclusion within AECs of remaining secondary dunes relates to the question of whether the entire barrier island system should be designated as an AEC. Such designation appears unnecessary as barrier islands are protected from adverse environmental impacts in the following ways:

a. AEC designation represents strict environmental control over those portions of the islands which are most susceptible to negative impacts (beaches, primary dunes, ocean erodible areas, inlet lands and public

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

water supply areas). These designations were determined after extensive public hearings and debates as well as indepth scientific research.

b. North Carolina originally intended to submit a CZM Program based entirely on AEC designations. The exclusion of entire barrier islands was a primary reason why OCZM decided that a larger coastal area had to subject to the management program. The management area outside of AECs includes the entire non-Federally owned portion of the barrier island system and was designed to ensure that potentially damaging uses are adequately managed. Certain types of development are expected to continue on the barrier islands.

7. The program fails to clearly state in what manner permit applicants and other interested individuals will be notified of coastal policy, guidelines and regulations.

7. The North Carolina Program presently has an adequate mechanism for public notification of changes in coastal policy or the development of new policy through the CRCs policy development process. Policy changes of this type will include updating and implementing local plans, land use plan amendments and changes in AEC guidelines. The policy development process is subject to public hearings and will include extensive public participation.

The program is now meeting with State and Federal permitting agencies in order to develop agreements between the agencies and the Office of Coastal Management concerning consistency agreements. In these meetings discussions will include procedures for notifying applicants of the additional criteria that must be considered in permit decisions. This process will be completed prior to the approval of the management program.

8. The program does not clearly indicate that a procedure for defining "permissible land and water uses within the coastal zone which have a direct and significant impact on coastal waters" has been developed and applied pursuant to 305(b)(2).

8. During the first few years of program development, an indepth inventory and analysis of coastal resources was conducted to determine those uses which should be subject to management because of their potential for direct and significant impact on coastal waters. Those geographic areas that were susceptible to negative impacts were designated as AECs while those major uses, outside AECs which could have significant impacts, were designated as critical uses to be managed by the Program. (Refer to past studies, publications, etc.)

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

9. The State's use of the "Key Facilities" category of AEC to satisfy the "uses of regional benefit" requirement (CZMA Subsection 306(e)(2)) conflicts with the conservation thrust of CAMA.

The commentators believe that the final EIS should contain a clarification of this position indicating that the CRC will designate "Key Facility" AECs in response to a proposal for such a facility, rather than in hopes of attracting such a facility to an area.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

9. CAMA Section 113(b)(7) authorizes the designation as AECs of "/a/reas which are or may be impacted by key facilities." Under CAMA Section 103(6), the term "key facilities" means:

(a) public facilities on non-Federal land determined by the CRC to tend to induce development and urbanization of more than local impact (including, but not limited to, major airports, major highway interchanges, major frontage streets and highways of State concern, and major recreational lands and facilities); and

(b) major facilities on non-Federal land for the development, generation, and transmission of energy.

The term includes the sites of such facilities and of major improvement and access features of such facilities. North Carolina contends that, if local governments were to exclude a key facility from the coastal area unreasonably, the CRC could designate an appropriate site as a key facility AEC under CAMA Section 113(b)(7), and could thereupon issue guidelines that would ensure the siting of the facility in that AEC consistent with the requirements of CAMA and other applicable law. NRDC objects to this proposed use of the AEC designation procedure, at least to the extent that it would facilitate the siting of energy facilities in the coastal area. It bases its objections upon (a) the alleged "overall conservation thrust" of CAMA; and (b) the argument that the term "areas of environmental concern" implies that AEC designations may not be made for purposes other than protection of the environment. For the reasons discussed below, it is apparent that CAMA nevertheless may impose severe constraints on the use of AEC designation as a method of energy facility siting.

The argument that the "overall conservation thrust" of CAMA prevents its use to facilitate major development in the coastal area that would otherwise be unreasonably excluded is refuted by a review of the coastal area management system goals set forth in CAMA Section 102(b).

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

Goal (2), for example, is

> "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 or water for development, use, or preservation based on ecological considerations...."

(Emphasis Added.)

Goal (3) is

> "To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation...."

(Emphasis Added.)

Goal (4) envisions the establishment of "policies, guidelines and standards for:

> a. ...management of transitional or intensely developed areas and areas especially suited to intensive use and development, as well as areas of significant natural value;
>
> b. 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;
>
> ...
>
> d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities...."

(Emphasis Added.)

These goals indicate plainly that CAMA was intended to expedite certain types of major facility development, and that its orientation toward environmental preservation, discussed in more detail below, does not prevent its use in the siting of such facilities in the coastal area. The argument can be made however that, while some activities under CAMA may facilitate the siting of major developments, the designation of key facility AECs is not one of these activities because such designations must be motivated predominantly, even exclusively, by "environmental" (in the sense of "preservationist") concerns. This is the second basis for NRDC's objections to North Carolina's proposed use of this procedure.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

Our belief that NRDC's position is in error is manifested by the inclusion of "renewable resource areas," particularly "prime forestry land," as one of the seven categories of AEC authorized by CAMA Section 113. The primary motivation for the designation of AECs of this type would plainly be their prospective economic exploitation.

Even in the absence of this clear evidence, the implications of the term "areas of environmental concern" are vague enough that it is probably well within North Carolina's administrative discretion to reject NRDC's argument that AEC designations must have a preservationist motivation. In the apparent absence of legislative history on the point, North Carolina can make sound arguments that the primary impetus for designation of an AEC may be a motive other than environmental preservation, such as the need for a coastal energy facility, provided that the guidelines for land and water use within the AEC give sufficient weight to environmentally preservationist considerations. The CRC must determine what, under CAMA, this "sufficient weight" is, its ability to use AEC designation as a device for assuring "reasonable" siting of major facilities in the coastal area.

As was noted above, CAMA actually seems to have been intended to encourage reasonable development in the coastal area. Certain provisions of CAMA seem to require, however, that environmental considerations be accorded special significance in the determination of what development is "reasonable," and that the environmental harm caused by development that does take place be minimized.

The legislative findings of CAMA Section 102(a) state that

> "(i)n 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...,"

and that

> "land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment...."

(Emphasis added.)

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

10. With regard to the Executive Order, and the networking of authorities, the program does not demonstrate that:

a. The Order is binding on independent agencies and boards.

b. The Order gives adequate legal recourse to those individuals or groups seeking to insure enforcement of the Executive Order.

c. The Governor has clear legal authority to issue an Order which purports to make coastal policy binding upon existing agencies and permitting programs.

The commentators believe it is essential that the Office of Coastal Zone Management pursuant to 15 CFR. 923.41(b)(1) request that the North Carolina DNRCD seek an Attorney General's opinion with regard to the following issues and that the Attorney General's opinion with regard to the following issues and that the Attorney General's opinion be incorporated in the final EIS:

a. Whether the Governor possesses sufficient authority to issue an Executive Order which makes coastal policy binding upon existing state agencies, boards, commissions, and permitting authorities.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

In addition, Goal (2) of CAMA Section 10Z b) provides that the development or preservation of coastal land and water resources should be "based on ecological considerations."

While these provisions would seem to be applicable to all activities in the coastal area, compliance with them would be especially important in the designation of and adoption of guidelines for AECs. It is likely that, in designating key facility AECs to facilitate the siting of development that would otherwise be excluded from the coastal area, the CRC would have to (a) give substantial weight to environmental preservation factors in determining whether exclusion of the development from the coastal area is unreasonable; (b) select the site that is least environmentally harmful; and (c) impose conditions that would minimize the environmental damage to be caused by the development.

10. On pages 31-38 of its comments, NRDC contends that the North Carolina program document does not demonstrate:

a. that Executive Order #15 is binding on "independent" agencies and boards;

b. that the Governor has legal authority to issue an Executive Order to make coastal policy binding upon existing agencies and permitting programs; and

c. that interested members of the public will be able to secure judicial enforcement of the Executive Order.

Because there are no applicable North Carolina precedents, the analysis of the legal authority underlying Executive Order #15 presented in the program document relies almost exclusively upon analogies to the law governing executive orders of the President of the United States. The justification for this is that the constitutional language upon which the North Carolina Governor's authority to issue executive orders is based is practically identical to the language of the United States Constitution vesting "the Executive power" in the President and charging him with authority "to see that the laws are faithfully executed." To the extent that the courts of North Carolina have not adopted this analogy in past opinions, there is unavoidable uncertainty about

Natural Resources Defense Council
(Curry) (5/28/78)

Comments

b. Whether the Governor can make portions of coastal policy which are otherwise not legally binding, binding upon the entities listed in (1) above.

c. The extent to which Executive Order 15 is in conflict with existing state law.

Natural Resources Defense Council
(Curry) (5/28/78)

Responses

the status of Executive Order #15 under North Carolina law. While an opinion of the North Carolina Attorney General might illuminate this matter to a limited extent, the complete absence of applicable North Carolina precedents would restrict the usefulness of such an opinion, preventing the lack of it from being a serious shortcoming of the program, particularly in view of the Governor°s adoption of the legal analysis contained in the program document.

Accepting the Federal analogy embodied in the North Carolina legal analysis, OCZM believes that the Governor does have sufficient inherent executive authority to issue Executive Order #15 and to bind through it all North Carolina agencies performing executive functions, even those that are popularly referred to as "independent" agencies. For the reasons set forth in the response to comments of the Department of the Interior, OCZM does not believe that the existing statutory authorities of North Carolina agencies are so narrow as to prevent compliance with and implementation of the coastal guidelines under the Executive Order. Based on the discussion of this point that has been inserted into the revised version of the North Carolina analysis, OCZM also believes that the Executive Order does not violate the intent underlying CAMA.

The Governor°s authority to dismiss state officials "for cause" reinforces, but is not an esential basis for, the inherent executive authority that underlies Executive Order #15. This power to dismiss provides a potential mechanism for enforcement of the Order°s provisions.

Because North Carolina relies upon a Federal legal analogy in support of Executive Order #15, that Order would seem to be judicially enforceable by interested members of the public to the same extent as are Federal executive orders, as suggested by NRDC on pages 35 and 37 of its comments. A statement to this effect is included in the revised legal analysis.

North Carolina Farm Bureau Federation
(Sledge) (5/1/78)

Comments

1. Farmers must be assured that drainage ditches can be maintained and new ditches dug where absolutely necessary.

2. Enforcement of Local Plans
The Coastal Program says water and land uses outside the Areas of Environmental Concern, including rural/agricultural lands, must be consistent with state policies affecting those lands and waters. In the Program, the impression is that the Coastal Resources Commission is given the authority to require local plans to be consistent with state guidelines and Coastal Resource Commission policies. The Program does state that the Commission has statutory authority to review local ordinances and make recommendations for consistency, but the impression that the CRC is anything more than an advisory group is dangerous to the rights of the local governments in expressing the citizen°s desires and concerns.

3. Growth Management Policies
In the Program, there are many references to policies established by the Land Policy Council. We can find no statutory mandate to allow implementation of the Land Policy Council°s recommendations.

North Carolina Farm Bureau Federation
(Sledge) (5/1/78)

Responses

1. Please refer to the NRDC comments for a contradictory position. Also, please refer to OCZM°s response to this issue of drainage ditches as contained in the NRDC section.

2. Provisions of the CAMA require that local LUPs be developed by local governments pursuant to State guidelines. These local LUPs are subsequently approved by the CRC. If localities do not developo their own LUPs, the CRC is empowered to develop and adopt plans for the localities. The CRC was established by CAMA and is a policy-making group with broad authority over State coastal actions and policies. However, CAMA emphasizes the role of local governments in coastal planning. The establishment of the CRC is not intended to take away the rights of local governments in expressing citizen concerns.

3. Policies established by the Land Policy Council and referenced in the State°s Coastal Management Program will be used as advisory or enhancement policies only. Refer to response #1 of NRDC comment section.

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Comments

1. The North Carolina Petroleum Council concurs generally with the State of North Carolina Coastal Management Program as a system suitable to manage conservation and development of the State's coastal resources. The Management Program is built around the multiple compatible use concept so as to allow any compatible development which can meet stated policies, guidelines, and standards. We have studied the guidelines, and as we understand them, they would not prohibit reasonable and environmentally conscious petroleum-related operations where needed - even in Areas of Environmental Concern. The need to allow activity of interest to the nation and regions outside North Carolina's coastal zone is one of the goals of the State's Coastal Area Management Act (CAMA) and this goal is articulated in the Management Program.

Thus, as we see North Carolina's Management Program from the position of an industry interested in the balanced use of caostal resources (but also interested in supplying energy resources so vital to our national well-being), the Management Program contains those basic structural members necessary to make it a workable system.

*The following comments were contained in an unreferenced (xeroxed) attachment, which appears to bear no reference to the letter supplied by the North Carolina Petroleum Council dated May 11, 1978. They appear to be comments related to litigation by the A.P.I. in other States; however, in compliance with NEPA, we are responding fully to these comments.

2. The Coastal Management Program Must Be Explicitly Defined.

The statutory definition of the management program is left in broad terms and is not specific enough to satisfy the intent of the federal CZMA or the NOAA interim final regulations.

To be specific, we believe the description of the management program should itemize by name and number:

(1) Each State law which, in its entirety, is part of the program.
(2) Each provision of a State law not included in (1) above which is part of the program.
(3) Each specific State rule, regulation, policy, standard, order, guideline or other directive, which is part of the program.

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Responses

1. No response necessary.

2.

Refer to Appendix C, pages 129-223, which should address points (1) thru (3).

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Comments

(4) Each local land use plan, ordinance, city or county code, or other restriction which is part of the program.
(5) Any other document, executive order, or descriptive material which is legally a part of the program.

3. Executive Order No. 15 does not meet the requirement that the Management Program be duly adopted by the State as required by the FCZMA, Section 306(c)(1).

Finally, we call attention to the fact that CAMA expires on June 30, 1981. Unless CAMA is extended, the central core of the Management Program will fall. This matter must be acknowledged and properly handled.

4. The Coastal Management Program Must Be Strengthened on the Required Consideration and Accommodation of National Interests.

o First, there is a provision of State law which should be clarified. In a provision called "Coordination with the federal government," the CAMA says:

"Where federal or interstate agency plans, activities, or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies."

(CAMA, Section 113A-127).

o Next, there should be an expression of the national interest concept in the Guidelines for Areas of Environmental Concern.

o Next, it is unclear whether the local land use plans have, in accordance with the State Guidelines for Local Planning of Title 15, Chapter 7B, Section .0103, actually provided for interests greater than those of the local area.

o Finally, the method of determining just what the "national interests" are should be described in the program. Include in the Management Program the description of "a process for continued consideration of identified national interests...

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Responses

See the Consistency section of the FEIS, Part II, Chapter 6.

The only applicable executive order can be found in Part II, Chapter 5 of the FEIS.

3. See letter from Governor Hunt which is inserted in the FEIS.

With proper implementation of the Program under 306, the North Carolina Program staff has high hopes that CAMA will be extended.

4.

Please refer to the revised Consistency section, Part II, Chapter 6 of the FEIS.

Refer to goal #3 in CAMA, page 3 of the Appendices.

The State approved the LUPs based on the Land Use Planning Guidelines. North Carolina believes that the LUPs do reflect a national interest in coastal resources. These plans will be refined over a period of time in close consultation with federal agencies to further reflect the national interest.

The State looked at the rules and regulations of CZMA and worked with OCZM in development of the National Interest. In addition, the State requested all Federal agencies to define "National Interest". These definitions were utilized in determining what North Carolina has identified as National interests. The State also looked at all Federal facilities located on the coast in determining "national interests".

The State has provided for continued consideration of the national interest thru both their program policies and statutory and administrative

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Comments

5. We recommend the following steps be taken to improve the consistency procedures and make the program more closely comply with the requirements for program approval:

(1) Clarify the role of local land use plans in consistency determination. Limit their effect only to the extent essential to the accomplishment of program objectives.

(2) Include a provision for public notice of consistency certifications with proper allowance for hearings when appropriate.

North Carolina Petroleum Council
(Weatherspoon) (5/11/78)

Responses

mandates. Similarly, the communication network set up with Federal agencies for continued coordination will serve as a mechanism for continued consideration of "national interests".

5.

This comment is addressed in the revised Consistency section of the FEIS. See Part III, Chapter 6.

Please refer to the revised Federal Consistency section for notification and review procedures that will be followed.

State of North Carolina
Dept. of Cultural Resources
(Edmunds) (5/1/78)

Comments

1. Statement of issues and policies needs to be expanded considerably. In particular, further attention should be given "cultural resources" and how they should be managed.

2. Ongoing management processes of the Coastal Management Program should include a mechanism by which cultural resources are an integral part of the Program.

3. Cultural Resources should not be considered solely under Tourism and Recreation Resource Issues.

State of North Carolina
Department of Cultural Resources
(Edmunds) (5/1/78)

Responses

1. Please refer to response #4h of the Department of Interior Comments. In addition, certain language in CAMA makes direct reference to protection of cultural resources and that protection of cultural resources must be addressed in all local LUPs so as to be in accord with State guidelines.

2. Please refer to response #4(h) of Department of Interior comment section.

3. North Carolina determined to discuss cultural/historic issues under Recreation and Tourism because the linkage seemed to be strongest. The State in no way intends this to diminish the importance of this category of activities by placing its discussion under Recreation/Tourism. While the issues relating to cultural/ historic resources may be broader than one particular AEC category, the State thinks it is most appropriate here.

Nuclear Regulatory Commission
(Ryan) (5/4/78)

Comments

1. We note on page 113 that State energy policy fosters "a statewide planning and coordinating program to promote continued growth of economical public utility services and to cooperate with other States and with the Federal government in promoting and coordinating interstate and intrastate public utility services." We find in this statement an appropriate recognition of regional interests. On page 223, major energy transmission or generating facilities are clearly identified as uses that produce regional benefit. The plan on page 217 also appropriately recognizes that energy transmission and generation facilities are national interest concerns.

2. The plan does not contain a planning process for energy facilities as required by section 305(b)(8) of the Coastal Zone Management Act. We understand from an April 10 communication from Mr. Stewart that this deficiency will be satisfied before the statutory deadline of October 1, 1978. It is our understanding that CZMA permits approval of the plan without the detailing of this energy planning process. We will be very interested in reviewing this supplement and would be happy to comment on it before it is formally published.

Nuclear Regulatory Commission
(Ryan) (5/4/78)

Responses

1. No comment necessary.

2. We will notify North Carolina that you would like to review official draft work on Section 305(b)(8) prior to approval.

Ray M. Spencer & Son, Farms
Scranton, N.C. (5/20/78)

Comments

1. I take issue with the statement at the bottom of Page 70 "Runoff from agricultural ditches MAY HAVE high levels of sediment and chemicals associated with herbicides, pesticides and fertilizer." Before such a MAY HAVE statement is made, the chemicals, herbicides and fertilizer should be identified and the impact of these sediments and chemicals on marine life should be documented and provable statements. It is a known fact many species of fish migrate to the agricultural drainage canals to spawn.

2. Mosquito Control is apparently not a concern to CAMA, it is not mentioned in the program. This is the number one budget figure in the tourist areas of Hyde County. Tourism and mosquitoes do not mix---the citizenship must endure and tolerate great hordes of mosquitoes during warm, wet seasons. When you realize that public funds are expended to protect coastal areas and yet no mention is made of the health of the coastal residents, there is a lack of PLANNING.

Ray M. Spencer & Son, Farms
Scranton, N.C. (5/20/78)

Responses

1. Water quality data gathererd by the State indicates that agricultural ditches contribute significantly to the levels of sediment entering the coastal waters. Recent studies of nutrients in Albemarle Sound indicate that agricultural ditches contribute significant levels of nitrogen and other chemicals associated with fertilizer to the waters of that area. Additional information can be obtained from DNRCD. (Water Resources Research Institute Report #127 Water Quality In The North Carolina Coastal Plain Streams and Effects of Channelization; Fertilizers and Water Quality in North Carolina Coastal Plain, Gilliam, Weed, Gambrell, WRRI, Research Special #74; Data Report #1 Water Quality Ramifications of Converting Forests to Intensive Agriculture, Barber and Kirby-Smith, 1975 WRRI and Sea Grant.)

2. Mosquito control is of concern to North Carolina. North Carolina does realize the impact this problem has on both tourism and quality of life in the coastal zone. The State°s program will look at this more closely as the document and program continue to be refined. Any specific suggestions you may have should be directed to DNRCD so that they can accommodate any of these.

Onslow County, North Carolina
(4/24/78)

Comments

1. Our chief concern is that the State of North Carolina is not considering its own Coastal Area Management Act (CAMA) in the distribution of the $116.5 million raised by the Clean Wataer Bond Referendum. The coastal areas of this State have always had water and sewarage difficulty due to a high water table, and this problem will only become more critical as inadequate systems are required to pump more water and handle more human waste. Since the State is convinced of the importance of coastal tourism and recreation to the economy and since these activities can only be promoted in a clean environment, it is imperative that the coast be given primary consideration for the distribution of these monies. This issue was brought to the attention of the Economic Development Task Force of the Coastal Resources Commission (CRC) at the meeting of February 23, 1978. No action was taken and none has been forthcoming.

2. The North Carolina coastal management program must address the problem of how to minimize the impacts of waste pollution on coastal waters by supporting development of environmentally sound waste treatment systems and guiding new development to areas which are served by such systems or which are suitable for septic tanks.

Onslow County, North Carolina
(4/24/78)

Responses

1. This issue has been brought to the attention of CRC and the Staff is working on this now. However, it would appear that the number of participants on the "higher priority" list are proportionally higher in the coast than any where else in the State.

The criteria for this priority listing are very comprehensive and not based solely on water quality's relationship to recreation and tourism. Other criteria include population, effect of water quality on other industry, etc. This issue will be addressed more completely by the CRC in the very near future.

2. North Carolina agrees fully and they feel this program is designed to ensure that adequate waste treatment facilities are available. This program is encouraging local coastal participation in "201" programs. The AEC permit program is addressing the impacts of conventional septic tanks on coastal waters.

Environmental Protection Agency
(Dickerson) (6/14/78)

Comments

1. EPA does not believe the program consistently provides for incorporation of both air and water considerations. We believe this derives in part from using the Coastal Area Management Act (CAMA) which focuses almost exclusively on land and water rather than air, land and water. Specifically, we find a discussion of air quality considerations lacking in essentially all the issues and policies on growth management, coastal industry, transportation, energy and environment (pp. 69-92, 100-120). We also note that the North Carolina Administrative Code for development standards applicable to all Areas of Environmental Concern (AECs) does not contain a section prohibiting pollution of air. (Appendix B, p. 116)

EPA would appreciate clarification as to how the North Carolina coastal program incorporates "all standards and requirements of the Federal Water Pollution Control Act (FWPCA) and Clean Air Act (CAA), as amended into our management program" (p. 215) and excludes CAA requirements from the AEC permit standards?

EPA does not believe these basic exclusions reflect the statutory intent of Section 307(f) of the Coastal Zone Management Act (CZMA).

2. EPA recommends that the section of the plan concerning "Institutional Arrangements Policies--Federal Consistency and National Interest" (Chapter 3, p. 122) emphasize that the national interests involved in planning and siting facilities cannot be balanced against the national interests in attainment and maintenance of air and water quality standards. A statement similar to the one in Chapter 6, "(w)hen national interests are clearly paramont (sic) as in the case of... the protection of water and air quality, then the balancing of natural (sic) interests is unnecessary," (pp. 215-216), should be added.

3. EPA recommends that the Coastal Management Program (CMP) more clearly recognize that both the location and type of facilities within the coastal zone can have various direct (through their emissions) and indirect (through emissions from induced secondary developments) effects on coastal air quality. We believe that more specific information and procedures for coordinating the CMP and state implementation plan (SIP) are necessary.

Environmental Protection Agency
(Dickerson) (6/14/78)

Responses

1. It should be noted that all Federal air and water quality standards are inherently a part of State coastal management programs pursuant to the rules and regulations of the FCZMA of 1972. North Carolina considers maintenance of air and water standards of prime concern throughout the State and their coastal issues and policies statements do not reflect an undue emphasis on problems associated with air quality within the coastal zone because the problem is not considered to be necessarily greater here.

The standards and requirements of FWPCA and CAA are an inherent part of the NCCMP. The AEC permit standards do not specify these CAA requirements as they are specifically mentioned in the FCZMA and are an inherent part of these AEC standards. The State intends to base all its decisions on Federal air and water quality standards in addition to stated coastal goals and policies. This will include development proposed for AECs.

2. Please note editorial changes to the document.

3. The North Carolina program does recognize that such direct and indirect impacts might exist and through the program's incorporation of Federal air and water quality standards meets the requirements of the FCZMA in this respect. The Executive Order requires close coordination between the CMP and the SIP.

Environmental Protection Agency
(Dickerson) (6/14/78)

Comments

4. EPA recommends that the policies concerning "Residential, Commercial, and Second Home Development" (p. 102) emphasize that local and state agencies should not encourage moderate or high density growth in "transition" areas where such growth would hinder the attainment or maintenance of air quality standards.

5. EPA finds that while the AEC identification procedure discussed in the plan (pp. 28-30) provides for designation of renewable resource areas, such areas where a "generalized condition of ...air pollution exists" or "areas with a significant potential for air inversions," as AECs, this category does not seem to have been included as a final AEC category. EPA suggests that certain coastal areas of exceptional air quality deserve AEC protection. The Coastal Resources Commission (CRC) should also seriously investigate designating areas presently not meeting air quality (or water quality) standards as areas for preservation or restoration or as AECs to assist DEM in ensuring that the standards are maintained.

EPA also requests that air pollution considerations be included as one of the "Development Standards Applicable to all AECs" (Appendix B, p. 116).

6. EPA urges that Appendix D (p. 248) be modified to state that coastal planning activities must be coordinated with 208 planning for both point and nonpoint sources. In addition, EPA recommends that the policies for agriculture and forestry (pp. 104-105) describe in more detail the process for incorporating "appropriate best management practices for non-point source pollutants developed through the Section 208 planning process" into the plan. This is particularly significant in light of the current exemption of agricultural and silvicultural activities from the AEC permit process. We also urge that the coastal policies for activities other than agriculture and forestry also discuss their relationship to ongoing 208 planning activities in North Carolina which are listed in the Appendix (pp. 248-249).

7. We recommend that water and waste treatment facilities be listed in Chapter 3 (p. 65, 101) as an example of a "key facility" which can strongly influence development patterns.

8. The Waste Disposal Policy (p. 116, #7) for sewage systems should not encourage regional

Environmental Protection Agency
(Dickerson) (6/14/78)

Responses

4. This kind of consideration regarding "air quality" is inherent in the program. In a situation where a LUP encourages growth which might hinder full attainment or maintenance of air quality standards, the State policy (i.e., State air quality standards) would prevail.

5. The CRC will be very pleased to work with EPA in developing future AEC designation categories. Please refer to the following responses: #6-NRDC, #2-DOI.

Please refer to response #4 above.

6. Please note that the appendices should read "point and non-point sources". Please refer to response #4 of the NRDC comment section.

7. The list, as stated, is not exclusive; rather, the list will be refined and extended. North Carolina agrees that the examples you raise are potential key facility designations.

8. We agree.

Environmental Protection Agency
(Dickerson) (6/14/78)

Comments

sewage systems if more cost effective and equally environmentally beneficial package plants or innovate on-site technologies are available.

9. The dredge and spoil and wetlands policies (pp. 118-120) need to be altered to reflect the 404(b)(1) guidelines (40 CFR Part 230) and the Corps of Engineers regulations (33 CFR Part 323 et. seq.) for issuance of 404 permits.

10. EPA believes the State consistency provisions violate the Federal consistency regulations by circumventing the basic assumptions of the Federal consistency regulations that an activity cannot be allowed if it violates air or water quality requirements pursuant to Section 307(f). Thus a test for consistency must include an affirmative decision that air and water requirements will not be violated. Due to the lack of air quality considerations mentioned earlier, the elements North Carolina has chosen to use--AEC standards, local land use plans, and State Guidelines (p. 205)-- do not permit such an affirmative decision.

11. EPA believes the exemption of agricultural and forestry activities, energy facilities regulated by the State Utilities Commission, and certain other activities from AEC provisions raises serious questions about the effectiveness of the AEC concept to enforce the coastal policies for the critical resources in North Carolina's first tier.

12. EPA is also concerned that activities outside of, but directly affecting designated AECs, cannot be effectively regulated by the CRC. If such "affecting" developments cannot be controlled, then the added protection provided by AECs may prove less than adequate. EPA urges that the CMP develop legally enforceable policies and procedures for ensuring AEC protection from outside activites.

13. We are particularly concerned that the permitting of numerous "minor" developments may have serious cumulative impacts upon coastal resources. Even small scale growth, such as a series of individual septic tank systems, can have significant impacts on critical coastal resources such as aquifers. Procedures by which the local development officers will consider these impacts should be discussed. Again, in this instance, the limited advisory role of the CRC in areas outside the AECs casts doubts on the overall effectiveness of the CMP.

Environmental Protection Agency
(Dickerson) (6/14/78)

Responses

9. The State's permitting system is designed to meet the needs of North Carolina and while the regulations may not be identical in all instances, North Carolina does believe that their dredge and spoil and wetlands policies are an adequate re-reflection of both 404 and COE regulations.

10. Reference #5 above. In addition, it is State coastal policy that air and water quality standards be met prior to a consistency determination being made.

11. Please refer to response #4 and #5 of the NRDC comment section. Also Interior comment #2.

12. Please refer to response #1 of the NRDC comment section and response #4 and #6 of the NRDC comment section.

13. The State has an overview authority over all minor development permitting in AECs and has an Executive Order which binds all State agencies to coastal goals and policies in areas outside AECs. We feel that this overview capacity coupled with the Executive Order provides the necessary control for managing cumulative impacts from development activity.

Environmental Protection Agency
(Dickerson) (6/14/78)

Comments

14. EPA recommends that further consideration be given to designating all of the Outer Banks and the barrier island system, not excluded as Federal Lands from the coastal zone (see Appendix E), as AECs or in some manner developing policies ensuring their special protection. This protection would be in addition to that provided in AEC ocean beaches, frontal dunes, ocean erodible areas, estuarine shorelines, inlet lands, and estuarine/public trust waters.

15. EPA recommends that utility corridors, such as those for power lines and gas pipelines, be added to the critical uses list.

Environmental Protection Agency
(Dickerson) (6/14/78)

Responses

14. North Carolina has determined that adequate protection has been afforded to the Outer Banks and Barrier Islands through protection afforded each of the AEC categories. This office also believes the necessary management authorities exist for adequate protection of the Barrier Islands. Please also refer to response #2 in the DOI comment section; NRDC comment #6.

15. The State will take this as an advisory position until such time as critical use lists are updated. Full consideration will be given for such designation at that time. In addition, there is currently some State regulation on gas pipelines and power lines through other State agencies which are bound by the Executive Order.

PART I

INTRODUCTION

A. DESCRIPTION OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT (CZMA)

In response to the intense pressures upon, and because of the importance of the coastal zone of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). In July of 1976, the Coastal Zone Management Act of 1972 was substantially amended (P.L. 94-370). The Act and 1976 amendments affirm a national interest in the effective protection and development of the coastal zone by providing assistance and encouragement to coastal states to develop and implement rational programs for managing their coastal zones.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction for developing these state programs. Besides the financial assistance incentive for state participation, CZMA stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with approved state management programs (the Federal Consistency requirement, Section 307(c)(1) and (2)). Section 307 further provides for mediation by the Secretary of Commerce when serious disagreement arises between a Federal agency and a State with respect to the administration of a State's program and shall require public hearings in concerned localities.

Section 308 establishes a coastal energy impact assistance program consisting of:

- Annual formula grants (100% Federal share) to coastal states, based upon specific Outer Continental Shelf (OCS) energy activity criteria (Section 308 (b)).

- Planning grants (80% Federal share) to study and plan for economic, social, and environmental consequences resulting from new or expanded coastal energy facilities (Section 308(c)).

- Loans or bond guarantees to states and local governments for improved public facilities and services required as a result of new or expanded coastal energy activity (Sections 308(d)(1) and (2)).

- Grants to coastal states or local governments if they are unable to meet obligations under a loan or guarantee because the energy activity and associated employment and population do not generate sufficient tax revenues (Section 308(d)(3)).

- Grants to coastal states if such states' coastal zones suffer any unavoidable loss of valuable environmental or

recreational resources which results from coastal energy activity (Section 308(b) and (d)(4)).

Section 309 allows the Secretary to make grants (90% Federal share) to states to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support state management programs. The Secretary may also make grants (80% Federal share) to states to carry out research studies and training required to support their programs.

Section 315 authorizes grants (50% Federal share) to states to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the preservation of islands, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

B. OCZM REQUIREMENTS FOR SECTION 306 PROGRAM APPROVAL

The table below indicates which chapters of the North Carolina Program Submission describe how the State's program meets the specific requirements of Section 306 of the CZMA.

OCZM Requirements 15 CFR Part 923, Section:	North Carolina Coastal Management Program
.4(b) Problems, Issues and Objectives	Program Summary, 50-60, 105-163
.5 Environmental Impact Assessment	Part III, 265-292
.11 Boundaries	165-172
.12 Land and Water Uses to be Managed	173-224
.13 Areas of Particular Concern	249-254
.14 Guidelines on Priority of Uses	177-197
.15 National Interest in the Siting of Facilities	121-124, 131-132, 150-152, 240-246
.16 Area Designation for Preservation and Restoration	250-254
.17 Local Regulations ad Use of Regional Benefit	132, 225-229, 247-249, 253-254
.18 Shorefront Access Planning	Not Required at this Time.
.19 Energy Facility Planning	Not Required at this Time.
.20 Shoreline Erosion	Not Required at this Time.

OCZM Requirements 15 CFR Part 923, Section	North Carolina Coastal Management Program
.31 Means of Exerting State Control Over Land and Water Uses	Program Summary, 53-59,198- 24, Appendices A,B,C.
.32 Organizational Structure to Implement the Management Program	67-68,217,268-269,271-273
.33 Designation of Single Agency	67-68
.34 Authorities to Administer Land and Water Use, Control Development and Resolve Conflicts	198-224, Appendices, A,B,C.
.35 Authorities for Property Acquisition	Appendix C., 247-249
.36 Techniques for Control of Land and Water Uses	Program Summary, 50-59,198-224 Apendices A,B,C.
.41 Full Participation by Relevant Bodies in Adoption of Management Program	61-104; Appendix D.
.42 Consultation and Coordination with Other Planning Efforts	99-101,130,132-133,246-256
.51 Public Hearings	91-99 Appendix D.
.52 Gubernatorial Review and Approval	Executive Order, 210,216, Governor's Letter
.54 Applicability of Air and Water Pollution Control Requirements	152-154 Appendix C.

C. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 REQUIREMENTS

On January 1, 1970, the President signed into law the National Environmental Policy Act (NEPA), which required each Federal agency to prepare a statement of environmental impact in advance of each major action that may significantly affect the quality of the human environment. An environmental impact statement (EIS) must assess potential environmental impacts of such action.

To comply with NEPA's requirement of preparing an EIS, OCZM has combined the State's coastal management program (Federal approval of which is the proposed action) with a discussion of the environmental impacts. The CZMA is based upon the premise that the environmental aspects of the coastal management program should receive significant consideration in the development of State programs. Therefore, as you read this EIS, you should be aware that the State coastal management program is the core document included in its entirety, supplemented by the requirements of NEPA, Section 102(2)(c).

For the reviewers who are familiar with the NEPA requirements for the content of an EIS, the index to follow will provide this information.

TABLE 2

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D. PROGRAM SUMMARY OF NORTH CAROLINA'S COASTAL MANAGEMENT PROGRAM

The passage of the North Carolina Coastal Area Management Act (CAMA) during the 1974 Session of the General Assembly demonstrated the State's strong and continued interest in protecting its coastal resources. It marked the beginning of an attempt to institute an integrated system of land and water management using a variety of management tools at all levels and departments of government.

The policy formulation contained in CAMA, although influenced by the national awareness of environmental issues, was motivated primarily by State issues and concerns, and proceeded largely independent of Federal coastal management efforts.

The CAMA has survived a court challenge testing its constitutionality and several legislative attempts to repeal or weaken it. However in addition to CAMA, the State of North Carolina has established a mechanism to ensure that all coastal-related issues are addressed by the State in a

coordinated fashion. The Executive Order which creates such a coordinating mechanism was obtained in response to OCZM requests. It is further evidence of the strong commitment in North Carolina to a wise use of coastal resources.

Program Framework

North Carolina's Coastal Management Program consists of: (1) the resource management laws, regulations and standards described in Appendix C; (2) State policies concerning coastal management established by statutes or by authority of statutes as set out in Chapter Three; (3) the Governor's Executive Order Number 15; and (4) the Coastal Area Management Act which serves to provide a cohesive bond with existing statutes to provide a broad system of coastal management, complete with its guidelines, regulations, standards, procedures, and local land use plans. The above stated elements are incorporated and described in the "North Carolina Coastal Program Document" which allows for amendment through proper channels thereby assuring a program that will continue to be relevant to the needs of the coastal area.

North Carolina's objective in developing a coastal management program is to establish a comprehensive coordinated approach for the protection, preservation, and orderly development of the State's coastal resources. In large measure, the management program is based on the legislative authorities contained in the CAMA which establishes the Coastal Resources Commission (CRC) as a regional resource management body. The key features of the CAMA are: (1) CRC involvement in all decisions involving development in critical coastal resources areas (called "areas of environmental concern"); and (2) development by local governments of land use plans under CRC policy direction and subject to final CRC approval.

In addition to CAMA, other North Carolina statutes and regulations will be relied upon to ensure a comprehensive management program; these authorities will be coordinated through an Executive Order signed by the Governor. Finally, locally developed land use plans will be available to aid the State in understanding local desires for future growth and development. To the extent that these land use plans are not inconsistent with state policy, they will be used to guide State decision-making.

North Carolina's program involves a relatively large coastal area consisting of 20 coastal counties. Within this area, a two-tiered approach was chosen for management purposes. The first tier consists of critical resource areas, designated as Areas of Environmental Concern (AECs), in which most significant land and water uses are regulated by permit. The second tier consists of the area within the coastal counties but outside the Areas of Environmental Concern. In this

second tier, the program calls for management of certain uses by coordinating existing state authorities; additionally, the State will be guided by policies contained in state-approved land use plans which have been prepared by the local governments under CAMA guidelines, entitled "State Guidelines". These Guidelines consist of two sections. One section contains guidelines and criteria for development within AECs; the other section contains general guidelines for development of land use plans throughout the entire coastal area.

Management in the First Tier - AECs

The AECs include near shore and estuarine waters, saltwater wet lands, beaches and primary dunes and certain other areas which together represent a narrow band, or buffer zone, around coastal waters, where regulation of nearly all uses will occur. These areas encompass the State's most important coastal resources where direct and significant impacts are most likely.

AEC Permit Addministration

Nearly all development activities in the AECs are regulated by permit. The authority for administering the CAMA permit program in AECs is shared between the CRC and local government units within the coastal area. The CRC will process applications for major development permits and appeals of local decisions concerning minor development application. Once the CRC has approved a local implementation and enforcement plan, a local government may process applications for minor development permits in AECs. The local decision, however, is subject to appeal to the CRC.

AEC Permit Criteria

CAMA directs the CRC and local governments to deny permits in AECs where development would be inconsistent with the State Guidelines for AECs or with local land use plans. The State Guidelines for AECs, which were developed by the CRC and adopted by rule, contain specific and detailed permitting criteria. According to CAMA, all sections of the local land use plans dealing with AECs and all local ordinances and regulations within AECs must be consistent with the State Guidelines for AECs. All local land use plans have been certified as being consistent with the State Guidelines. Thus, in theory, there should be no inconsistencies between the AEC portion of local land use plans and the State Guidelines for AECs. Subsequent to the 1976 certification, however, the State Guidelines for AECs were revised. However, since the AEC section of LUPs were based on proposed or potential AECs and not on established AECs (the CRC designated AECs and adopted guidelines after the local plans were certified), a certified local land use plan may be inconsistent with the final Guidelines for AECs. For this reason

the CRC will soon complete a second review of the local land use plans to insure that they are consistent with the revised Guidelines for AECs. In the interim, if a case arises where the local land use plan is inconsistent with the State Guidelines for AECs, the State Guidelines will control and the criteria identified therein will be used to determine whether or not the AEC permit should be issued.

Management in the Second Tier

In the coastal areas outside AECs, the program calls for a more limited state role. The state will be involved in decision-making in non-AEC areas only where uses and activities which have a potential for directly and significantly affecting coastal resources are being proposed. (Such uses and activities are referred to in the program document as "Critical Uses".) Statutes and regulations which are already in force in North Carolina provide the state with the authority to make decisions regarding these critical uses.

Understanding How Critical Uses are Regulated

In order to aid the reader in understanding the nature and degree of state involvement in citing decisions regarding critical uses, the program document contains a matrix which identifies the state authorities that are applicable to each use and a discussion of the criteria and standards related to each authority. To facilitate use of this information and to demonstrate the relationship between the issues, the policies, the matrix, and the criteria and standards, the following example is proposed.

Assume that one is interested in the mangement programs' treatment of petroleum refineries. To determine the issues developed by the State of North Carolina relative to refineries, the reader would turn to the discussion in Chapter 3 on Energy, Issues (page). Next, the reader would probably wish to examine the policies of the state regarding these facilities; these can be found in the section of Chapter 3 which sets forth State energy policies. The next step would be to refer to the discussion of those authorities that will be used to enforce the policies. If the proposed location of a petroleum refinery is in an AEC, it would require a CRC major development permit in addition to other applicable State permits. In this case all the criteria set forth in the State Guidelines for Areas of Environmental Concern (Appendix B) would be relevant. If the refinery was proposed for an area outside an AEC, it would fall into the category of a "critical use" subject to State management. One would rely on the matrix to identify the authorities which regulate the various activities associated with an oil refinery. Finally, to determine the criteria and standards used to make decisions under each of these authorities, one may use the discussion in Appendix C.

Thus by going from the issue and policy statements in Chapter 3 to the Matrix and then to the criteria and standards of Appendix F, one can determine the State's perception of the issues and problems associated with Petroleum Refineries, the state's policies regarding such facilities, the laws and regulations that will be relied upon by the State to regulate refineries, and, finally, the standards and criteria that will be used to make decisions with respect to each law and regulation.

Role of the Executive Order

To ensure that the pre-existing statutes, and regulations controlling critical uses are exercised in accordance with coastal goals and policies, the Governor of North Carolina has issued an Executive Order which requires State Agency consistency with the goals and policies stated in the Coastal Management Program, with the State Guidelines promulgated pursuant to CAMA, and with the local land use plans. An example of how the Executive Order integrates existing regulation of critical uses with the local land use plans may be helpful. Assume that an applicant applies to the Environmental Management Commission (EMC) for a permit to construct a well with a design capacity of more than 100,000 gallons per day as required by the North Carolina Well Construction Act (N.C.G.S.). The well is necessary to provide water to a large apartment complex (a critical use) planned for construction in a coastal area outside an AEC. The Executive Order mandates the EMC, in determining whether to issue a permit, to review and make its decision consistent to the maximum extent possible, with:

(1) the State Guidelines for Land Use Planning and the State Guidelines for AECs promulgated pursuant to CAMA;

(2) the coastal policies articulated in Chapter 3 of the "North Carolina Coastal Plan" and;

(3) local land use plans.

Accordingly, in determining whether to issue the permit, the following EMC actions are necessary.

EMC Review of State Guidelines

As long as the activity is not proposed for an AEC, it is likely that the State Guidelines for Land Use Planning (LUP) will not be very important in the EMC decision-making process since they mainly contain guidance for local governments regarding how the plans should be designed and developed.

EMC Review of Coastal Policies

The EMC must determine whether the proposed apartment complex would be inconsistent with any of the coastal policies listed in Chapter 3 of "The North Carolina Coastal Plan." If it would be inconsistent, and if the CRC has the flexibility under the North Carolina Well Construction Act and rules and regulations promulgated pursuant thereto, the Executive Order requires that the EMC deny or condition the permit in such a way that the coastal policies are not violated.

EMC Review of the Local Land Use Plan

The EMC must also consider the contents of the local land use plan during its permit deliberations. In particular, the EMC must look at (1) any specific policies regarding apartment development that the land use plan may contain, and (2) the land use classification for the site in question. First, assume that the land has been classified by the local government as "transitional" and that the local government wishes to accommodate moderate to high density development in the area. In this situation, the EMC should issue the permit unless its own policies and/or criteria for well construction are violated or unless some of the policies of the "North Carolina Coastal Plan" would be violated by construction of the well. Conversely, assume that the land has been classified by the local government as "rural" which reflects the local government's wish to preserve the site for agriculture and forestry activities. This local desire must be considered by the EMC and, provided sufficient discretion exists under the Well Construction Act, the ERC should deny the permit for the well.

Obviously there will be differences in the amount of discretion that the state agency making a permit decision regarding a critical use may exercise. In most instances, however, statutes and rules and regulations are drawn broadly and the administering agency will have adequate discretion to take the state coastal and local land use plans into consideration.

Decisions of Local Concern

The State will not play a regulatory role in decision-making in non-AEC coastal areas where "critical uses" are not involved. Such decisions are of local concern only and should be decided by the local governments. In these situations, the local land use plans should be of primary importance. It is hoped that local governments will make land use decisions consistent with these plans (although they are not required to do so). Federal and State agencies will comply with the plans to the greatest extent possible and will use them as a guide for public investment decisions and financial assistance activities.

Planning

North Carolina wishes to stimulate, encourage, and support local planning as an essential element of wise resource management. Local identification and understanding of the problems associated with land use and growth management through planning is a prerequisite to avoiding environmental degradation while achieving economic growth and development. The fifty-two local land use plans thus far developed by cities and counties serve as a clear expression of local sentiment and desires. As they are revised so as to be consistent with the Final State Guidelines for AECs and refined so as to contain more detail, they will become increasingly important. This will be accomplished over a period of time as local conditions change, as State Guidelines are modified to require greater specificity, and as local planning experience and acceptance is gained.

E. EFFECTS OF FEDERAL APPROVAL ON THE NORTH CAROLINA COASTAL MANAGEMENT PROGRAM

The State's CAMA focuses heavily on local planning and implementation of State Guidelines. The State's permitting process will play a major role in implementaton of CAMA's goals and objectives for growth and development in the coastal area.

The Federal Coastal Zone Management Program strengthens the State's program by ensuring a more coordinated and comprehensive system of managing coastal resources. To gain approval under the Federal program, the State was required to develop specific policies to effect sound coastal management and to ensure that relevant state agency decisions were made in accord with these policies. The end result should be a much broader based decision-making process with consideration of all aspects of a problem rather than a single aspect as is now often the case.

The Federal Act provides several key planning and intergovernmental coordination elements which make the Federal program unique and different from the State CAMA. The most significant anticipated changes will be:

- Increase Federal funding assistance available to State and local governments to promote and implement sound coastal management.

- More comprehensive tehnical assistance available to local governments.

- An improved State permitting program through better permit coordination, more enforcement personnel, better training procedures, and more technical support to localities.

- Greater enforcement of those State laws currently in effect in the coastal areas.

- The State would be required to consider the national interest in the siting of facilities on the North Carolina coast.

- Federal activities affecting the coastal area would be required to be consistent to the maximum extent practicable with the North Carolina coastal program.

- Consideration and planning for shorefront access, shoreline erosion, and OCS development.

In all the Federal Act is an effective complement to the North Carolina Act that provides incentives and a national direction that cannot be provided by the State Act alone. The Federal Act will facilitate a coordinated approach to coastal management decisions and resource planning.

PART II

THE NORTH CAROLINA COASTAL PLAN

Prepared by:
North Carolina Coastal Management Program
North Carolina Department of Natural Resources and Community Development
Archdale Building
Raleigh, NC 27611
Kenneth D. Stewart, Director

STATE OF NORTH CAROLINA

OFFICE OF THE GOVERNOR

RALEIGH 27611

JAMES B. HUNT, JR.
GOVERNOR

July 13, 1978

Dear Mr. Knecht:

On behalf of the State of North Carolina, I am pleased to transmit the Coastal Zone Management Program in fulfillment of Section 306 requirements of the Federal Coastal Zone Management Act of 1972. This program represents four years of diligent efforts by coastal citizens and local, state, and federal agencies to identify and formulate a balanced approach to managing our precious coastal resources.

I believe that this program adequately describes and addresses the important coastal issues in North Carolina and that the document fully satisfies the requirements of Section 306 of the Federal Act.

As Governor, I am very proud that North Carolina is the first southern state to submit a comprehensive coastal management program for approval. I am equally proud and excited that the principal forces in program development have come from coastal citizen involvement through participation on the Coastal Resources Commission, the Advisory Council, local government units, and local planning boards.

This program should be viewed as North Carolina's policy for managing its resources in the coastal area. In addition, the Secretary of Natural Resources and Community Development has been asked to continue to receive and administer implementation grants and to conduct the state program in a coordinated fashion with all appropriate local, state, and federal agencies.

Please be assured that the state agencies that are networked together to form our comprehensive coastal program are appropriately organized and possess the necessary authority to fully implement this important program.

I trust that you will find North Carolina's program satisfactory as described and that we can look forward to a continued close and cooperative working relationship with the Office of Coastal Zone Management as we implement our program.

My warmest personal regards.

Sincerely,

Mr. Robert W. Knecht
Associate Administrator for
Coastal Zone Management
NOAA - U. S. Department of Commerce
3300 Whitehaven Street, N. W.
Page Building #1
Washington, D. C. 20235

State of North Carolina

JAMES B. HUNT, JR.
GOVERNOR

EXECUTIVE ORDER NUMBER 15

WHEREAS, the General Assembly of North Carolina, in passing the Coastal Area Management Act, has expressed its desire for a comprehensive, coordinated management system for the protection and orderly development of the coastal area; and,

WHEREAS, the stated goals of the Coastal Area Management Act are:

(1) To preserve and manage 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 aesthetic 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, conservation, location

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Section 1. All State agencies shall take account of and be consistent to the maximum extent possible with the coastal policies, guidelines and standards contained in the State guidelines, with the local land use plans developed under the mandate of The Coastal Area Management Act, and with the North Carolina Coastal Plan prepared under the Federal Coastal Zone Management Act of 1972 in all regulatory programs, use and disposition of state-owned lands, financial assistance for public facilities, and encouragement and location of major public and private growth-inducing facilities.

Section 2. The Secretary of Natural Resources and Community Development and the Coastal Resources Commission shall ensure the opportunity for full participation by affected State agencies in the development of policies and guidelines for the coastal area prior to their adoption.

Section 3. All conflicts arising from the implementation of this order within the Department of Natural Resources and Community Development shall be resolved by the Secretary of that Department, and all conflicts over consistency between the administering coastal management agency (Department of Natural Resources and Community Development) and another department of State government shall be resolved by the Governor.

Section 4. This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 27th day of October, 1977.

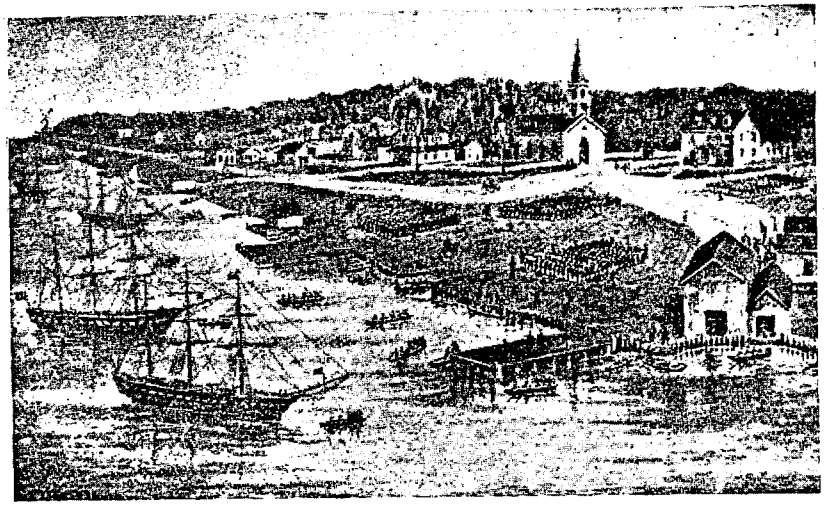
GOVERNOR OF NORTH CAROLINA

SEAL

CHAPTER ONE GENESIS OF COASTAL AREA MANAGEMENT

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 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. The 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, 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 small limited areas of heavy industry have developed on the coast.



CAPE FEAR PATRIOTS RESIST THE LANDING OF STAMPS AT BRUNSWICK

North Carolinians have long had a special concern for the coast and for the proper management of its resources. The State's deep roots are in its coastal area. 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 concern of the coastal region was to achieve some degree of economic growth so that its residents could attain the standards of living enjoyed by the residents of other regions of the State. This concern with economic growth, to a large extent, still today prevades the thinking of local governments in the coastal region. However, 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 A.

North Carolina and the nation 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. However, 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. Also, the existence of federal requirements for coastal zone management, although certainly a strong motivating force, never became the sole reason for developing a state program.

Enactment of the North Carolina Coastal Area Management Act

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

Although there was an almost inherent relationship between inhabitants of the coast and the natural systems of the region, there was not general understanding that the economic and social well-being of the coastal region and of its citizens depended upon the protection and proper management of these systems. For example, ever since the mid-1800's it has been state policy that state nonnavigable wetlands 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 of

the State Department of Public Instruction. Passage of the State Lands Act (G.S. 146) in 1959 began a shift away from this policy limiting the conveyance of stateowned 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 to bottoms under navigable waters to register their claims. 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 Resources and Community Development (DNRCD), provided protection for coastal marshes against destructive dredging, filling and other modifications. Amendments to Article 3, Chapter 104B of the General Statutes strengthened the State's sand dune protection statutes and provided local governments of the counties bordering 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 longterm 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 Interagency Committee on the Environment and 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 wideranging permit and regulatory authorities. These were refined to provide for more local participation, 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 that they desired greater involvement in the program. There was a virtually unanimous feeling that local government should play a major role in the planning process -- 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 rewritten 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, providing greater input from local government, and tightening criteria for identification of areas of environmental concern and for denying permits. Most amendments were designed to moderate or refine the bill. Many were frankly tactical and designed to damage or delay the bill.

The Coastal Resources Commission

The General Assembly established within the Department of Natural Resources and Community Development 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 General Assembly recognized the need for a strongly coordinated influence to effectively implement an encompassing resource management program. The Commission was therefore given a major task implementing coastal area management primarily through the coordination of governmental policies and actions. 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 development and adoption of guidelines for local planning, the designation and regulation of areas of environmental concern and the development of specific policy necessary to guide the orderly growth and development of the coastal area.

The Federal Coastal Zone Management Act

The State of North Carolina having passed its own comprehensive coastal management legislation also recognized the importance of participation in the voluntary federal program for coastal management. In addition to providing the major source of funds for program development and implementation, the federal program offered numerous incentives and opportunities that the State could not enjoy outside of participation in the FCZMA. Among these opportunities are: federal agency consistency, specific planning, research, and acquisition funds. North Carolina realized as well that only through a coordinated cooperative effort by all states could a management program for a shared resource, such as coastal waters, be achieved.

Consequently, by letter dated May 31, 1974, the governor designated the Secretary of the Department of Natural and Economic Resources, (now DNRCD) to plan and manage the state's coastal management efforts. Under this direction from the governor and under the authority vested in the Secretary through CAMA, the Department of Natural resources and Community Development undertook the development of the separate but closely related requirements of the state and federal coastal laws.

Though very closely related, the two laws have some differences in emphasis, terminology and applicability to North

Carolina's situation. Two key differences are the State CAMA's greater emphasis on local land use planning to deal with many coastal problems and the related issue of boundary size and the impact on coastal waters. This boundary issue is important to North Carolina because the General Assembly felt that land use planning for entire counties rather than a narrow coastal strip within those counties is an appropriate way to address many state coastal problems. The designation of our 20 county area as the coastal boundary under the federal requirements consequently raises the problem of the necessity for and degree of coordinated state control in upland areas that do not have a critical impact on coastal waters.

CHAPTER TWO PROGRAM DEVELOPMENT -- A HISTORICAL PERSPECTIVE

Introduction

The North Carolina Coastal Management Program has two major phases. Both phases involve an integration of (1) the requirements and authorities of the Coastal Area Management Act (CAMA) with existing state programs and authorities and (2) the requirements of the Federal Coastal Zone Management Act of 1972 (FCZMA). Phase I of the program is the planning phase. Phase II of the program is the implementation phase.

The first phase of the program -- planning -- involved three elements. The first element is land use planning required by the CAMA. Each of the 20 designated coastal counties and the municipalities in the coastal area were given the opportunity to prepare land use plans. This element of work is virtually complete although much remains to be done to achieve the degree of specificity necessary to guide public and private uses of land and water resources, as well as to provide the framework necessary for state and federal decisionmaking related to regulatory programs, research needs, and public investment of funds.

The second element, conducted primarily on the state level but with the participation of the public and all levels of government, involves the designation for special management of areas of environmental concern. The CAMA specified that there would be a two-step process to arrive at the designations. The first step was referred to as designation of interim areas of environmental concern (IAEC's); followed by the second step -- final designation of areas of environmental concern (AECs) and adoption of appropriate use standards for each AEC category.

The third element of Phase I is the preparation of the State Coastal Plan required by North Carolina's participation in the federal coastal management program. The adoption and approval of this document will represent North Carolina's coastal goals and policies and explain its program of management.

Phase II of the North Carolina Coastal Area Management Program is the implementation phase. Key features of this phase are (1) the permit program established in areas of environmental concern, (2) the local implementation of the land use plans, and (3) the various procedures for coordinating this comprehensive coastal program among the various federal, state, and local government agencies.

Throughout the process of program development there has existed a guiding goal to involve citizens, special interest groups, and all levels of government as totally as possible. From

the development and approval of local land use plans to the adoption of each rule and regulation, a maximum effort has been directed toward public participation and intergovernmental involvement.

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 three major elements of the planning phase will be discussed here.

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 consistent with the State Guidelines that have been adopted by the Coastal Resources Commission (CRC) (G.S. 113A-107 and 108).

The State Guidelines (Appendix B) require that the land use plans contain statements of local land use objectives, policies, and standards. They are also to contain supporting data and a classification of land within the county. The CRC's planning guidelines define a number of subject areas to be treated in all local plans:

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

(2) Data regarding population and economic trends and factors; Identification of areas which represent valuable resources, environmentally sensitive areas, and areas which are culturally valuable;

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

(4) Recommended interim areas of environmental concern and applicable development standards. (These recommended AEC categories were intended only to provide guidance to localities in local planning. They have since been replaced by a narrower list of AECs which were officially designated by the CRC. This list of officially designated AECs is found in Appendix B, Subchapter 7I.)

In addition to specifying the proper format and information for the local plans, the Commission dictated in the Guidelines that a synopsis or summary of the plans be provided to all coastal residents. The synopsis was to be 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 inform local citizens about their local government plan and to expand their involvement in the planning process. The Department of Natural and Economic Resources (DNER, now Department of Natural Resources and Community Development) was responsible for printing a large enough supply of each synopsis for distribution to every household in each planning jurisdiction.

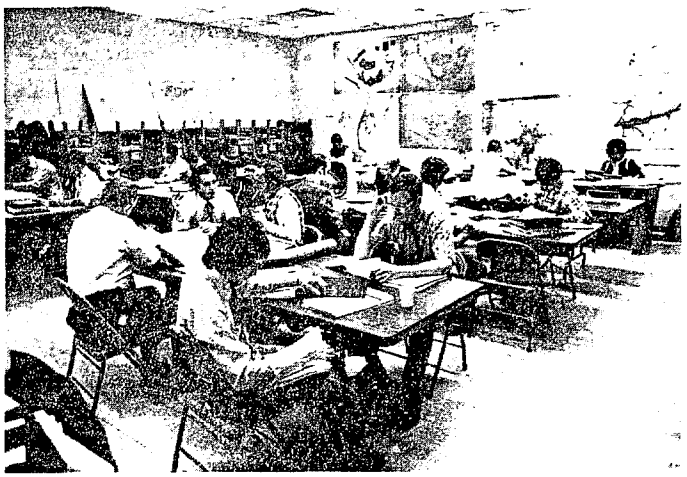
The planning process actively began at the local level in January of 1975 when planning grants funded under North Carolina's OCZM Program Development Grant were announced and contracts executed to provide funds to participating local governments. Localities were given a variety of options for securing professional support for the preparation of their plans. Most 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 DNRCD's Local Planning and Management Services Section.

The General Assembly originally provided that the local land use plans be submitted by November 23, 1975. This deadline was extended six months through a subsequent amendment to the CAMA. The Coastal Resources Commission decided to use this extension 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.

Detailed review criteria were extracted from the Planning Guidelines to define the content of the plans and synopses. A review schedule designed to complete the plan review during late November and early December, 1975, was developed by the Department of Natural and Economic Resources. Then arrangements were made

for the participation of a technical review team from approximately 23 state offices, divisions, and sections.

The review team was truly an 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 perservation and public participation. Representatives from the 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 of the land use plans 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 given a briefing on the review procedure and schedule and on the arrangements for subject area responsibility for each of the reviewers. Reviewers were instructed to examine the plans and synopses, to evaluate them on selected criteria related to their 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 CRC 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 asked to resubmit drafts of the synopses for review on March 31, 1976. After that time additional suggestions for synopsis preparation and staff sessions with local planners 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 the National Oceanic and Atmospheric Administration, and by state agency personnel. Topics discussed were CAMA, the North Carolina coastal zone management plan, and their relationship to one another. At that time an invitation was extended to federal agencies to participate in the review process. Representatives of a number of federal agencies did review and make comments on individual local land use plan drafts simultaneously with state reviewers.

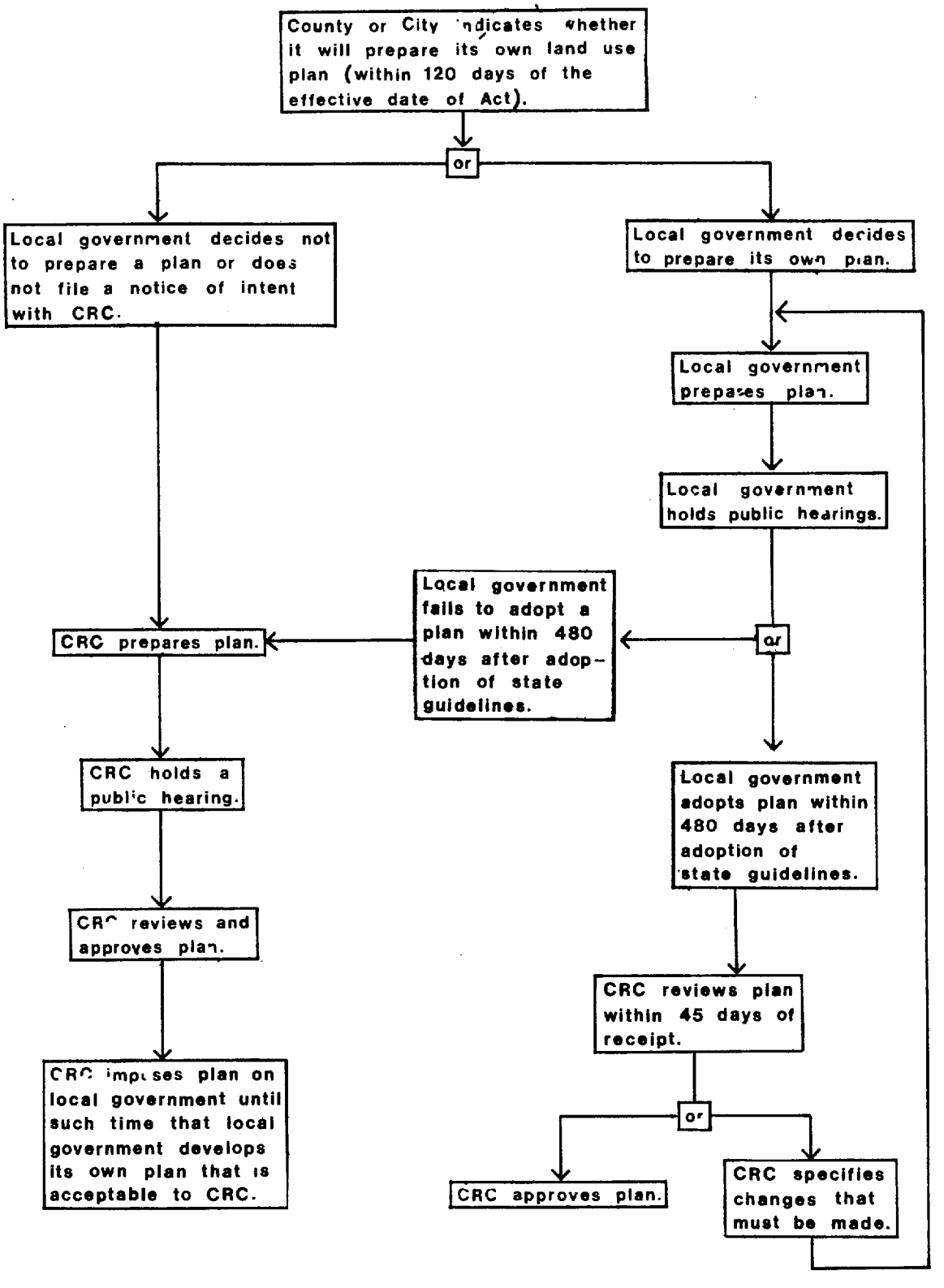
Final plans were received for review and approval from 50 of the 52 participating counties and municipalities on May 21, 1976. One county and one municipality refused to adopt their locally prepared plans. As required by statute, the Commission began to prepare the last county's plans. Fifty plans were 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 by the Commission. The last county plan was completed and approved by the Coastal Resources Commission in January of 1978. Chart 1 summarizes the steps involved in the lands use planning procedure established by the CAMA.

Areas of Environmental Concern (AECs)

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:

CHART 1. PROCESS FOR DEVELOPING LOCAL LAND USE PLANS



(1) 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);

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

(3) the authority to designate geographic areas of the coast as interim areas of environmental concern and to 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.)

(4) 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)):

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

(6) 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, conservation, and wise 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 AEC 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.

AEC Identification Criteria

Both general and precise identification criteria were contained in the Act (G.S. 113A-113(b)) to give guidance to the Commission in selecting areas for special management or areas of environmental concern. 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 sub-items 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 the legislative delegation of authority.

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 of 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 recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary of Natural and Economic Resources, and proposed sites 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 possiblity 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. These guidelines 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 Secretary's recommendations 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 Coastal Resources Commission on 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 Commission 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 entire 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 Appendix B) refined the original AEC material and added greater specificity to the allowable uses within each AEC.

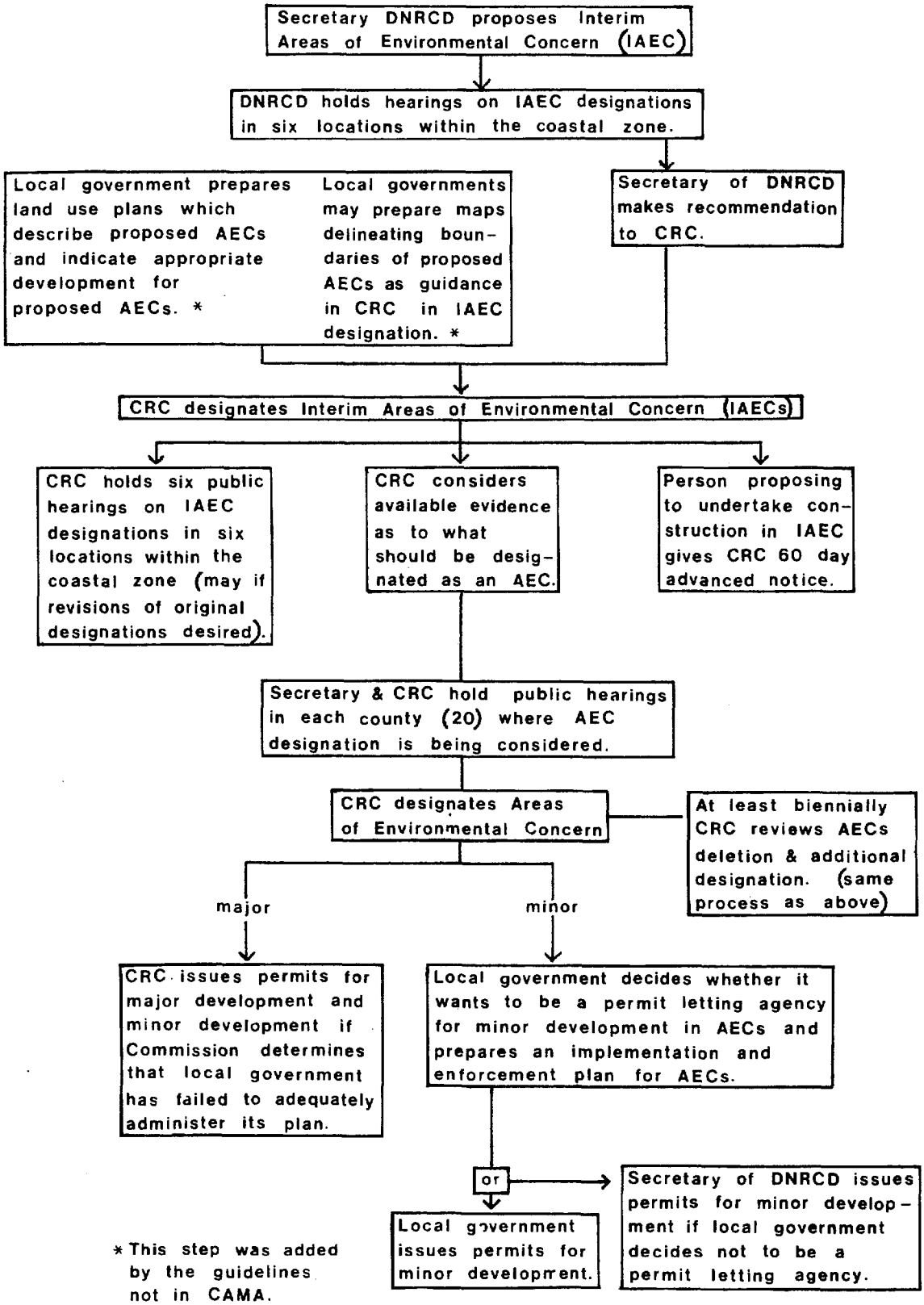
During February and March of 1977 the Commission, Coastal Advisory Council, and staff visited the local government units to discuss the proposed AECs and their specific location and effect on each respective local government jurisdiction. After an analysis of the comments received from these meetings, and from comments received from state and federal agencies, the Commission refined the AEC's and appropriate use standards and submitted their proposals to public hearing in each of the 20 coastal counties. On June 22nd the Commission designated 13 categories of Areas of Environmental Concern and adopted the standards for development in each category. (See Chart 2, Chapter Five and Appendix B).

Preparation of the State Coastal Plan

From the very beginning, the work done under the CAMA mandate served to address the requirements of the Federal Coastal Zone Management Act of 1972. The extensive local government role in program development and the emphasis of the Department of Natural Resources and Community Development and the Coastal Resources Commission on public participation was coupled with federal requirements for full federal agency participation.

CHART 2.

DESIGNATING AREAS OF ENVIRONMENTAL CONCERN AND PERMIT LETTING



Much of the early attention to specific FCZMA requirements was through informal direct communication with the Office of Coastal Zone Management (OCZM) staff. OCZM was given advance notice of proposed action and provided copies of all proposed rules and regulations under consideration. The first written document that served as a focal point for future development of the State Coastal Plan was prepared by the staff and submitted to OCZM for review in the fall of 1976. This document, referred to as a "Talking Paper" served to guide activities relative to meeting the federal requirements. One major decision reached from the "Talking Paper" analysis by OCZM was that North Carolina should designate the full 20-county area as its coastal zone boundary for management purposes.

After serveral meetings and correspondence with OCZM, North Carolina, proceeded with the development of the first draft of the State Coastal Plan. This document was prepared and submitted to OCZM, the CRC, and Advisory Council and to all affected state and federal agencies for review in April, 1977. Departmental staff followed up with the state and federal agencies by direct consultation or through telephone conversation (See Appendix D). The final public hearing draft was prepared as a result of this agency's consultaton and comments. On November 1 and 2, 1977, the North Carolina Management Staff held a pre-threshold review of the final (public hearing) draft wth staff from the federal Office of Coastal Zone Management (OCZM). OCZM comments received at this time were considered and additions were made to the text to reflect these comments prior to printing and circulation.

The public hearing draft was distributed, beginning on November 29, 1977, to OCZM, the North Carolina Coastal Resources Commission, the Coastal Resources Advisory Council, county and municipal officials of the 20-county coastal area, regional governments, affected state and federal agencies, the Raleigh and seven field offices of the N. C. Department of Natural Resources and Community Development, several special interest groups which had shown particular interest in the Coastal Management Program, and the press.

Next, notices of a public hearing on the final draft of the plan were sent to eleven major newspapers covering North Carolina. Four of these papers covered the coastal area. Notice was included in the Coastal Management Program newsletter which is received by over 1000 persons. Also, a press release announcing the public hearing was sent to over 60 coastal media representatives.

The public hearing on the final draft of the plan was held on December 13, 1977, in Morehead City, North Carolina. (See the transcript of this hearing and letters of comment received on the final draft from state and federal agencies.) These comments were addressed or considered in preparation of the Environmental Impact Statement.

The Implementation Phase

The implementation phase of the state program began in earnest on the "permit changeover date" (G.S. 113A-125(a)) as designated by the Secretary of DNRCD on March 1, 1978. Implementation will involve a restructuring of the administration of DNRCD'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 is 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.

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 will take steps to ensure consistency (G.S. 113A-111). This ordinance consistency review process is presently underway.

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. DNRCD is providing financial and technical assistance to 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. DNRCD 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 DNRCD 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. The federal consistency provisions and the State Executive Order will insure that agencies making public investment decisions consider the local land use plans.

Permit-Letting in AECs

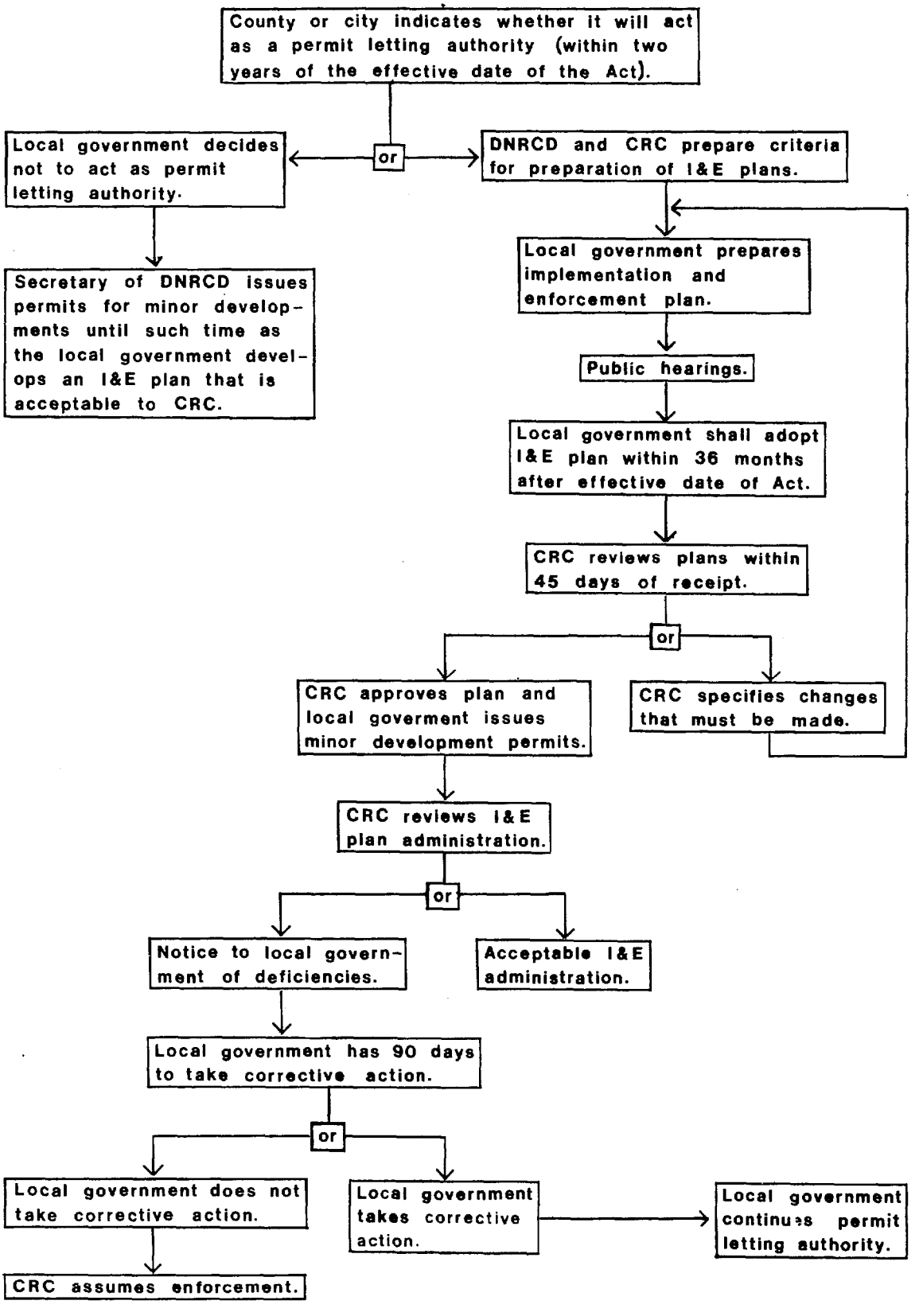
The enforcement of standards within AECs is a joint responsibility between local government and the State. The Coastal Area Management Act (Appendix A) in section 113A-103 and 113A-118 explains the scope of the permit program and defines the respective local-state responsibilities for permitting in AECs. The Coastal Resources Commission adopted "Criteria for Local Implementation and Enforcement Programs" for the local administration of minor development permits. These I and E criteria were then used by those local government units that had filed a letter of intent to become minor development permit agencies in the development of local I and E programs. Almost all local government units elected to develop an I and E program and assume their own minor development permit issuance authority. The Department of Natural Resources and Community Development will issue minor development permits in those jurisdictions not covered by an approved I and E program. Each locally developed program was adopted by local government after public hearing and submitted to the Coastal Resource Commission for review and final approval. (See Chart 3.)

Appeal from the minor development permit process and the issuance of major development permits will be handled by the Coastal Resources Commission (See Appendix A). Details of the permit system can be found in Chapter Five.

The Coastal Resources Commission provided training for local AEC permit officers and their field coordinators in January and February of 1978. Permit officers studied the responsibility of the permit officer, AEC standards, coastal management legislation and programs, and the materials and procedures used in issuing minor development permits. The course was sponsored by the Department of Natural Resources and Community Development in cooperation with the Institute of Government, UNC-Chapel Hill. Staff from the Institute, N. C. State University, the Coastal Management Program, and the Division of Marine Fisheries shared in the instruction of the training course. The training course will be required of permit officers handling minor development permits in areas of environmental concern prior to local governments beginning issuing AEC minor development permits. See a copy of the training course agenda in Appendix D.

CHART 3.

PROCESS FOR DEVELOPING AN IMPLEMENTATION AND ENFORCEMENT PLAN



Permit Coordination

The CAMA (113A-125) states that "the Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. . ." The Commission and the Department undertook a study of the existing permit system that included an analysis of state permit programs; consultations with state administrating agencies; and public meetings to gain insight from individuals that had had past experience dealing with the permit system. Several reports were prepared with progressing specificity, and in March of 1977, a report with recommendations for permit coordination was adopted and submitted to the General Assembly. The Coastal Resources Commission and the Department of Natural Resources and Community Development have recognized the importance of permit coordination and the simplification of both the existing permit program and the new AEC permit as a top priority in the development of the Coastal Area Management Program.

Public Participation/Intergovernmental Involvement

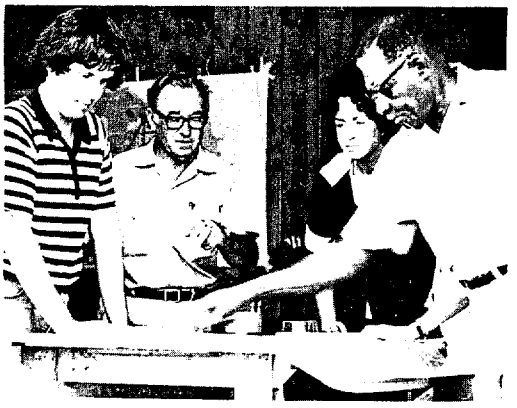
Public participation and intergovernmental involvement in the State's coastal zone management program are closely related since the primary purpose of both in the program is to ensure the full participation of "relevant federal agencies, state agencies, local governments, regional organizations, port 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 describe the manner in which 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 of the FCZMA.

Public Information/Participation

Public participation, as called for in the State Guidelines, (see Appendix B) was to be the very foundation of the planning process. It was not designed simply to provide token compliance with requirements of a federal contract, but was instead to be a planning process in itself, and one apparently unique to North Carolina's coastal zone management program. The basic goal was to extend the decision-making process in land use planning beyond the

small number of professional planners, government technicians and officials who were usually involved. Because the 15-member CRC consists largely of persons nominated by local governments, and because the 47-member Advisory Council is primarily composed of representatives of county and municipal government, these bodies, given statutory supervision over the program, were in a unique position to bridge the gap between local and state government. Through their local orientation, they were able to create an atmosphere of trust with coastal residents that the traditional state agency can rarely attain.

From the beginning, 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 was on an effort to let the people make their own plans. The professional planner was to be used as a technician, a data collector and an advisor. Local citizens were to answer the basic questions concerning future goals. What should their county or city 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? It was North Carolina's feeling that once people know that these are their decisions to make, they will want to participate. It was hoped that some of them would even get excited about it.



Public participation in the coastal area management program was based on local governments generating grass roots participation in the planning process. The joint state-local effort was to be 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.

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", was developed outlining numerous proven methods to involve large numbers of citizens in this kind of project. 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:

(1) 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.

(2) 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.

(3) A "Summary" to the State Guidelines for Local Planning established by the CRC was made available to all citizens wanting copies.

(4) 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.

(5) 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. These spots featured local residents talking about coastal problems. Radio stations were also provided with the audio part of these spots.

(6) 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. These articles were followed up by other letters to the editors. Local planners, citizens, and officials were urged to submit articles on their own for publication.

(7) 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.

(8) 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.

(9) A speakers' bureau offered 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.

(10) 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 others involved with the CAMA program.

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

(12) 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 coastal management were made in the classroom.

(13) Workshops seeking 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 given to 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 added much needed assistance through newsletters and background leaflets. A film on CAMA was developed through the Sea Grant Program. The Coastal Plains Regional Commission provided two grants that 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.

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 was created in response to the coastal management program. 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 comments beyond those which could be gathered from a questionnaire. The number of meetings, and the response of the people varied from very poor to excellent.

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. For example, officials of local governments were invited to meet with the Commission at its March 1976 session to discuss areas of mutual concern in the development of the program. This meeting focused attention on several issues (e.g., spectic 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.

Local governments served as spokesmen through their plans. A major concern to citizens and governmental bodies alike in the coastal area was the 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 make sure that effective protection measures were established. Several plans recommended more IAEC types than were required, and several included more sophisticated refinements of the minimum standards.

The Role of Regional Organizations

North Carolina's multi-county regional planning organizations (referred to as Councils of Government or 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 of statewide land policy programs, the LROs were involved in the development of the program's planning guidelines. Second, LROs provided 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 consistently participated in the on-going activities 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.

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 debates on the Act. Major hearings were:

(1) One hearing during the 1973 legislative session;

(2) 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 earlier, 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.

(3) 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.

CAMA itself requires a large number of public hearings. Most 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 June 30, 1977.

(1) 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, 1974 - Jacksonville
September 5, 1974 - Morehead City
September 6, 1974 - 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.

(2) 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.

(3) 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 50 local government entities preparing and submitting land use plans complied with these requirements prior to adopting and submitting their plans. Substantiation of these hearings is contained in each respective land use plan. The Coastal Resources Commission held a public hearing on the county plan it was required to prepare in Beaufort, North Carolina on January 12, 1978.

(4) G.S. 113A-115 requires a public hearing in each county before AECs are designated.

- Specific provisions:

- 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.

- Documentation

Twenty public hearings were held as follows:

April 26, 1977 - Manteo, NC (Dare County)
April 27, 1977 - Currituck, NC (Currituck County)
May 3, 1977 - Camden, NC (Camden County)
May 3, 1977 - Elizabeth City, NC (Pasquotank County)
May 4, 1977 - Gatesville, NC (Gates County)
May 4, 1977 - Hertford, NC (Perquimans County)
May 4, 1977 - Southport, NC (Brunswick County)
May 4, 1977 - Wilmington, NC (New Hanover County)
May 5, 1977 - Burgaw, NC (Pender County)

May 5, 1977 - Jacksonville, NC (Onslow County)
May 10, 1977 - Edenton, NC (Chowan County)
May 10, 1977 - Winton, NC (Hertford County)
May 11, 1977 - Windsor, NC (Bertie County)
May 11, 1977 - Columbia, NC (Tyrrell County)
May 11, 1977 - Beaufort, NC (Carteret County)
May 11, 1977 - Bayboro, NC (Pamlico County)
May 12, 1977 - New Bern, NC (Craven County)
May 12, 1977 - Swan Quarter, NC (Hyde County)
May 18, 1977 - Washington, NC (Beaufort County)
May 18, 1977 - Plymouth, NC (Washington County)

- Notice of Hearings:

  A Notice of Hearings with a complete schedule covering all of the 20 hearings was mailed to the entire CAMA mailing list.

(5) G.S. 113A-117(b) requires a public hearing by the local governing body before adoption of a local implementation and enforcement program.

- Specific provisions:

  - 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.

- Documentation:

  Local implementation and enforcement programs or letters of transmittal submitted by 41 local governments contain statements of local I and E program hearings held.

In the future, public hearings on actions relating to issuance or 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, notice must be provided to the public at least seven days before the final decision, and comments will be received for a period not to exceed 15 days after notice is published. 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 rulemaking, 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 or 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 10 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 June 30, 1978, the following public hearings have been held to meet relevant requirements of APA:

(1) 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.

(2) 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.

(3) Public hearing on "Draft Rules and Regulations Relating to Generally Applicable Grant Criteria and Procedures for Local Implementation and Enforcement Programs.

- Documentation

A public hearing was held in New Bern, North Carolina on June 21, 1977, at 10:00 a.m. Notice of the hearing was given to the entire CAMA mailing list and advertised in six major newspapers located geographically throughout the coastal area. A transcript of the hearing was not prepared since no formal comments were received. Documentation of the hearing is included in the minutes of the June 21-22, 1977, CRC meeting.

(4) Public hearing on a Proposed Land Use Plan Amendment Process

- Documentation

On August 3, 1977, a public hearing was held in connection with a regularly scheduled CRC meeting in Wilmington, North Carolina. Notice of the hearing was given to the CAMA mailing list and advertised in six major coastal newspapers. No formal comments were received. Documentation of the hearing is included in the minutes of the August 3-4, 1977, CRC meeting.

(5) Public hearing on guideline change for AECs

- Documentation

Between April 28th and May 18, 1977, 20 public hearings were held pursuant to the provisions of CAMA (G.S. 113A-115). Notice and schedule of these hearings was given to the CAMA mailing list and advertised in six major coastal papers. Comments received were included in the minutes of CRC meetings held in May and June of 1977.

(6) Public hearing on the adoption of Major Permit Procedures and Exemptions.

- Documentation

A public hearing was held in Atlantic Beach, North Carolina, on January 12, 1977 at 10:00 a.m. Notice of the hearing was given to the entire CAMA mailing list and advertised in six major newspapers located throughout the coastal area. A transcript of the hearing was not prepared because no formal comments were received. Documentation of the hearing is included in the minutes of the January 12-13, 1977, CRC meeting. The specific procedures for major permit development and the guidelines for minor permitting are attached in Appendix F.

(7) Public Hearing on Regulations to provide for a "General Permit" for Development Initiated Prior to March 1, 1978, and for Uncontested Permit Applications.

- Documentation

A public hearing was held on March 23, 1978 in Wilmington, N.C. No formal statements were received for the record at this hearing. These adopted regulations (15 NCAC 7K .005) are included in the Addendum.

(8) Public Hearing on Proposed Exemptions from CAMA Permit Requirement - Structural Accessways Over Frontal Dunes - Private Bulkheads, Riprap, and Piers.

- Documentation

A public hearing was held at Manteo, N.C. on May 24, 1978 during an official CRC meeting. A Summary Transcript of Proceedings was prepared. A copy of these regulations (15 NCAC 7L. 0307, .0308) as adopted are included in the Addendum.

At least two public hearings are also required by the U.S. Department of Commerce prior to final adoption and submission of the state management program. Over 100 hearings have been held by

local governments, the Department of Natural Resources and Community Development and the Coastal Resources Commission associated with the development of the Plan's constituent parts. The whole plan (final draft) was presented for public hearing on December 13, 1977, in Morehead City, NC. (See Appendix D for the transcript of this hearing.)

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

(1) 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.

(2) 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.

(3) All coastal county commissioners and mayors of municipalities developing land use plans were personally invited to meet with the CRC at their March, 1976, meeting in New Bern to discuss items of mutual interest.

(4) 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 to keep the program as close as possible to the people.

(5) 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 participation in the planning process.

For a one-year period, ending June 30, 1977, two public participation coordinators were employed by NRCD under a grant from the Coastal Plains Regional Commission. These coordinators worked out of regional offices establishing contact with the citizen advisory councils in each municipality and county in the coastal area. Advice and direction were offered on topics ranging from the production and distribution of a community planning bulletin to the use of electronic media. Local citizen planners were assisted in their efforts to create an atmosphere of working together for the common good when decisions were made on specific tracts of land and thus public interest reaches a peak. From its inception, the CRC has stressed its belief that the only way to generate wide-spread 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 traveled to the counties and towns, provided assistance and kept the process at an even pace. The coordinators served in an ombudsman role between local citizen planners, the CRC, and DNER. The local public participation coordinators, indeed, played a vital role in keeping the lines of communication open between state and local officials.

In September, 1977, two information and communciation specialists were added to the Coastal Area Management program staff. Their assignments are: (1) to develop an on-going public information program, keeping news of the coastal program available to the public; (2) to plan continued activities involving citizens in the coastal management process; and (3) to prepare educational materials on the coastal program. On-going public information activities will include releases of information to the media, announcements, special programs, brochures, flyers, etc., and a monthly update (newsletter) of Coastal Area Management news. Public involvement activities for which the specialists will be responsible include preparations for public hearings, gathering commentary on the coastal program through questionnaires or interview situations/meetings, assisting with arrangements for Commission and Advisory Council meetings, and coordination of public information activities with other public agencies, special interest groups, and individual citizens interested in the coastal program. Examples of educational materials being planned by the specialists are a brochure describing designated AECs, an AEC pamphlet designed for the person who may be applying for an AEC permit, and a permit officer's handbook to be used in the permit-letting process. Also planned are regional meetings with Commission and Advisory Council members and local government officials to provide a current look at the coastal program and to outline coastal issues currently being studied by the Coastal Resources Commission.

Coordination with Other Planning Programs and Activities

There are three major areas of coastal management program development that exhibit sound coordination efforts with other planning programs and activities. These are CAMA's local land use planning guidelines, the land use plan review process and the CAMA staff A-95 reviews. The CAMA guidelines state that all county and respective municipal land use plans must be consistent and coordinated to the maximum extent possible. More specifically, governments were required by CAMA guidelines to establish land classification schemes that not only met the CAMA thresholds for development limitations and population density, but that also reflected consistency to the maximum extent possible with other planning efforts.

Three examples illustrate this delicate balancing of state and regional programs with local objectives and eventual meshing

of all relative planning programs together. Local governments were required to include within the CAMA transition class of lands all those areas expected to experience high density growth and/or to be provided with the necessary water, sewer, education and transportation services. For local governments to determine transition areas they became familiar with state and regional planning programs and attempted to be consistent with them. A second example involves the conservation land use classification which identified land to be maintained essentially in the natural state and had to include all fragile, hazardous, and publicly-owned areas. These fragile, hazardous, or publicly-owned areas include publicly-owned forests, parks (SCORP classifications), fish and gamelands, water supply watersheds, etc., and federal or state hazard area determinations, such as F.I.A.A. 100-year flood levels, military base K-9 zones, and nuclear power plant radioactivity buffer zones. Thirdly, in order to determine the difference and extent of rural and community classifications, local planners found helpful information from other planning programs such as the LRO's regional development guides, Soil and Water District plans for resource management, S.C.S. soil maps, forest management maps, state transportation plans and regional sewer and water plans.

The second area of program development exhibiting coordination with other planning requirements involved the holding of two major technical two-week review sessions by the CRC over a ten-month span to analyze the local land use plans that were submitted. Participants at each of these review sessions included the representatives of affected state agencies, federal agencies, lead regional organizations, the League of Municipalities, and the Association of County Commissioners. Each agency participated in the draft reviews and were invited by the Executive Secretary of the Coastal Resources Commission to attend a final review session, to examine the plans, comment on them, and have any comments recorded and forwarded to the Commission for their use in the plan review and approval process. Consequently, state and regional government representatives were provided the opportunity to identify inconsistencies between the locally developed land use plans and their own program plans. The involvement of state and regional governments on the Coastal Resources Advisory Council, which helps formulate CAMA policies, plans and procedures, as well as in the above stated process for public hearing and agency review of coastal management activities, provided yet another opportunity to assure coordination and consistency among plans.

The third area of program development exhibiting agency coordination with other programs is through staff reviews of all local, regional, state, and federal projects coming through the State's A-95 Clearinghouse. At the present time, the Coastal Management staff is involved in reviewing drafts of the Section 201 Wastewater plans for the coastal area. The staff is just beginning to establish the procedures for review of major projects that travel through the Clearinghouse and is continuing consultation with relevant agencies. For details of further coordina-

tion activities, see Chapter Six. Appendix D includes lists of State planning and regulatory programs and regional councils of government planning programs affecting local land use plans.

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" 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 between which no coordination previously existed.

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 at 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 working, 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:

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

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

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

(4) excluded federal lands.

The over-riding 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 agencies such as the Navy, Air Force, National Forest Service and National Park Service.

Direct Involvement

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

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 relevant 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, is included in Appendix D.

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. 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 addressing of the "national interest". The responses of the federal agencies were sent to local governments in order that the proper adjustments could be made.

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.

AEC Designation

Prior to AEC designation extensive opportunities were given to interested parties to comment on the proposed permit standards and descriptions for AECs. Between April 28th and May 18, 1977, public hearings in each of the 20 counties were held pursuant to the provisions of CAMA (G.S. 113A-115). Additionally, a notice and schedule of public hearings were sent along with a copy of the proposed AEC amendments to the State Guidelines to all federal contacts. The comments received at the public hearings and the responses from the federal contacts were analyzed by the staff and presented to the Coastal Resources Commission in May and June of 1977. Subsequently, designation of AECs occurred on June 22, 1977.

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.

State Management Plan Development and Review

Federal agencies responded splendidly to the Draft Management Plan released in April of 1977. Comments received from federal agencies assisted with defining problems in the Draft

Management Plan and in discovering additional communication channels between North Carolina and the federal government. Additional valuable comments were received regarding the public hearing draft. They are attached in Appendix D and assisted in identifying steps to take to initiate and conduct program implementation and enforcement, identifying problem areas, and in the formulation of the DEIS. Also, comments received by OCZM at two public hearings held on the DEIS and written comments submitted were considered in developing the Final Environmental Impact Statement.

Local Ordinance Review

Local ordinance review is underway. The coastal management staff is checking local ordinances specifically for inconsistencies between AEC standards and local regulations. Additionally, the staff will review local ordinances that may potentially affect federal operations on federal lands. If problems are discovered, the concerned agencies will be requested to review the ordinances and possibly meet with the appropriate governing body of the local government. The purpose of involvement of the federal agencies is to ensure that adequate consideration by local government is given to national interests.

Summary

North Carolina's Coastal Program has been very ambitious in encouraging public involvement and program coordination throughout the various development phases. The Commission staff and Advisory Council not only devoted much of their time in obtaining the public participation necessary for development of a comprehensive and balanced management program but also in obtaining views on proposed implementation. The network of past communication to achieve intergovernmental cooperation and public participation has been established and shall continue to be utilized even after program approval. Documentation of this full participation effort which addresses intergovernmental communication, plan coordination, AEC designation process and public involvement can be examined in Appendix D.

CHAPTER THREE THE FOCUS OF COASTAL MANAGEMENT IN NORTH CAROLINA

Findings Concerning the Need for Coastal Management

The need for instituting a comprehensive program of coastal management in North Carolina is clearly described by General Assembly findings as set forth in the Coastal Area Management Act. These findings 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."

These 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 Section 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 herein 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" (FCZMS, Section 303(b)).

To further elaborate on the above general findings and to explain more specifically the focus of the North Carolina management program, the following section identifies and discusses specific coastal management issues. A third section discusses the State policies for dealing with each of these issues. These policies are taken from statues, major program regulations, or policy statements established by the Land Policy Council or other special groups with recognized authority to make policy concerning resource management and land use planning. Following each policy statement, the source for the policy is referenced, and the primary legal authority or authorities for implementing the policy are noted. These authorities are then more thoroughly discussed in Chapter Five.

Specific Issues and Problems Concerning Coastal Management in North Carolina

The following issues and problems have been grouped under seven general topics. They are further divided into more specific topics in order to focus in greater detail on the issues that must be addressed by the North Carolina Coastal Management program.

Growth Management Problems

The challenge to North Carolina's coastal municipalities and counties is to develop the capability to effectively deal with local growth management problems. Coastal North Carolina has historically lagged behind other State regions in economic development. Local land use plans indicate that coastal residents want economic growth. Local government officials are dependent on economic development for the maintenance of a strong local tax base to provide and upgrade services. Nevertheless, coastal residents are very conscious of the necessity to manage economic growth. They seek the benefits of economic growth but not at the cost of abruptly changing the coastal lifestyle or the natural environment. Specific growth problems include assuring that non-compatible land uses are not mixed; encouraging compact development patterns so that necessary services can be provided more efficiently and less expensively; avoiding sprawled development or other unwise uses of prime resource lands, such as lands containing valuable minerals or prime agricultural lands; and guiding development away from fragile or valuable natural areas.

Key Facilities

Development patterns can be strongly influenced by the location of certain types of public or quasi-public facilities which must be present before development can occur. The location of these facilities is to a great extent controlled by state and federal agencies either through regulation or providing funds for the facilities. Examples of such facilities are:

- major highways and interchanges - major airports - major ports and waterways - rail lines - OCS related facilities - electric power plants - major recreation development facilities - military installations

The Coastal Management program must address how to insure that in locating key facilities, local preferences and needs are considered by state and federal agencies, while assuring that local interests do not arbitrarily exclude uses of regional, state or national benefit (see uses of regional benefit, p. 247).

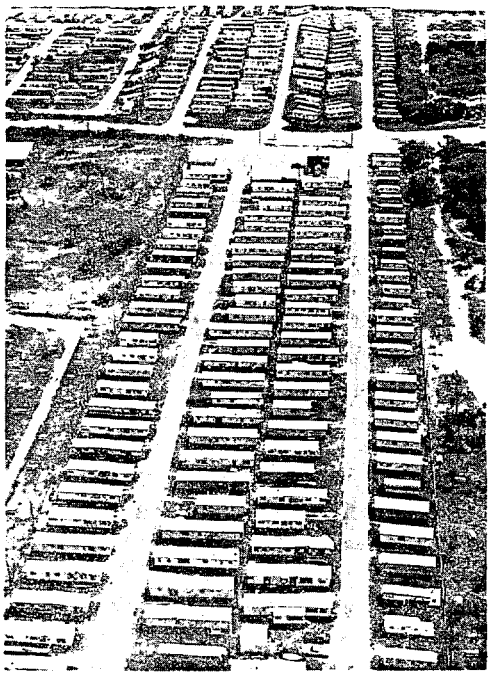
Conflicting Uses of Land

One important technique of guiding growth and land use patterns involves making decisions on the best uses for land and resources within a planning jurisdiction. Such a technique is a valuable means for coordinating the various policies, standards, regulations, and other activities at all levels of government that effect land use planning. It is important that the technique be based upon such factors as: the existing characteristics of the land; the expected future demand for land suitable for development; the capability of local jurisdictions to provide service to new urban development; and existing local, state, and federal land-related plans and policies. North Carolina's Coastal Management program must address how to establish a system to be used by localities to identify appropriate uses of land which is definitive enough to guide land use-related decisions and policies at all levels of government, but which is not so complicated or detailed that it cannot be practically applied throughout the coastal zone.

Residental and Second Home Development in the Coastal Area

The recreational and scenic attractions of the ocean and inland coastal waters of North Carolina have and continue to induce high rates of residential and second home development adjacent to the water's edge. A great majority of this development is sprawled along the Outer Banks or the estuarine shoreline rather than located in municipalities or populous areas where

local or regional facilities and services could most adequately be placed. Consequently, these residences are served by individual facilities such as septic tanks and individual water wells. These systems proliferate along the coastal shoreline in areas which are very low in elevation, and thus have severe limitations for septic tanks. The result is that the waste waters generated from such development seep for relatively great vertical and lateral distances before being purified, thus polluting surface waters. Residential and second home developments along the waterfront restrict public access to beaches and waters. Also, development in these areas is often subject to natural hazards such as hurricanes, erosion, and flooding which endanger life and property and necessitate expensive landscape changes to protect homes, in addition to periodic evacuation of residents.



Waterfront residential and second home development also presents a difficult transportation problem. Maximum expense is incurred with the minimum efficiency of moving people from place to place. For example, along the Outer Banks traffic must move through the bottlenecks at the bridges along roads that are used by both short distance travelers as well as sightseers who are traveling many miles.

In summary, residential development along North Carolina's water-front has caused problems in providing adequate facilities and transportation systems to accommodate the population, and in exposing of property to unnecessary risks and unsightly landscapes through destruction of protective frontal dunes. The coastal management program must address how to accommodate residential and second home development patterns in a manner such that the greatest cost efficiency in providing necessary services is maintained while still protecting the character of the coastal area.

Coastal Industry Issues

The twenty coastal counties of North Carolina are predominantly rural with limited industrial development. Agriculture, forestry, and fishing have been the backbone of the coastal

economy. Although New Hanover County has experienced significant industrial activity and Beaufort County has recently become a major phosphate production center, most of the coastal area remains only slightly affected by the primary and secondary impacts of industrial development.

North Carolina and its important coastal region has been identified as a prime industrial development area for the future. Local governments in their land use plans have expressed the desire to see the economic growth associated with industrial development but not at the expense of the currently established farming and fishing activities nor at the expense of radical changes in lifestyle.

The coastal management program must face the problem of protecting and enhancing the current economic backbone of the coast and the natural resources of the area while encouraging a controlled, gradual rate of industrial development.

Fishing and Seafood

The fishing industry in its varying forms has traditionally been an important aspect of coastal North Carolina's economy. The gross annual income from fishing activities in 1976 was approximately $200,000,000 and most of the economic benefits derived from the fishing industry accrue to the coastal area of North Carolina.

North Carolina's estuarine environment is responsible for a great number of the commercial species utilized in this important coastal industry. The estuarine system in North Carolina is the largest on the Atlantic coast, and occupies approximately 2,327,000 acres of marsh, creeks, rivers and open sounds. In 1976, ninety percent of North Carolina's commercial fisheries production (almost 200 million pounds of edible products) was either harvested in the estuary or was comprised of species dependent on the estuary at one or more of the critical phases of their life cycle.

In recent years, the North Carolina fishing industry has suffered due to the declining viability of the estuary. Water pollution resulting from various sources, including improper sewage treatment, increased sedimentation, and industrial discharges, has diminished the commercial potential from certian portions of the estuarine system. A particular problem exists concerning shellfish, long an important part of North Carolina's fishing industry. Over the last few years, a substantial portion of the State's shellfishing waters (350,000 acres) have been closed to commercial harvesting due to water quality problems.

Habitat destruction is also a problem in the estuary. Important shellfish beds, nursery areas for commercial species, migration routes for anadromous fish and submerged grassbeds that serve as important feeding areas are all subject to alteration directly through dredging operations and indirectly through

sedimentation from onshore development. Although many dredging projects are necessary, if they are improperly located within the estuary, they can have significant detrimental effects on important estuarine habitats. The smothering of sedentary species such as shellfish and the alteration of important bottom lands often results from poorly planned dredging operations and improperly designed onshore land clearing activities.

The North Carolina coastal management program must address how to maintain, promote, and enhance the North Carolina fishing industry in a manner that is consistent with local economic objectives and long-term productivity of our important renewable fishery resources.

Agriculture and Forestry

Agriculture and forestry are among the most important economic activities in the coastal area. The agricultural and forestry industry employs a significant number fo coastal residents. Agriculture contributes approximately $345 million and forestry $272 million per year to the state's economy. Agriculture and forestry is a way of life in much of rural eastern North Carolina. The maintenance and success of these industries is therefore extremely important to the economic well-being and social stability of the predominantly rural coastal area. Both forestry and agriculture supply the food and fiber needs of the nation and the world and are, thus, of concern not only to the State of North Carolina but to the nation as a whole. The ability to produce is affected by many factors. The conversion of land from farming and timber to other uses, environmental and land use regulations, tax policies, and energy shortages all impact directly upon the economic viability of agricultural operations.

North Carolina ranks fifth in the nation in the number of commercial forest acres. Approximately 21% of the state's commercial forest land is located within the twenty county coastal area. Most of this acreage supports softwood species that are converted to valuable sawtimber and pulpwood products. The coastal area also supports a great volume of the highly valued wetland forest types such as cypress and gum.

North Carolina presently ranks tenth in the nation in agricultural exports. Tobacco, corn, wheat, peanuts, soybeans and poultry products are important parts of our exports. Many of our crops show a potential for further development if an export market can be established or
expanded. An expansion of foreign markets could promote the development of food processing facilities within North Carolina. This not only would help the agricultural community, but could provide more jobs within the coastal area. North Carolina's agricultural exports have grown rapidly. The value of these exports has increased from $406 million in 1970 to $786 in 1976. Further expansion of agricultural exports is a definite possibility for this State and further development of our ports would be necessary to handle the growth.

Along with the industry's benefits, however, come certain environ-mental and resource management problems. Agricultural and forestry practices necessarily involve certain land and water-disturbing activities that affect the coastal resources and in turn, affect other important coastal industries. The most conspicuous activity conducted in forestry and agricultural operations that impacts another important coastal industry, namely fishing, is the ditching and drainage of agricultural land. Such ditching is widespread and necessary because much of the coastal zone is very poorly drained and in close proximity to the

groundwater table. Unfortunately; however, the removal of water from agricultural fields often results in negative impacts in terms of water quality that in turn affect important marine species. Runoff from agricultural ditches may have high levels of sediment and chemicals associated with herbicides, pesticides and fertilizer.

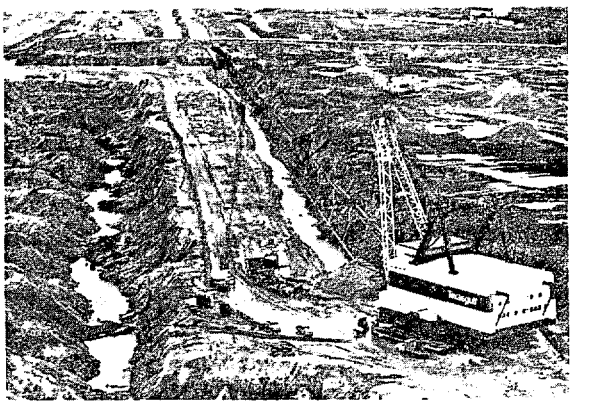
The current trend is for the individual farm to be larger with more intensive activity (production per acre). Productivity is increased, but so also are the side effects of drainage ditching, pesticide, chemical, and animal waste runoff.

Local citizens, through their county land-use, have expressed their desires to grow industrially. However, they have consistantly emphasized the importance of their current way of life. Industrial development would be welcome, but not at the expense of the currently established farming and forestry activities nor at the expense of radical changes in their rural lifestyles.

The North Carolina Coastal Management program must address how to maintain, promote, and enhance the agricultural and silvicultural production of the coastal area while minimizing the negative effects on coastal resources that are necessary to other important activities. This should be done in a manner consistent with the local economic objectives and long term productivity of our valuable agricultural resources.

Mining

Portions of the North Carolina coastal area contain extensive deposits of phosphate that are of local, national and world importance. Cement manufacture from limestone is an important mineral industry in New Hanover County and limestone resources are also found in several other counties. Significant deposits of peat occur in parts of the coastal zone which, if mined, can prove to be a valuable energy resource. Although peat mining is now only in the experimental stage, the potential for developing the resource is great. In addition, significant deposits of glass sand and heavy minerals may be present. Therefore,



phosphate mining, limestone mining, and, possibly in the future, peat, glass sand, heavy mineral mining, sand and gravel, soil and clay mining contribute significantly to economic and employment opportunities in our coastal area. In fact, mineral production in the coastal counties amounts to $20 million per year, nearly 25% of the total State production.

The mining of phosphate is accomplished by open pit mining methods that impacts other resources in the coastal area. In order to maintain a dry, open pit mine it is necessary to continually pump a large volume of groundwater to lower the pressure in the Castle Hayne Limestone which underlies the phosphate deposit. This pumping controls the artesian pressure in the Castle Hayne aquifer, but it has created a cone of depression in the artesian pressure surface (piezometric surface) that is regional in extent. Over development of the groundwater resources in the coastal area could lead to salt water intrusion into the fresh groundwater aquifer.

Other environmental impacts attributable to mining include disturbance of the surface of the area being mined, discharge of air and water effluents from mining and manufacturing processes, and dredging activities for water control and transportation purposes.

The North Carolina Coastal Management program must address the issue of further development of the mineral resources of the area for local and national economic benefits, while protecting the quality of the natural setting of the waterways, natural environment, and lifestyle of the coastal area.

Manufacturing

Residents of North Carolina's coastal zone consistently emphasized the need for economic development and growth in their land use plans. New manufacturing facilities and the employment that accompanies them are primary stimulants for such growth. Historically the coastal area has been the site of only a small amount of manufacturing activity which was primarily associated with processing natural products of the area such as fish, timber, and agricultural products. This trend has begun to change in recent years, and a greater variety of manufacturing facilities have begun to develop in coastal North Carolina. Although these plants are still widely dispersed, except for a heavy concentration in the Wilmington area, evidence of an increasing importance for manufacturing in the coastal economy is available.

Many plants are attracted to the coastal zone by the abundant water supply which can be used in manufacturing processes, in transportation, and in the removal of waste from the manufacturing process. The plants, therefore, are often located adjacent to the coastal waters and can have a direct impact on those waters as point sources of pollution. Although the North Carolina coastal zone is certainly not yet proliferated with such

point sources, some of them (for example, pulpwood plants) have a very significant impact on local waters. In addition to water quality impacts, manufacturing plants have obvious secondary impacts on the area in which they are located. Increased transportation needs and residential growth with the accompanying problems of waste disposal and services are primary examples of these impacts. While acknowledging that economic growth is desirable, the coastal zone residents have consistently stated in their land use plans that such development should be diversified and compatible with the coastal environment and the assimilative capacity of the coastal resources. The implications would seem to be that a selective and deliberate approach be used in seeking new industry, rather than encouraging new industry at all costs.

In summary, the North Carolina Coastal Management program must address how to promote moderate growth in the manufacturing industries in a manner consistent with the long-term productivity and well-being of the natural and human environment.

Transportation Issues

Full utilization of coastal natural resources in the production of goods and services depends to a great degree on the transportation of these resources to markets that often lie outside the coastal area. Therefore, adequate transportation facilities such as roadways, airports, railways and waterways are necessary for the economic development of the coastal area. The tourist and vacation industry, which is vital to the coastal economy, is particularly dependent upon good roads to provide access to and from the major tourist attractions on the coast. The moving of goods and materials within the coastal area and to and from the coastal area is essential to all the major coastal industries, especially manufacturing.

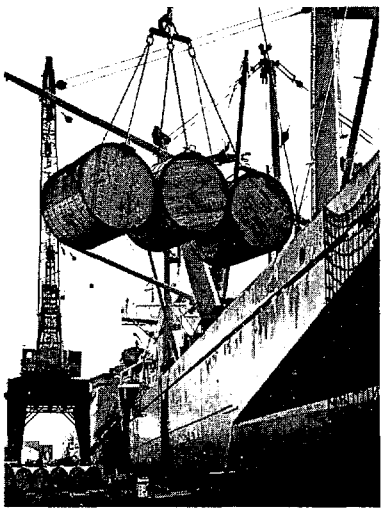
Highways, Roads, and Related Facilities

As essential as roads and other transportation facilities are, it must also be recognized that their construction and operation have both direct and indirect impacts on coastal waters. Direct impacts result from building roads in areas close to waters so that sedimentation may eventually reach and disturb marine resources. Major roads and related bridges and causeways may also have an indirect impact by providing access to fragile coastal landscapes. This action, in effect, directs growth into areas that may not be able to accommodate both development and the continued productive use of natural resources. Also, roads may be planned and designed in a manner that would subject this public resource to naturally occurring coastal hazards. Roads in some areas may in fact increase the danger of flooding and damage to adjacent development.

The problem to be addressed by North Carolina's coastal management program is how to provide highways that are adequate for the economic growth desired in the coastal area while insuring

that such facilities do not unnecessarily degrade waters and promote growth in the areas that cannot accommodate it.

Ports



North Carolina's two major ports, located at Morehead City and Wilmington, make an important contribution to the economy of the coastal area. It is estimated that 11,000,000 tons of cargo were moved through these ports in 1976. Approximately 1,670 workers are employed in activities associated with these ports, with over 32,000 jobs being either directly or indirectly affected by port-related activities. It is estimated that each ton of commerce adds $76.00 to the aggregate figure for personal income in North Carolina.

At Morehead City, phosphate is the most important commodity handled, followed by tobacco, petroleum products, pulpwood, lumber and plywood. At Wilmington, steel, plywood, and lumber are the leading imports on a tonnage basis. Wilmington has also become the dominant port in the three state area for chemicals and alcohol. However, North Carolina ports handle only about 56 percent of the exports produced in North Carolina. Some important products, such as cigarettes, are primarily shipped through ports in other states which have better container service to handle such goods. Another characteristic of North Carolina ports is that imports and exports are not balanced at either port. Wilmington handles 89 percent of the State's imports and Morehead City has 76 percent of the exports.

The development of ports has a broad range of impacts on the local and regional environment. The direct impacts on coastal waters are caused by the dredging and filling activities that are necessary to maintain navigability and to build wharves and other facilities. Runoff during construction projects and from developed areas, residues from vessels, fuel spills, etc., can affect water quality in the vicinity.

The secondary impacts of ports are very broad. A recent survey shows that 35 of 291 responding industries considered ocean transport critical or very significant to their location decision. Clearly, the existence of a port facility will tend to attract industries. Transportation facilities must be provided for land movement of goods. The 65,000 trucks that are loaded and unloaded annually create a high demand for road consturction and maintenance.

In summary, the North Carolina Coastal Management program must address how to insure that the facilities and services necessary to accommodate the growing activitiy conducted by North

Carolina ports are provided in a manner that is least damaging to coastal waters and adjacent shorelands.

Navigation

Waterborne trade has played an important role in coastal North Carolina's development despite the fact that navigation has been somewhat hampered by North Carolina's coastal land configurations. Nevertheless, waterborne transportation has proved to be competitive with other forms of transportation on a cost per ton-mile basis. In addition, increasing demands for seafood, waterbased recreational activities, and passenger ferry service have demonstrated the need for expanded considerations of navigational needs and wise utilization of the State's coastal waters.

Large Scale Shipping

Development associated with large scale shipping can be divided into two categories: harbors or ports, which are discussed elsewhere and the Atlantic Intracoastal Waterway (AIWW).

The AIWW is a national waterway providing a major North-South shipping corridor. The AIWW benefits the State in two ways: (1) by providing intracoastal transportation corridor and (2) by providing for access to North Carolina and the nation for large scale shipping. Approximately 3.4 million tons or 21 percent of the total State tonnage was reported carried via the AIWW in 1976. When combined with the Morehead-Beaufort and Wilmington harbors, the three represent 90 percent of all tonnage shipped in that year. In terms of expenditures, the AIWW represents $32 million or 30 percent of the total recorded expenditures for nagivation.

Operation of this important interstate shipping corridor is possible only through continuous maintenance dredging projects. The Army Corps of Engineers performs the maintenance of AIWW while attempting to minimize the negative environmental effects created by dredging. Other problems associated with AIWW operations are increased shoreline erosion to property owners along the AIWW and the increasing scarcity of acceptable spoil sites.

Small Scale Shipping

In addition to providing benefits to the commercial fishing industry, the small navigation projects serve as important "farm to market roads" for both agricultural and seafood products. The more than 40 small navigation projects provide for the economic security of many coastal areas which have few economic alternatives. These projects, additionally, provide for utilization by North Carolina's commercial and sport fishing operations and allow for use of recreation resources.

Recreational boating is another aspect of small navigation development. The increased incomes and leisure time of the last

two decades have generated tremendous growth in this industry and in the demand of recreational boating on navigable waters. Accordingly, the economic benefits, direct and indirect, of recreational boating have risen dramatically. A 1972 study prepared on sport fishing in the Morehead City area gives an indication of its magnitude. In that area, spending for charter and head boats, fishing piers, and rented ship and boat storage space by non-residents of Carteret County generated $2.7 million in revenues during 1971. Of this figure, $1.4 million (52 percent) remained in the county as direct or indirect contributions to the personal income of the residents.

Environmental problems have resulted from the process of dredging and maintaining navigation channels. Dredge disposal areas displace many marine species, such as oysters. The elimination of marsh and bottom habitat also lowers commercial and sport fish yields, recreational opportunity, and wildlife areas. Relatively deep natural bottoms have become shallow and even exposed ground. Discharges from hydraulic dredging operations usually cause a period of lowered water quality (increased turbidity, acidity and coliform bacteria levels) which also adversely affects marine species. The location of these spoil areas adversely affects many types of small navigation, often preventing the desirable random movement of small pleasure boats and the smaller commercial and sport fishing vessels. In summary, the Coastal Management program must address the problem of how to maintain and expand the existing navigation base so that it works as a coordinated regional system and so that adverse impacts on small boats and coastal ecosystems are minimized.

Tourism and Recreational Resource Issues

North Carolina's coastal area contains priceless natural, aesthetic and cultural resources that are enjoyed by both coastal residents and visitors from other parts of the State and nation. The natural beauty and cultural richness of the coast is usually cited by residents as an important factor in making the area a desirable place to live, as well as being the primary attraction for the great number of vacationers and tourists that annually visit the area. In fact, the natural, aesthetic, and cultural resources of the coastal area represent an unusual opportunity for the coastal resident, in that their proper management and preservation is compatible with both economic and quality of life benefits for citizens of both the coastal area and the entire State. However, unguided development can affect the quality of these resources through pollution, overuse, loss of aesthetic sense or outright destruction.

Recreation

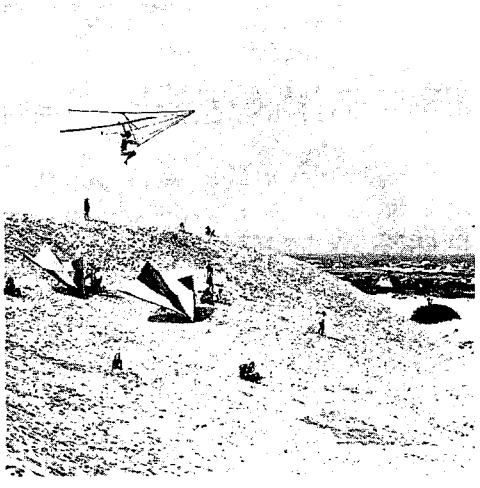
The coastal area is one of the richest sections of North Carolina for recreational activities such as fishing, boating, swimming and hunting. Each of these activities take an important place in the lifestyle of coastal residents. Also, these

activities attract hundreds of thousands of visitors each year thereby creating one of the most important sources of income for residents. Two groups of issues for tourism and recreation can be separated here; those for the permanent residents and those for seasonal residents. For permanent residents, the everyday recreational needs must be considered, including permanent facilities such as tennis courts, baseball field, etc., and organized programs for users of these facilities. This requires that a complete analysis be made of the anticipated recreational needs of the present and future populations and that ongoing programs and funding to meet these be identified. Of course, maintenance of good water quality is critical to keeping coastal waters attractive for recreational use by both seasonal and permanent residents.

The Coastal program should attempt to mesh management of resource areas with ongoing community outdoor recreation programs and wherever possible, promote use of such areas for compatible recreational activities.

Tourism

For seasonal residents, the issue is to provide access to resources of the coast, such as a particular beach or historic site, while assuring that the resource qualities are protected. The more fragile areas need to be identified and protected from overuse with visitors directed to areas that can sustain greater impacts. Maintenance of forests and other forms of vegetative cover is vital to the natural aesthetic quality of the area. Adequate roadways for North Carolina residents is another issue of concern. A large portion of the coast is more accessible to out-of-state residents than native North Carolinians. The scenic quality of these roadways and the development that accompanies them is also important.



Other problems associated with tourism are the provision of facilities and services to handle the seasonal influx of people; the competition between visitors and residents for the use of resources which can result in lack of access for residents; the potential negative effects on the natural, aesthetic, and cultural resources caused by the increased commercial and transportation facilities required to accommodate tourists.

The coastal management program must address the problem of how to promote and facilitate tourism in the coastal area to the maximum extent possible without degrading the natural and man-made resources that attract people to the coastal area in the first place.

Unique Cultural and Natural Resources

The coastal area of North Carolina abounds in cultural resources and in particular historic sites and structures. Well preserved historic buildings add an element of tradition and character that many residents consider important to the quality of their community. In addition, these cultural resources are a major attraction for the growing number of tourists who appreciate their aesthetic, architectural and historical significance. Many of these sites are in private ownership; therefore, no mechanism exists to insure that they will be preserved. Also, many archaeological resources are in jeopardy of being lost often because their location is unknown. Development activities can unknowingly destroy a site before there is time to salvage the priceless resource. The Coastal program must address the problem of how to support a comprehensive program for identification and preservation of valuable cultural resources in the coastal area.

Beach Access

North Carolina has 308 total miles of ocean shoreline of which 148 miles are in public ownership. This large percentage of public beach area, primarily associated with the National Seashores, provides the citizens of North Carolina with a great amount of recreational beach area. Access to these public beaches is a problem only from the standpoint that most of the population centers of North Carolina are a great distance away from the National Seashore properties. The Park Service has made adequate provision for access to the beaches within the National Seashore by providing parking lots, roadways, crosswalks and walkways across the

dunes. Public access beaches along the 160 miles of the North Carolina coast not yet publicly owned is not as favorable. Some communities have provided for public access, but in many areas, access has never been a problem and no provisions have been made to insure that it will not be a problem in the future. In fact, there are very few areas where access is denied to the public. It is recognized, however, that increased development in and use of the shoreline may cause beach access to become a problem in the future.

Another side of the beach access question is the conflict between the various groups of beach users. This is particularly true of those who wish to drive their vehicles on the beach in direct conflict with the wishes of the pedestrian beach user. Conflicts also exist between fishermen and swimmers, private land owners and beach users, surfers and swimmers and other user groups as the intensity of beach use increases. These conflicts often result in the restriction of public access by private land owners and in the implementation of local laws to restrict the full use of the public beach.

In summary, the Coastal Management program must address the issue of how to insure adequate access to the public beaches in coastal waters in a manner which is not detrimental to the delicate beach environment and which satisfactorily allocates such access among the competing types of uses.

Energy Issues

Energy-Generating Facilities

Although the present function of the North Carolina coast in supplying energy for the State and the nation is not particularly significant, the potential for energy development may be significant. Coastal management must consider energy development because the coast has abundant supply of water for cooling processes and pollutants, the various sites suitable for petroleum unloading and refining, and an extensive continental shelf that may eventually have valuable oil and gas reserves proven.

Large energy-generating facilities are of a real concern to North Carolina, especially in the coastal zone. Energy is certainly essential to the continued productivity of the nation as well as the State of North Carolina. However, it must be recognized at the same time that an energy-generating facility may have significant effects on coastal environments and especially on coastal waters. Furthermore, the socio-economic effect of the facility is very significant to the area in which it is located, particularly because manpower needs during the construction stage are large but the long-term employment associated with the operation is low. This causes an influx of people seeking employment at the construction stage. Each family requires housing and other facilities which the prevalent rural areas of the coast are not equipped to provide. The resultant development patterns and

problems are often undesired. Secondary growth may also occur within the county due to the lower taxes that result from the enormous contribution such plants have on assessed property values. In summary, it is possible that an electrical generating plant of significant size can change the natural, cultural, and economic environment in the coastal area. The questions facing North Carolina are: first, what type of energy generating facility is best suited to the coastal zone, if any? Second, where is the best location for such a facility within the coastal area?

Petroleum Refineries

Presently North Carolina has no petroleum refineries operating within its jurisdictional boundaries, and none anticipated for the immediate future. North Carolina imports both its oil and natural gas and ranks tenth in national gas consumption; therefore, the potential market for petroleum products is strong. The principal factor influencing an industry's decision to site a refinery is the proximity of the market, along with other factors such as the source of the crude oil, necessary site features, and environmental regulations. Since refineries are both land and water intensive, North Carolina's coastal area may be a prime area for future siting.

Although there is no general correlation between the discovery of oil in a frontier OCS area and construction of a refinery, a significant find and its location may provide an impetus for siting a refinery in North Carolina. However, at this juncture, it can be safely stated that North Carolina does not anticipate having such a facility in the near future.

However, if a refinery should locate in the coastal zone, the impacts could be great. A refinery will need a large site (1,000 - 1,500 acres) which will permit both expansion and a wide buffer zone. Approximately 600 acres will be required to accommodate structures resulting in significant land disturbing activities. Sedimentation and runoff can become a major problem to coastal waters during the construction phase. Another feature of refineries is that they tend to locate near the water's edge, causing alteration and destruction of marshes or wetlands during construction, and permanent alteration of the natural habitat conditions of an area. Refineries also use tremendous quantities of water. Significant wastewater volumes will be created which must be discharged. Air quality can also be degraded by refineries. Specifically, analysis has shown that hydrocarbon emissions may be in excess of standards for typical "state-of-the-art" refinery design, and hydrocarbon emissions are the principle contributor to the formation of petrochemical oxidants (ozone and smog). Finally, the secondary impacts that result from a significant population influx must also be considered.

In summary, the North Carolina Coastal Management program recognizes that petroleum refineries are not a pressing major problem, but nevertheless we must address the question of how to develop a mechanism to select the best location to plan for and mitigate the negative impacts of any oil refinery that might be proposed in the coastal zone.

Outer Continental Shelf Development

The North Carolina Outer Continental shelf area is geographically associated with what has been termed the South Atlantic Region by the U.S. Department of the Interior and may contain valuable oil, gas, sand and gravel deposits. The South Atlantic Region is composed of North Carolina, South Carolina, Georgia and Florida. The first lease sale for oil and gas exploration and development purposes in this region took place in March 1978.

The lease sale consisted of offering for lease the rights to explore for and produce oil and gas resources that may be present in 224 tracts in the South Atlantic area known as the Southeast Georgia Embayment. The sale area covered 1,280,966 acres and the tracts are located from 30 to 75 miles offshore South Carolina, Georgia and Florida and lie in water depth ranging from 43 to 540 feet. The U.S. Geological Survey has estimated that this sale area could contain undiscovered recoverable resources of 0.28 to 1.0 billion barrels of oil and 1.9 to 6.8 trillion cubic feet of gas. However, because this is a frontier area which has experienced no oil and gas exploration by actual drilling or development, there is no assurance that petroleum in marketable quantities will be found. This may explain why there was no real interest in leasing the rights offered in Sale 43.

As the initial exploration in the South Atlantic Region will take place off the coast of South Carolina, Georgia and Florida for all practical purposes, North Carolina will be minimally impacted by OCS oil and gas development during at least the next decade. As exploration will not take place off our coast, but off South Carolina, Georgia and Florida, the chances for primary impacts during the exploration stage are unlikely. However, depending upon the size, nature, and location of a find, the potential for secondary impacts does exist. Such impacts include use of harbor facilities for transportation, refineries and/or petrochemical complexes. Secondary impacts can in turn cause habitat loss through ill-planned site alteration, conversion of wetlands and environmentally sensitive areas, drastic changes in coastal life styles, economic burdens on local governments from a population influx, etc.

It is hard to predict to what extent North Carolina will in reality be affected since there are so many variables. Consequently, the North Carolina coastal management program must address two questions concerning outer continental shelf activities in the near future. The first is to determine what valuable resources other than oil and gas exist and to what extent

and how they will be used; the second is to determine what secondary impacts are likely to result from energy-related OCS activities off the coast of North Carolina and other states. The issues that the Coastal Management program can then address include: "should the State of North Carolina encourage the development of OCS-related facilities recognizing the possible impacts from such a posture and what should the State of North Carolina do to manage and minimize the negative impacts resulting from OCS development either off North Carolina's or the neighboring states' coast?"

Environmental Issues

The following discussion briefly describes a few of the environmental issues that North Carolina's Coastal Management program must address. Far from exhaustive, this section only attempts to provide the reader with a perspective on some of the pervasive environmental problems of the coastal zone.

Waste Disposal and Water Supplies

The proliferation of the use of septic tanks in the coastal area, particularly in areas adjacent to coastal waters, has caused much concern about their regulation. Poor soil characteristics throughout most of the coastal area and a generally high water table through much of the year tend to make conventional septic tank sewage disposal systems environmentally unsuitable for continued use in high density coastal development. Many areas of the coast are already experiencing a substantial pollution problem evidenced by the alarmingly large number of acres of state waters which are presently closed to the taking of shellfish. A significant amount of this problem can be attributed to the disposal of sewage by conventional sub-surface septic systems.

The major soils of the coastal area management region are not suitable for sewage disposal by conventional septic tank systems. Recent studies show that most conventional septic systems that are used for sewage disposal in the region will cause pollution of ground or surface waters, or some other problem within the first year's use. In conditions where the only available land is either marsh, spoil material, or frequently inundated soils, other systems of waste treatment must be used to adequately treat and dispose of sewage. In such areas, waste is injected directly into shallow groundwater at the site, often polluting important water supplies. From there the waste moves in basically untreated form to nearby surface waters, canals, or estuaries.

Such soil conditions are prevalent on the Outer Banks and other offshore islands and along the shorelines of estuarine waters. These are the types of areas subject to heavy residential and second home development. Unless a suitable substitute for the septic tank is developed, then the only environmentally sound way to accommodate intensive development in these areas is by means of municipal or regional waste treatment systems. Many localities

have recognized the problem of waste disposal and have unrealistically depended on central treatment facilities as a solution. These systems are expensive, especially if development is not guided into patterns that can be efficiently serviced. Furthermore, disposal of treated waste is still a problem in many coastal areas because much of the estuarine system does not have the assimilative capacity to handle even treated waste. Therefore, other methods of disposal, including ocean outfall, land application and nonconventional individual waste treatment systems (septic tank alternatives) need to be examined as alternative waste disposal techniques.

In summary, the North Carolina Coastal Management program must address the problem of how to minimize the impacts of waste pollution on coastal waters by supporting development of environmentally sound waste treatment systems and guiding new development to areas which are served by such systems or which are suitable for septic tanks.

Development in Coastal Hazard Areas

Proximity of development to coastal waters and the exposed nature of the landscape create the greatest hazards to coastal development. Periodic hurricanes and storms are the most severe of the coastal natural hazards. The Outer Banks and the islands off the coast are especially vulnerable to the dangers associated with high winds and storm surges resulting from hurricanes. The Outer Banks must also face rapid erosion of the ocean shoreline, as well as extensive flooding. Certainly in the future as development proceeds on the Outer Banks, greater economic losses of private and public property can be expected and unfortunately, many times the cost of relief and rehabilitation of private development on the Outer Banks falls upon all taxpayers.

Another type of natural hazard that occurs frequently on the coast is associated with northeastern winds or northeasters. Associated with this hazard is accelerated erosion that many times results in a major retreat of the ocean shoreline as well as the shorelines bordering the sounds. Although the danger to life certainly is not as great with the northeasters as it is with the hurricanes, the economic loss of property can be almost as great and certainly more predictable. A recent inventory conducted by the Soil Conservation Service indicates that the shorelines adjacent to the major sounds in coastal North Carolina have a typical rate of erosion of 2 to 3 feet per year with some shorelines

exhibiting an erosion rate of 20 feet per year. The amount of erosion occurring depends on a number of factors including the fetch of the adjacent water body, the exposure of the banks to the northeast storms and southeast hurricane winds, the type of soil composing the shoreline and the type of vegetation both in the shallow water areas adjacent to the shoreline and on the shoreline.

Finally, there are continuously occurring natural phenomena that cause significant shifts in coastal land forms, primarily resulting from wind or water erosion. These alterations in landscape are not associated in particular with any abnormal storm conditions but occur because of the natural tidal cycles and sedimentation processes. Lands adjacent to inlets, for example, are extremely dynamic because of the continuous and sometimes rapid shift in the inlets configuration. These shifts occur to some degree because of changes in sedimentation patterns and tidal forces. There is also a continual but extremely slow process of erosion of shorelines resulting from sea level rises.

The combined effect of these various coastal hazards is to create a situation where both location and design of development is critical to its continued survival. Unfortunately, because of the great demand for coastal recreation and relaxation, and the high volume of recent development, most structures have not incorporated these concerns into their design and planning. These problems are compounded by the lack of knowledge on the part of new residents to the coastal area concerning the dangers of erosion and flooding. Landowners do not know where to obtain reliable information on erosion rates and flooding problems; nor do they realize the great expense involved in protecting their property by means of bulkheads, seawalls, and other protective measures. As a result, owners of endangered property find themselves compelled to seek financial as well as technical assistance from public agencies. Government is therefore faced with the uncomfortable situation of either committing taxpayers' money to the protection of private property following a natural hazard or to refusing assistance to private citizens who have suffered severe property losses.

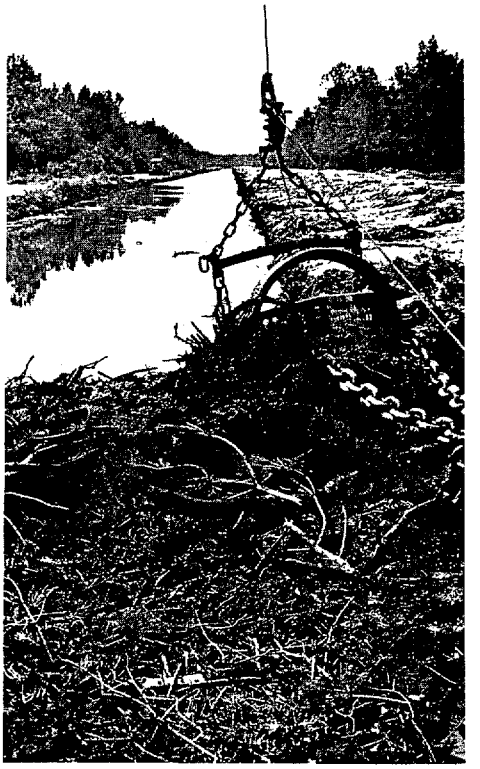
In summary, the North Carolina Coastal Management program must address how to direct development away from hazard areas thereby avoiding both the private and public expense associated with protecting property in obvious hazard areas.

Drainage

Coastal North Carolina consists of vast areas of lowland characterized by a high water table and abundant rainfall. A process for removing excess water is essential to preparing such lowlands for any form of development.

The excavation of ditches for drainage is therefore a practical necessity for economic activity within the coastal zone.

Yet drainage ditching also creates potential environmental problems, primarily by increasing the amount and rate of runoff into coastal surface waters. Direct destruction of coastal wetlands can result from ditching, and can be worsened by the improper disposal of dredge spoil. Ditches have the potential for conveying many different pollutants, such as sediment, fertilizer, pesticides, and bacteria, to the estuaries. Freshwater runoff when drained onto esturine waters can be considered one of the most menacing pollutants to manage. Urban areas and lands drained by ditches are intense sources of freshwater runoff.

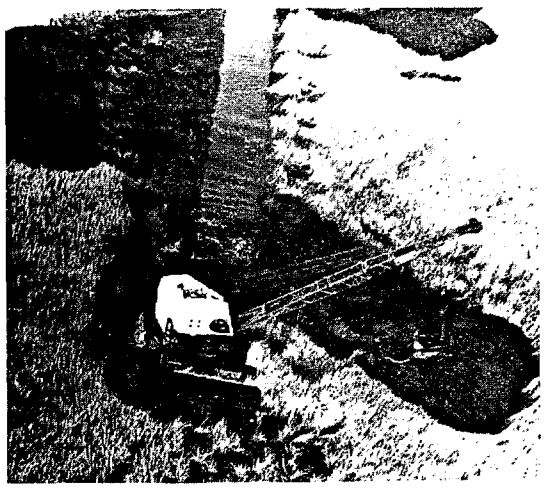


In summary, the State Coastal Management program must address the problem of how to determine what are acceptable purposes for draining coastal lowlands and what are the best patterns and techniques to minimize the negative effects of such drainage on coastal waters, taking into full consideration the importance of drainage to the coastal economy.

Dredging and Spoil Disposal

Dredging, the excavation of bottom material, and filling, the deposition of these materials onto the bottom, are construction techniques used widely in North Carolina's coastal area. Various parties may desire to dredge to create and maintain navigation channels, turning basins, harbors and marinas, for laying pipeline and as a source of material for fill or construction. Filling refers to deposition of dredged materials, either for the specific purpose of creating new "dry land areas" for commerical, industrial, residential or other uses, or as disposal of the by-product (dredge spoil) produced during dredging. Therefore, dredge and fill activities can be economically beneficial

and are in great demand for improving usability and increasing the value of land adjacent to North Carolina's coastal waters.



Dredge and fill activities can adversely effect the coastal waters in a variety of ways. They can create short and long-term changes in water currents, circulation, mixing, flushing and salinity; add to the water turbidity, and pollution; and lower the dissolved oxygen level. Dredging also increases the potential for groundwater discharge and loss of storage. Seepage from spoils may degrade local groundwater supplies. The most obvious direct effect of these closely linked activities is the immediate destruction of coastal wetlands, bottoms and tidelands, diminishing their natural productivity, and the habitats they provide for many species. Furthermore, dredging navigation canals and channels produces spoil which must be disposed of, and filling requires some areas to be dredged for a source of fill material. Dredge spoil is a slurry of sediment and water which contains a high proportion of polluting materials: organic matter, heavy metals, toxics and fine sediments. Direct runoff from these spoil areas can therefore degrade water quality and deposit sediment on bottoms over a substantial area. Pollutants can also circulate downward to the water table and contaminate the groundwater.

The North Carolina Coastal Management program must consider determining the proper justification for the destruction of public resources through dredging, as well as promoting the best dredging techniques (location, timing, method of disposal, etc.) for those projects that are justified.

Coastal Wetlands Preservation

The value of North Carolina's vast coastal wetlands can hardly be overestimated. The high productivity level and complex food chains within the estuarine system cannot be maintained without the detritus and nutrients that are exported from these coastal marshlands. Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. The importance of these marshlands are indicated by the fact that 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.

Coastal wetlands act as good quality waterfowl and wildlife feeding and nesting areas. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion and flood damage by dissipating wave action and resisting soil erosion. 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.

Coastal wetlands often separate the dry shorelands from coastal waters, and therefore they are affected by activities either associated with or dependent upon coastal waters. For example, the high value of coastal waterfront makes it profitable to fill wetlands. Wetlands and estuarine bottoms are often the nearest and most convenient place to deposit dredge spoil, particularly from drainage ditching and channelization. All of these activities threaten or greatly diminish the total acreage of wetlands, and consequently reduce productivity of coastal waters.

In summary, the North Carolina Coastal Management program must address how to minimize destruction of wetlands without denying reasonable access to coastal waters for water-dependent uses.

Protection of Unique Coastal Environments

Certain natural areas within the North Carolina coastal zone contain unique natural features that give them particular educational, scientific and cultural value. Such areas are often relatively small assemblages of plants and animals that have

remained essentially unchanged by the development which has occurred in the coastal area. Nevertheless, they are important coastal resources because of their scientific, educational, scenic and cultural value. Often these natural areas contain habitat conditions suitable for rare or endangered species or they support plant and animal communities representative of pre-settlement conditions. These areas help provide a historical prospective to changing natural conditions in the coastal area and together are important and irreplaceable scientific and educational resources.

Development pressure and lack of knowledge concerning the nature of these coastal environments have combined to threaten the delicately balanced systems of these coastal habitats. Both the design and the location of development occurring adjacent to and within these unique coastal environments have often in the past neglected to consider the best method of conserving the natural values of the area while at the same time accommodating the development's objective. Therefore, the State of North Carolina must address the issue of how to identify unique coastal environments and then develop a management system and a management approach capable of preserving the best examples of these unique coastal resources.

Institutional Arrangements

In order for any comprehensive coastal management program to succeed, careful consideration must be given to both the existing institutional arrangements, their weaknesses and strengths, and the desirability of any changes in institutional practices. Decision-making responsibilities and processes should be organized and allocated among the various levels of government and the citizens themselves, in a manner that promotes efficiency and reflects the social, governmental, and legal traditions of our State.

Public Participation

Any resource management and land use planning program must be built on a foundation of legitimate public participation. Most localities in coastal North Carolina have never been involved in a comprehensive land use planning effort. Therefore, any citizen participation effort must overcome a lack of familiarity and even distrust of an organized planning effort. This resistance is often further intensified by the strong tradition of localism that is prevalent in coastal North Carolina. The coastal management effort is perceived by many to be state interference in a sphere of activity that should be left to local government. Therefore, the key issue concerning citizen participation has been how to involve coastal citizens on a continuing basis in the genuinely substantive aspects of decision-making, thereby creating an atmosphere of trust and facilitating the exchange of ideas between the public, local government, and the State coastal management agency.

Local and State Cooperation

The North Carolina Coastal Area Management Act, the key element to this State's coastal management program, has recognized that, in addition to water pollution control standards and similar resource protection programs, good land use planning is necessary to the success of an attempt to protect coastal waters. At the same time, the Act recognizes that comprehensive land use planning and regulation has traditionally been done at the local government level, and that most land use decisions are more appropriately dealt with at the local level. The problems in allocating coastal planning functions is complicated by the fact that many of North Carolina's coastal counties are very rural in character, and most municipalities are small. As a result, they do not have the existing staff capability to handle the planning and regulatory functions necessary for a coastal management program. Furthermore, they cannot justify the expense involved in developing and maintaining a staff for such a purpose. Consequently, a system must be developed to provide local governments with necessary financial assistance, information and other technical services.

In summary, the North Carolina Coastal Management program must address how to best allocate and finance certain of the coastal planning and management functions to local governments in the coastal area while retaining enough responsibility at the State level to assure that legitimate regional, State, and national interests are taken into consideration.

Federal Consistency and National Interest

Another aspect of the institutional changes necessary to a successful coastal management program is the need for federal agencies to participate in, acknowledge, and cooperate with the coastal planning effort in all activities that directly and significantly affect coastal waters. Coastal North Carolina contains vast areas that are either owned or regulated by federal agencies. The State acknowledges that these land holdings and activities serve identified national interests, and indeed, that federal lands are excluded from the technical definition of the coastal zone. However, the coastal planning and management program is also an effort to analyze and protect the greater-than-local interests in the coastal zone, thereby serving a national interest recognized by the FCZMA of 1972. As such, the management program represents to some extent a subordination of local perogatives to greater-than-local needs, in return for which federal agencies are mandated to conform their activities to the greatest extent practicable with the approved state management plan. The fulfillment of this mandate is necessary to popular acceptance of the coastal management effort. Without it the entire program will be seen as just another effort to remove power from the local level.

In summary, the problem to be addressed by the coastal management program is how to insure that the national interests of

federal agencies are reflected in a coastal plan, that a system is developed to insure that federal agencies give proper consideration to the state management plan, and that the plan is presently clear enough to provide federal agencies with the guidance necessary to determine whether their activities are consistent.

Uses of Regional Benefit

North Carolina has emphasized throughout its management plan the need for local governments to exercise their full prerogatives. However, it is also necessary to recognize that certain uses that are of an overriding benefit to the nation and the State must not be arbitrarily excluded from the coastal area because of local opposition. The coastal area of North Carolina accommodates presently and will continue to accommodate land uses that provide benefits of a greater than local nature.

North Carolina's coastal management agency has the responsibility of identifying uses of regional benefit assuring that local regulations do not unreasonably restrict or exclude such uses and for seeking alternatives that mitigate local government objections if these alternatives exist.

State Agency Consistency

In addition to the need for federal consistency, state government agencies need to be coordinated and consistent with the coastal management objectives of North Carolina. The agencies of the State must cooperate if achievement of the ambitious goals of North Carolina in coastal management are to be realized. While it may appear unnecessary, since the State plan is in theory a coordinated comprehensive plan, intra-state coordination can pose serious problems in establishing a coastal management program. Intra-state coordination is a problem to be faced by North Carolina.

Permit Coordination

Another institutional problem that greatly concerns all who are involved with the coastal management effort, particularly coastal residents, is the duplication, confusion, and delay caused by the proliferation of permits required for coastal development by the various levels of government. The primary source of concern is the overlap of authority over development in coastal waters and wetlands, i.e., federal permits under Section 10 and 404, state dredge and fill permits (G.S. 113-229) and easement to fill (G.S. 146-6(c)). A key factor in this problem is that most of the permit procedures were promulgated on a piecemeal basis, in response to specific environmental and land use problems. Simply stated, they do not mesh together properly. Other factors serve to complicate the problem:

(1) All echelons of government; state, federal, and local; are in the permit business, often requiring permits for the same type of activity;

(2) Even within specific agencies, overlap and lack of coordination sometimes exists;

(3) In many instances, agencies not involved in the actual permit procedure have mandatory review responsibility, and in some cases actual veto authority.

In summary, the North Carolina Coastal Management program must address how to consolidate and simplify existing permit programs in the coastal zone without degrading the resource protection provided by these programs.

State Policies Concerning Coastal Management in North Carolina

The policies of the State of North Carolina concerning the issues important to coastal management can be divided into two general categories. Discussed first in the following section are those policies that are very general and are broadly applicable to private development activities and/or government activities and programs that affect the environment. Second are those policies that can be considered more specific because they apply to particular types of activities or protect particular types of resources.

General Goals, Objectives, and Policies

Protection of the Environment

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, known as the North Carolina "Environmental Bill of Rights":

> "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:

> S.S. 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. (Article 1, G.S. 113A)

The general policy of the State of North Carolina concerning all air and water resources in the State is as follows:

> "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 ultimate 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)

Coastal Resource Management and Development

The broad goals, policies, and objectives set forth in the CAMA for coastal resource management and development are as follows. It is State policy 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."
(G.S. 113A-102(b))

The most important generally applicable coastal policies, both in terms of specificity and enforceability, are the standards for development in coastal AECs. (These AEC standards are reproduced in their entirety in Appendix B.) These standards apply to all development in AECs that is not exempted by the CAMA. (AECs form the first tier of North Carolina's coastal zone, which is in the area in which management of development is most critical

for protecting coastal waters). To avoid continuous repetition, the AEC standards are not repeated as statements of policy for each of the following issue or problem topics. However, it is important to remember that AEC standards do apply to any activities associated with the following issues and problems if those activities take place in an AEC.

Policies Concerning Specific Issues and Problems

Any of the following policies which were set forth by the Land Policy Council and which are not shown to be implemented under some authority other than the Land Policy Act are considered to be advisory or enhancement policies.

Growth Management Policies

It is State policy:

(1) That land resources in the coastal zone shall be managed in order to guide growth and development and to minimize damage to the natural environment. Development or preservation of coastal resources shall proceed in a manner consistent with the capability of the land, air and water for development, use, or preservation based on ecological considerations. As set forth and implemented under authority of the CAMA.

(2) That criteria be developed for recognizing areas capable of and willing to accommodate growth. State growth policy, public investment, and regulatory programs shall reinforce the State, regional and local desire for such areas to grow, and assure that the public services necessary to support that level of growth will be provided. As set forth by the Land Policy Council and the CRC's "Guidelines for Local Planning" and implemented under authority of the CAMA.

(3) That local growth policies and plans be developed, and State policies and programs in areas within the jurisdiction of those local governments should be influenced by these local policies and plans. As set forth by the Land Policy Council and the CRC's "Guidelines for Local Planning" and implemented under authority of the CAMA.

(4) That State and federal governments use land classification plans and the State growth policy as a guide for regulatory and public investment programs affecting the location and timing of growth. As set forth by the Land Policy Council and the CRC's "Guidelines for Local Planning" and implemented under authority of the CAMA.

Key Facilities Policies

It is State policy:

(1) That the location and timing of investments in key facilities, and their regulation, should be consistent with State, regional, and local development objectives. As set forth by the Land Policy Council and the CRC's "Guidelines for Local Planning" and implemented under authority of the CAMA.

(2) That if local governments in the coastal area are having difficulty dealing with the impact of key facilities, State agencies should, upon request, come to their aid. As set forth by the Land Policy Council and implemented under authority of the CAMA.

(3) That the location of major state and federal facilities in the coastal zone be coordinated with local, regional, and statewide land policy objectives. As set forth by the Land Policy Council and implemented under authority of the CAMA.

(4) That the role of key facilities such as highways, waterways and ports in influencing growth patterns be recognized and that other agency's activities cocerning these facilities should be consistent coastal policies as set forth in the State guidelines. As set forth by the Land Policy Council and implemented under authority of the CAMA.

Conflicting Uses of Land

It is State policy:

(1) That all coastal counties, and all municipalities that desire to do so, will develop a land use plan consistent with State guidelines developed by the Coastal Resources Commission. The Coastal Resources Commission will develop a plan for those localities that elect not to do one. Each plan shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas in the coastal zone. Every local plan shall include a land classification system and set forth policies for development in each class of land. Local zoning ordinances, subdivision regulations, and other land use regulations should be consistent with the land use plan. As set forth by the CRC's "State Guideline for Local Planning" and implemented under authority of the CAMA.

(2) That the Coastal Resources Commission may designate as Areas of Environmental Concern certain critical resource areas that are of more than local interest. The CRC may develop regulations for proper management of these areas. As set forth by the CRC "State Guidelines for Local Planning" and implemented under authority of the CAMA.

Residential, Commercial and Second Home Development

It is State policy:

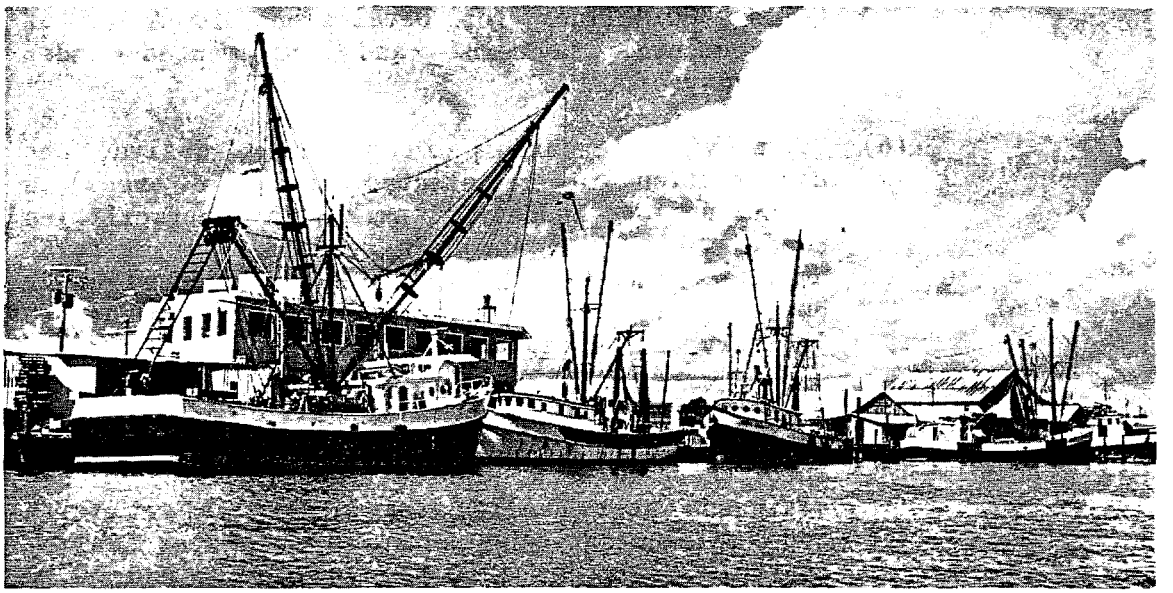
(1) That local governments and state agencies attempt to encourage moderate to high density growth in areas (classified as transition) where such growth is compatible with the natural characteristics of the land, water and air and can be efficiently provided with the necessary public services. Such lands should not include areas with severe physical limitation for development with public services; lands which meet the definition of the conservation class including Areas of Environmental Concern; 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. As set forth in the CRC's "State Guidelines for Local Planning" and implemented by authority of the CAMA.

Coastal Industry Policies

Fishing and Seafood

It is State policy:

(1) To promote the better utilization and prevent the physical waste of coastal fisheries by encouraging and permitting those engaged in coastal fisheries to act jointly and cooperatively to promote the common good, by developing a joint program with the Atlantic states, and by making reasonable regulations for both public and private fishery areas. As set forth and implemented under the authority of the Atlantic States Marine Fisheries Compact (G.S. 113-251 et seq)



(2) To develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina, both from public grounds and private beds. As set forth and implemented under authority of the Fisheries Statutes (G.S. 113-201).

(3) To give the highest priority to developing the estuarine system in a manner that will preserve and develop the natural ecological conditions and safeguard and perpetuate its natural productivity. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(4) That second priority of use in coastal wetlands, public trust areas, and estuarine waters shall be given to types of development activities associated with commercial and sports fishing. These include simple access channels, and boat docks, piers, wharves and mooring pilings. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(5) To regulate coastal wetlands so that highest priority is given to their conservation and so that second priority is given to types of development activities that require water access and cannot function elsewhere. As set forth in the CRC's "Guidelines for Development in Areas of Environmental Concern" and implemented under authority of CAMA.

(6) To provide leadership in planning, design, and construction in a selected area (or areas) a modern seafood industrial park with the facilities needed to land and process seafood. As set forth by the Secretary of DNRCD and implemented under authority of G.S. 113-14.1, Promotion of Seashore Industry and Recreation.

(7) To manage coastal water bodies according to their assigned best usage and to regulate discharges into these waters so that they do not exceed assigned water quality standards. As set forth and implemented under authority of Water Quality Control Statutes. (G.S. 143-214.1 and G.S. 143-215.1)

Agriculture and Forestry

It is State policy:

(1) That State government support programs aimed principally at employing good agricultural land-use practices, and encourage local governments to do so. As set forth by the Land Policy Council under authority of the Land Policy Act. (G.S. 113A-150)

(2) That prime agricultural lands should not be converted to non-agricultural uses where alternative lands are available. As set forth by the Land Policy Council and the CRC's "Guidelines for Local Planning", and implemented under authority of CAMA.

(3) That the State land resource program stress, and the State encourage local land use programs to stress, (a) the need to maintain a supply of good quality timber into the future; (b) the non-timber values of forest lands to the public; (c) the role of the individual landowner of the application of good forestry practices to water resources, wildlife, and recreation management. As set forth by the Land Policy Council under the authority of the Land Policy Act. (G.S. 113A-150)

(4) That large productive forest tracts be identified, and measures taken to encourage their maintenance for timber production. As set forth by the Land Policy Council under authority of the Land Policy Act. (G.S. 113A-150)

(5) That productive agricultural and forest lands should be managed for productive resource utilization and provided with limited public services. Only development that is compatible with agricultural and forest production should be encouraged. These lands should be classified as rural under the land classification system. As set forth by the CRC's "State Guidelines for Local Planning" and implemented under the authority of the CAMA.

(6) That construction of ditches in coastal wetlands for the purpose of draining upland agricultural and forest lands is acceptable only where there will be no significant adverse effect on the use of the water by the public, on the value and enjoyment of the property of any riparian owners, on the conservation of public and private water supplies, on wildlife or fisheries, or on other valid aspects of the public health, safety or welfare as determined by the Coastal Resources Commission or the State of North Carolina. As set forth by the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(7) To regulate feed lot runoff to prevent estuarine waters and other coastal waters from exceeding water quality standards set for that body of water. As set forth in Environmental Management Regulations, North Carolina Administrative Code 2H.0122 and 0123, and implemented under authority of G.S. 143-213(24), G.S. 143-215.1, and 143-215.3(a)(1).

(8) To regulate, according to state and federal standards, the use and application of pesticides. As stated and implemented under the North Carolina Pesticide Law of 1971 G.S. (143-434 et seq.)

(9) To incorporate in the North Carolina coastal management plan appropriate best management practices for non-point source pollution developed through the Section 208 planning process. (This statement of coordination within DNRCD will become policy when the coastal management plan is signed by the Secretary of DNRCD).

Mining

It is State policy:

(1) That before land is committed to high density urban development, a study of mineral resources be made. Land areas found to contain significant mineral resources should not be committed to urban development unless other reasonable alternatives are not available. As set forth by the Land Policy Council under authority of the Land Policy Act. (G.S. 113A-150)

(2) That lands with potentially valuable mineral deposits should be managed for productive resource utilization and provided with limited public services. Only develop ment that is compatible with mineral production should be encouraged. These lands should be classified as rural under the land classification system. As set forth by the CRC's "State Guidelines for Local Planning" and implemented under authority of the CAMA.

(3) 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. As set forth and implemented under authority of the Mining Act. (G.S. 74-48)

(4) To prevent mining operations from: causing long-term adverse affect on wildlife, fisheries, public parks, forests, or recreation areas; violating air or water quality standards; creating a substantial physical hazard to neighboring structures; or resulting in landslides or sedimentation or pollution of waters. As set forth and implemented under authority of the Mining Act. (G.S. 74-48)

(5) To prevent mining activities from causing contamination of subsurface water supplies and/or salt water intrusion. As set forth and implemented under authority of the Water Use Act (G.S. 215.11 et seq).

Manufacturing

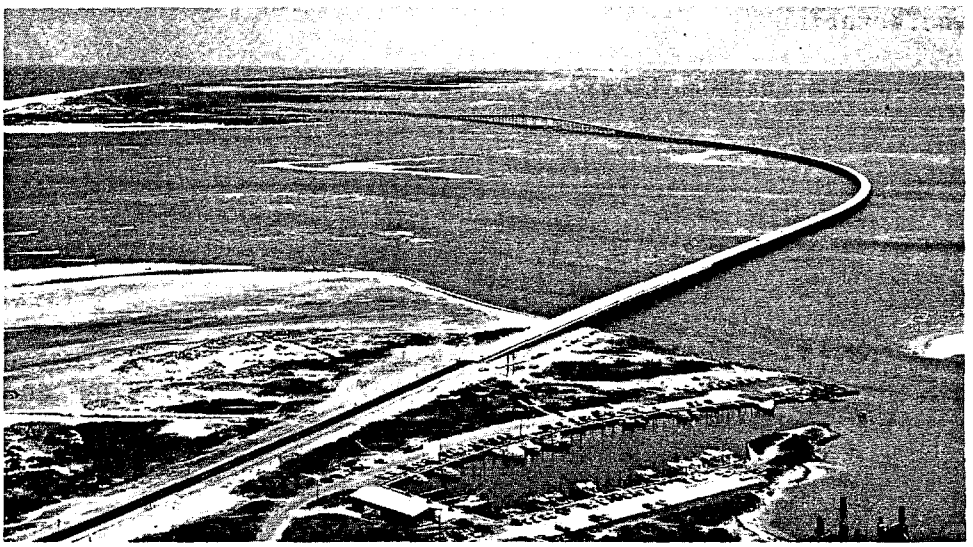
It is State policy:

(1) To promote planning and development of seacoast areas for the purpose of attracting new industrial growth. As set forth and implemented under G.S. 113-141, Promotion of Seashore Industry and Recreation.

(2) That the DNRCD will conduct an evaluation in conjunction with other 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 the coastal zone of North Carolina. As set forth and implemented under authority of G.S. 113-15.2, Investigation of Impact of Proposed New and Expanding Industry.

(3) That the State will encourage and support local governments in the use of their land classification plan to guide the location of large manufacturing facilities to those areas where any necessary services can be efficiently provided and where valuable natural resources will not be damaged. The State will not favor funding for water and sewer facilities to service manufacturing plants which are proposed for or constructed in an area that is not classified transition. As set forth by CRC's "State Guidelines for Local Planning" and implemented under authority of the CAMA.

(4) To manage coastal water bodies according to their assigned best usage, and to regulate discharges into these waters so that they do not exceed assigned water quality standards. As set forth and implemented under authority of the Water Quality Control Statutes (G.S. 143-214.1 and G.S. 143-215.1).



Transportation Policies

Highways

It is State policy:

(1) To develop and maintain a state-wide system of roads and highways which is based on the needs of the State as a whole. This system shall not sacrifice the general statewide interest to the inappropriate local desires of any particular area. As set forth and implemented under authority of the Department of Transportation and Highway Safety Act (G.S. 136-44.1).

(2) That the impacts of proposed major transportation actions upon the surrounding environment be analyzed and, when the negative effects outweigh the positive effects, that the decisions be altered. As set forth and implemented under the State Environmental Policy Act (G.S. 113A-4).

(3) That municipalities shall prepare and utilize comprehensive street and thoroughfare plans that are mutually adopted by the municipality and the North Carolina Board of Transportation and that are coordinated with the appropriate county, regional, and statewide plan. As set forth and implemented under authority of G.S. 136-66.2, Streets and Highways in and around Municipalities.

(4) That no construction or placement of major state-supported transportation facilities will be permitted in ocean hazard areas, nor will they be allowed in the estuarine shoreline area if the cost of keeping them in safe, usable condition is likely to be high. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(5) That roads, bridges and other major highway transportation facilities shall be constructed according to a sedimentation control plan that has been approved by the North Carolina Sedimentation Control Commission. As set forth and implemented under authority of the Sedimentation Pollution Control Act (G.S. 113A-50).

Ports

It is State policy:

(1) To improve harbors, seaports and inland ports at Wilmington, Morehead City, Southport and other places deemed feasible and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from those harbors and ports. As set forth and implemented under authority of G.S. 143-217, purposes of the State Ports Authority.

(2) It is State policy to cooperate with and act as agent for the federal government or its agencies to accomplish the above purposes and to maintain, develop, improve and use the harbors and seaports in connection with and furtherance of war operations and other national needs. As set forth and implemented under authority of G.S. 143-217, Purposes of the State Ports Authority.

(3) Any port development activities in coastal wetlands, estuarine waters, public trust areas, and estuarine shorelines must be consistent with AEC standards for development in those areas. As set forth in the CRC's "State Guidelines for Areas

of Environmental Concern" and implemented under authority of the CAMA.

(4) Port development activities in estuarine waters and coastal wetlands must meet state standards for a permit to excavate and/or fill in those areas, and must receive an easement to fill state-owned submerged lands. As set forth and implemented under authority of the State Dredge and Fill Act (G.S. 113-229).

(5) Port activities which involve development of land areas of more than one acre must be made pursuant to an approved sedimentation control plan if the development is controlled by the State Ports Authority, or must be made consistent with applicable local sedimentation control ordinances if the development is controlled by a private party. As set forth and implemented under authority of the Sedimentation Pollution Control Act (G.S. 113A-50).

Navigation

It is State policy:

(1) To encourage development of such river and harbor, flood control and other similar civil work 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. As set forth and implemented under authority of the Federal Water Resources Development Law (G.S. 143-215.39).

(2) To plan and execute a long-range program for preserving, developing, and improving rivers, harbors, and inland ports. As set forth and implemented under authority of G.S. 143-355.

(3) That the design of navigation channels should meet demonstrated navigational needs, should not create dead or stagnant water pockets, should not create shoreline erosion problems, should not block or impair existing navigable channels, should avoid shellfish and significant wetland areas, and should make maximum use of natural or existing deep water channels. Provision should be made for water circulation in canal projects. As set forth in the North Carolina Administrative Code Sub-chapter 3D - "Dredge and Fill", Section .0109(a)(1-7); 33 CFR s.s.209.145 "Navigation and Navigable Waters"; 40 CFR s.s.203, "Discharge of Dredge and Fill Material" and implemented under authority of the Dredge and Fill Act (G.S. 113-229).

(4) That fishermen marking their fishery areas or private beds in navigable waters shall do so in a manner that does not hinder or impede navigation. As set forth and implemented under authority of G.S. 113-205, Exercise of Private Fishery Rights.

Recreational and Tourism Resource Policies

Recreation

It is State policy:

(1) To protect and preserve its land and waters for the benefit of all its citizenry by acquiring and preserving park, recreational and scenic areas. As set forth in Section 5, Article 14 of the Constitution of North Carolina and implemented under all authorities mentioned below.

(2) To preserve to the greatest extent feasible, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational quality of the natural shorelines of the State. As set forth in and implemented under the CAMA.

(3) To maintain superior quality of water and air resources to ensure continued enjoyment of the natural attractions of the coast. As set forth in G.S. 143-211 and implemented under authority of G.S. 143-214.1 and G.S. 143-215.1.

(4) To provide or help provide outdoor recreation opportunities for all citizens and visitors. As set forth in the "State Comprehensive Outdoor Recreation Plan" (SCORP) and implemented under authority of G.S. 113-34, Acquisition and Control of State Forests and Parks.

(5) To plan and promote recreational developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to permanent residents. As set forth and implemented under G.S. 113-14.1, Promotion of Seashore Industry and Recreation.

(6) That the State acquire, locate and manage state-owned lands in a manner generally consistent

with local land-use and land classification plans, and with local land-use regulations. As set forth in the CRC's "State Guidelines for Local Planning" and implemented under the authority of the CAMA.

(7) To maintain a continuing planning program for outdoor recreation to guide decision-making in outdoor recreation programs and needs. As set forth in the "State Comprehensive Outdoor Recreation Plan" (SCORP) and implemented under authority of G.S. 113-34, Acquisition and Control of State Forests and Parks.

(8) To acquire adequate examples of natural outdoor recreation features and to preserve them in as close to a natural state as feasible. Such natural features should be made accessible to the public for outdoor recreation to the extent that such use does not destroy or degrade the resource. As set forth in the "State Comprehensive Outdoor Recreation Plan" (SCORP) and implemented under authority of The Natural and Scenic Rivers Act of 1971 (G.S. 113A-30 et seq); The North Carolina Trails System Act (G.S. 113A-83 et seq); and G.S. 113-34, Acquisition and Control of State Forests and Parks; and G.S. 113-29 et. seq., Acquisition and Development of State Forests.

Tourism

It is State policy:

(1) To assist in the sound development of the seacoast areas of the state, giving emphasis to planning and promoting attractions and facilities for travelers in these areas; with particular interest upon the development of the scenic and recreational resources of the seacoast. As set forth and implemented under authority of G.S. 113.14.1, Promotion of Seashore Industry and Recreation.

(2) To coordinate the activities of local government and state and federal agencies in planning and development of seacoast areas for the purpose of attracting visitors. As set forth and implemented under authority of G.S. 113-14.1, Promotion of Seashore Industry and Recreation.

(3) To discourage sprawl and strip development and roadside advertising where they detract from scenic quality by encouraging the Department of Transportation and local governments to adopt and enforce design standards for all roadside

advertising. As set forth by the Land Policy Council and implemented under authority of G.S. 136-122 et. seq., Preservation, etc., of Scenic Beauty of Areas Along Highways.

(4) That reforestation and preservation of vegetative cover be encouraged as much as possible toward enhancing state visual quality. As set forth by the Land Policy Council under authority of the Land Policy Act (G.S. 113A-50).

Unique Cultural and Natural Resources

It is State policy:

(1) To promote and encourage throughout the coastal area knowledge and appreciation of North Carolina history and heritage by providing assistance for identifying places of historical significance and, where feasible, acquiring such properties. As set for and implemented under authority of G.S. 121.9, Administration of Historic Properties.

(2) To foster the preservation of coastal complex natural areas, unique coastal geologic formations, and coastal areas that sustain remnant species by receiving and studying recommended acreas that may fall into those categories, designating as AECs areas as are deemed to qualify, and establishing a management program for the preservation of those areas. As set forth in the "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

Beach Access

It is State policy:

(1) That in the 75 foot estuarine shoreline AEC high priority of land use allocation shall be given water access proposals, provided that public resources will not be detrimentally affected. As

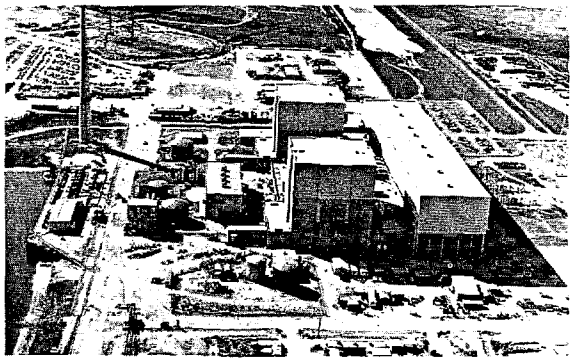
set forth in CRC's "State Guidelines for Areas of Environmental Concern" and implemented by authority of the CAMA.

(2) That in the ocean hazard area (ocean beaches, frontal dunes, and inlet lands), structural access ways to the beach may be permitted on or seaward of the frontal dunes, provided that their specific location and design are demonstrated to be the most suitable alternatives and will not damage the dunes. As set forth in CRC's "State Guidelines for Areas of Environmental Concern" and implemented by the authority of the CAMA.

Energy Policies

Energy Generating Facilities

It is State policy:



(1) To provide fair regulation of public utilities (including energy generating facilities) in the interest of the public, to promote adequate, economical and efficient utility services to all of the citizens and residents of the State, to foster a statewide planning and coordinating program to promote continued growth of economical public utility services and to cooperate with other states and with the Federal government in promoting and coordinating interstate and intrastate public utility services. As set forth and implemented under the authority of the Public Utilities Act (G.S. 62.2).

(2) That construction of a facility for generating electricity to be used for furnishing public utility service shall not begin until a determination has been made that public convenience and necessity requires, or will require, such a facility. As set forth and implemented under the authority of the Public Utilities Act (G.S. 62-110.1).

(3) No energy generating facility will be permitted until it receives appropriate permits from DNRCD

and from any other state agency with applicable permitting authority. Necessary permits will in most instances include dredge and fill permits, Air Quality permits, NPDES permits, and sediment and erosion control permits. Criteria and standards which guide the issuance of these permits are included in Appendix C.

Petroleum Refineries

It is State policy:

(1) To promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products. As set forth and implemented under authority of the Oil Pollution Control Act (G.S. 143-215.75 et seq).

(2) That local governments shall be encouraged to use land classification plans to guide the location of oil refineries. As set forth by the Land Policy Council under authority of the Land Policy Act (G.S. 113A-150).

(3) That no facility for refining oil shall be constructed without a permit from the Secretary of Natural Resources and Community Development. As set forth and implemented under authority of the Oil Pollution Control Act of 1973 (G.S. 143-215.99).

(4) That the DNRCD will conduct an evaluation in conjunction with other agencies having environmental responsibilities of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant (including petroleum refineries) locating in the coastal zone of North Carolina. As set forth and implemented under authority of G.S. 113-15.2, Investigation of Impact of Proposed New and Expanding Industry.

Outer Continental Shelf

It is State policy:

(1) To support an approach to off-shore oil and gas exploration which will provide an adequate supply of energy while protecting the public environmental, social and economic interests in our coastal and off-shore areas. As set forth by the Secretary of Administration in a special letter

concerning the possible impacts associated with OCS lease sale #43 in April, 1977.

(2) That the State will take an active role in the OCS decision process in the review and comment on all OCS lease stipulations and operating orders prior to their approval. As set forth by the Secretary of Administration in a special letter concerning the possible impacts associated with OCS lease sale #43 in April, 1977.

(3) 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)

(4) That the DNRCD must be contacted and a permit issued before any oil or gas well drilling may proceed. Each abandoned well and dry hole must be plugged according to DNRCD rules. Allowing a gas or oil well to go wild or out of control is prohibited. As set forth and implemented under authority of the Oil and Gas Conservation Act, G.S. 113-381, et seq. This authority extends only to the three mile state jurisdiction.

(5) That discharges of oil upon any waters, tidal flats, beaches, or lands, or into any sewer, surface water drain, or other waters that drain into state waters is prohibited. As set forth and implemented under authority of the Oil Pollution Control Act, G.S. 143-215.75, et seq.

Environmental Policies

Water and Air

It is State policy:

(1) To provide for the conservation of its water and air resources. As set forth in G.S. 143-211.

(2) To preserve and develop these resources in the best interest of all citizens. As set forth in G.S. 143-211.

(3) To prohibit, abate or control air pollution commensurate with established air quality standards. As set forth and implemented in the Air Quality Statutes (G.S. 143-215.07(a)(5)).

(4) To manage coastal water bodies according to their best usage, and to regulate discharge into these waters so that they do not exceed assigned water

quality standards. As set forth and implemented under authority of the Water Quality Control Statutes (G.S. 143-214.1 and G.S. 143-215.1).

Water Supplies and Waste Disposal

It is State policy:

(1) 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 for conservation and maintenance of conditions which are conductive to the development and use of water resources. As set forth and implemented under the authority of the Water Use Act (G.S. 143-215.12).

(2) To administer a complete program of pollution abatement and control which is coordinated with other jurisdictions. As set forth in the Water Quality Standards (G.S. 143-214.1) and implemented under authority of G.S. 143-215.1.

(3) To encourage the planning and development of regional water supplies in order to provide adequate supplies of high quality water to North Carolina citizens; and furthermore to provide a framework and financial assistance for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions to make possible the most efficient use of water resources and economics of scale for construction, operation and maintenance. As set forth and implemented under the Regional Water Supply Planning Act G.S. (162A-20 et seq.)

(4) That every person or unit of local government supplying water to the public for drinking and household purposes shall be subject to rules and regulations concerning the location, construction and operation of a water supply system. As set forth and implemented under the authority of the Water and Sewer Sanitation Act (G.S. 130-157-161.1).

(5) To require that each proposed public water supply system be designed to provide an adequate, reliable and safe supply of water to all areas that it is designed to serve. Each system must also be designed to permit interconnection, at an appropriate time, with an expanding municipal, county, or regional system. As set forth and implemented under the authority of the Sewer and Sanitation Act (G.S. 130-161.1).

(6) To require that the location, construction, repair, and abandonment of wells, and the installation of pumps and pumping equipment be regulated as necessary to protect the public welfare, safety, health and ground-water resources. As set forth and implemented under the authority of the Well Construction Act (G.S. 87-84).

(7) To encourage planning and development of regional sewage disposal systems in order to promote efficient disposal of sewage through comprehensive planning of regional sewage disposal systems and orderly coordination of local actions relating to sewage disposal. The State should provide financial assistance to local governments and regional authorities to encourage such planning. As set forth and implemented under the authority of the Regional Sewage Disposal Planning Act (G.S. 162A-26 et seq).

(8) To make ground absorption sewage disposal systems ecologically safe and to protect the public health by prohibiting installation of such systems in a faulty or improper manner or in areas where they may malfunction and there, endanger the public health because of unsuitable soil and population density. To require that such systems be set back at least 100 feet from shellfish waters and 50 feet from other coastal waters. As set forth and implemented under the authority of the Ground Absorption Sewage Disposal System Act (G.S. 130-166.23 and G.S. 130-60).

(9) To allow septic tanks to be used for projects adjacent to coastal wetlands and estuarine waters only where the soil will support or absorb this method of sewage disposal. As set forth in the "State Handbook for Dredge and Fill Projects" and implemented under the authority of the State Dredge and Fill Law (G.S. 113-229, 230).

(10) To prevent nuisances and promote and preserve an environment that is healthy, requiring maintenance of safe and sanitary conditions in and around solid waste disposal sites. As set forth and implemented under the authority of the Solid Waste Disposal Standards (G.S. 130-166.17).

Development in Coastal Hazard Areas

It is State policy:

(1) That hazard areas not be used in ways that cause unreasonable risk to life or property. As set

forth by the Land Policy Council under authority of the Land Policy Act (G.S. 113A-150).

(2) To help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, by assisting local governments in designating floodways in which artificial obstructions may be places only according to strict regulations. As set forth and implemented under the authority of State Floodway Regulation (G.S. 143-215.51).

(3) To encourage the establishment of parks and other open spaces in flood prone areas. As set forth in the North Carolina Water Resources Framework and implemented under authority of G.S. 113-34 Acquisition and Control of State Forests and Parks.

(4) To adopt erosion and sedimentation standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. As set forth and implemented under the authority of the Sedimentation Pollution Control Act (G.S. 113A-50).

(5) To control the location and design of structure and to prevent damage to natural protective features in ocean hazard areas (which include beaches, frontal dunes, inlet lands) in order to reduce the loss of life and property. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under the authority of the CAMA.

(6) To ensure development along estuarine shorelines is compatible with both the dynamic nature of that shoreline and the natural values of the estuarine system itself. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

Drainage

It is State policy:

(1) To permit development of this State to continue with the least detrimental effects from pollution by sedimentation. As set forth and implemented under authority of the Sedimentation Pollution Control Act (G.S. 113A-50).

(2) To prohibit feed lot runoff into the estuarine system which would cause the estuarine waters and

other coastal waters to exceed the applicable quality standards. As set forth in Environmental Management Regulations, North Carolina Administrative Code 2H.0122 and .0123, and implemented under authority of G.S. 143-213(24), G.S. 143-215.1, and 143-215.3(a)(1).

(3) That construction of ditches in coastal wetlands for the purpose of draining low lands will be allowed only where there are no significant adverse effects on the use of the water by the public, the property of riparian owners, public and private waters (among the effects on public and private waters to be considered is degradation below standards for point sources under the FWPCA), wildlife or fisheries or the public health, safety or welfare. As set forth and implemented under authority of the State Dredge and Fill Law (G.S. 113-229).

(4) That where drainage ditches are permitted in wetlands, erosion control methods, such as grassing, must be employed on fresh dikes and on freshly cleared (or spoiled upon) upland areas. As set forth in the State Dredge and Fill Guidelines and implemented under authority of the State Dredge and Fill Law (G.S. 113-229).

Dredging and Spoil Disposal

It is State policy:

(1) That excavated materials should not create stagnant water conditions, deposit sumps, or lethal fish entrapments.

(2) That excavation will be regulated to prohibit activities in primary nursery areas during known or estimated periods of fish migration and spawning (period of maximum biological activity).

(3) That confinement facilities for depositing spoil materials be constructed on high ground areas above the mean high water mark.

Policies (1), (2), and (3) are set forth in Subchapter 3d, Section .0109(a) of the North Carolina Administrative Procedures, the Dredge and Fill regulations, and implemented under authority of the Dredge and Fill Act (G.S. 113A-229).

(4) That to minimize the movement back into the affected water of all materials excavated, both in water and on high ground. If there is effluent,

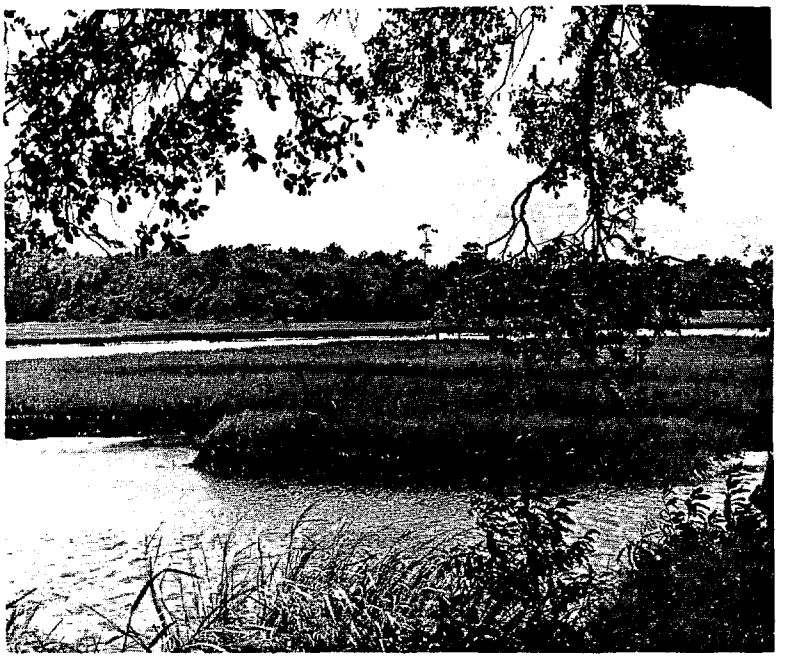
the location of outlets and the quality of the effluent from the spoil retention area should meet water quality standards adopted by the State and Federal government under the FWPCA and should preserve the adjacent aquatic ecosystems. As set forth in the Sedimentation Pollution Control Act (G.S. 113A-50); Title 15, Subchapter 2H, Section .0100 of the North Carolina Administrative Code, Waste Water Discharges to the Surface Waters, and implemented under authority of The Dredge and Fill Act (G.S. 113-229).

(5) That in-bay, open water, and deep water disposal will be considered only as a last resort and after all upland alternatives have been explored and exhausted. Such disposal will be allowed only for projects that promote a public interest and will be made only at State and Federally designated sites or sites specifically selected and agreed to by all concerned agencies. As set forth in Subchapter 6-A, Section .0500, "Easements to Fill"; and Subchapter 3d, Section .0109(b), The Dredge and Fill regulations, and implemented under authority of the Dredge and Fill Act (G.S. 113-229).

Wetlands Preservation

It is State policy:

(1) That any development in coastal wetlands will not diminish the natural or cultural value of the area through irreversible actions. As set forth by the Land Policy Council under authority of the Land Policy Act (G.S. 113A-150).



(2) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system so as to safeguard and perpetuate their natural productivitiy and their biological, economic, and aesthetic values. As set forth in the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(3) That unless a development will provide an overriding public benefit, a permit to dredge-and-fill in marshlands, estuarine waters or tidelands will be denied if there would be significant adverse effect: on the use of water by the public; on the value and enjoyment of property of any riparian owners; on the public health, safety, and welfare; on the conservation of public and private water supplies; on wildlife or freshwater, estuarine, or marine fisheries. As set forth in the State "Handbook on Dredge and Fill Projects"

and implemented under the State Dredge and Fill Law (G.S. 113-229).

(4) That the construction of drainage canals or ditches solely for the purpose of draining coastal marshlands will not be allowed. However, construction of drainage channels or ditches as the least damaging alternative will be allowed when it is shown that insect vector control is required as a public health necessity or other public health purposes, or where the control of urban runoff is a part of a comprehensive flood plain zoning plan. As set forth in the State "Handbook on Dredge and Fill Projects" and implemented under authority of the State Dredge and Fill Law (G.S. 113-229).

(5) To adopt regulations restricting or prohibiting the dredging, filling, or otherwise altering of coastal wetlands and contiguous areas for the purpose of promoting public safety, health, and welfare, and protecting property, wildlife, and marine fisheries. As set forth and implemented under the authority of the Wetland Protection Order (G.S. 113-230).

Protection of Unique Coastal Environments

It is State policy:

(1) That any development in a recognized fragile area will not diminish the natural or cultural value of the area through irreversible actions. As set forth by the Land Policy Council under authority of the Land Policy Act (G.S. 113A-150).

(2) To foster the preservation of coastal complex natural areas, unique coastal, geologic formations, and coastal areas that sustain remnant species. This will be accomplished by receiving and studying recommended areas that may fall in these categories, designating as AECs those areas that are found to qualify, and establishing a management program for the preservation of those areas which are designated. Furthermore, where regulation of any of the above types of areas is found to constitute a taking of the affected land, the State may purchase that land. As set forth by the CRC's "State Guidelines for Areas of Environmental Concern" and implemented under authority of the CAMA.

(3) That it is necessary to balance 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 protecting their water quality and adjacent lands by retaining these natural and scenic conditions. As set forth and implemented under the authority of the Natural and Scenic Rivers Act (G.S. 113A-31).

Institutional Arrangements Policies

Public Participation

It is State policy:

(1) That involvement of a large segment of the effected citizens is an essential ingredient of the CAMA land use plans developed by coastal municipalities and counties. Therefore, before approval of any CAMA land use plan the Coastal Resources Commission will require that the plan set forth the methods used to secure public participation and the degree of that participation.

(2) That before any coastal municipality or county adopts or amends its CAMA land use plan, a public hearing shall be held to give public and private parties an opportunity to present comments and recommendations.

(3) That every municipality and county that prepares a CAMA land use plan shall prepare a synopses of that plan for distribution of every household in each affected planning jurisdiction.

(4) That prior to permanently designating any area of environmental concern a public hearing will be held in each county in which lands to be affected are located at which public and private parties shall have the opportunity to present comments and views.

The above policies are set forth in the CRC's "State Guides for Local Planning" and implemented under authority of the CAMA.

State and Local Government Cooperation

It is State policy:

(1) To establish 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 standard-setting and review capacity, except where local governments do not choose to exercise their initiative. Enforcement shall be a concurrent State-local responsibility. As set forth and implemented under authority of the CAMA (G.S. 113A-101).

Federal Consistency and National Interest

It is State policy:

(1) To give meaningful consideration to balancing the national interests involved in planning and siting facilities with other national, state, and local interests related to coastal resource management and conservation except where certain national interests are paramount as in the case of the protection of air and water quality.

(2) To insure that Federal activities in the North Carolina coastal zone are to the maximum extent practicable consistent with the approved State Coastal Management Plan.

The above policies are set forth in the Federal Coastal Zone Management Act and will become State policy when this plan is signed by the Governor of North Carolina.

Uses of Regional Benefit

It is State policy:

(1) To insure that local regulations in the coasal zone do not unreasonably restrict or exclude projects or regional benefit. As set forth in the CRC's "Criteria for Local Implementation and Enforcement Plan", Subchapter 7E of the North Carolina Administrative Code, and implemented under authority of CAMA.

State Agency Consistency

It is State policy:

(1) That State guidelines developed by the Coastal Resources Commission for planning and development 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. State land policies governing the acquisition, use, and dis-

position of land by State departments and agencies shall take account of and be consistent with the State Guidelines, an the local land use plans that are consistent with those "Guidelines", insofar as lands within the coastal area are concerned. As set forth and implemented under authority of the CAMA (G.S. 113A-107(a)) and (G.S. 113A-108).

(2) All State agencies shall take account of and be consistent to the maximum extent possible with the coastal policies, guidelines and standards contained in the State guidelines, with the local land use plans developed under the mandate of The Coastal Area Management Act, and with the North Carolina Coastal Plan prepared under the Federal Coastal Zone Management Act of 1972 in all regulatory programs, use and disposition of state-owned lands, financial assistance for public facilities, and encouragement and location of major public and private growth-inducing facilities.

Permit Coordination

It is State policy:

(1) That after the CAMA permit system is put into operation, other regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Coastal Resources Commission. No such existing permit shall be issued, modified, renewed, or terminated except after consultation with the Commission. As set forth in and to be implemented under the authority of the CAMA (G.S. 113A-125(b)).

(2) That consideration should be given to combining three exclusively coastal permits and merging them with the CAMA permit. Two of these, the dredge and fill permit and coastal wetlands orders, are State administered. The third, sand dune protection permits, are administered by coastal counties. As set forth and implemented under authority of Executive Order #15.

(3) That a master application form for coastal permits 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.

(4) That the field offices of the Department of Natural Resources and Community Development will

be responsible for receiving permit applications and interviewing applicant. 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.

(5) That an inormational 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.

The above policies (2)-(5) are set forth in the CRC's "Report to the 1977 General Assembly on Developing a Better Coordinated and unified System of Environmental and Land Use Permits in the Coastal Area" and authorized by the CAMA (G.S. 113A-125(d))

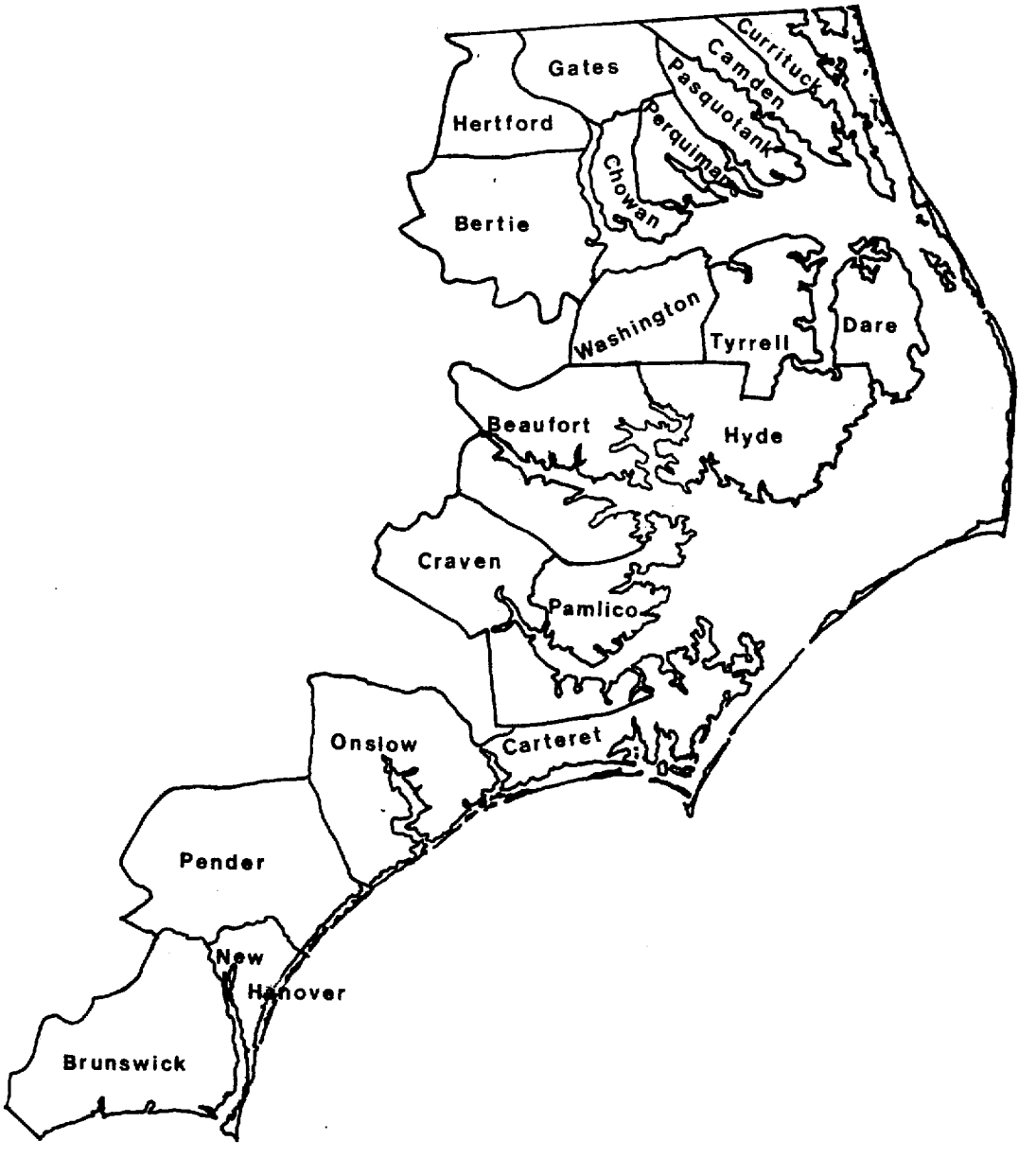


FIGURE 1. COASTAL ZONE

CHAPTER FOUR COASTAL ZONE BOUNDARIES

Direct and Significant Impact -- Definition of the Coastal Zone

The primary objective of North Carolina's coastal management efforts is to provide a system capable of insuring the orderly balanced use and preservation of its coastal resources for the people of North Carolina and for the nation. Achievement of this objective is possible only if the management of land and water uses having direct and significant impacts on important coastal resources takes place. Consequently, a first task in designing the North Carolina coastal management program was to define uses having a direct and significant impact on its coastal resources. These defined uses could then be used to establish the degree and breadth of control necessary for the North Carolina management program.

Determination of uses that are to be managed cannot in any practical sense simply be summed up by listing major uses having impacts on coastal resources. Rather, it was recognized by the North Carolina program that it was more proper to use two major criteria to determine the potential impact of any given activity: the location of the use in relation to coastal waters and the character of the use. That is, there are certain areas in the coastal zone in which almost any use has the potential to directly affect coastal waters while in other areas only large scale activities would significantly affect coastal waters. Thus, in planning an approach to the management of uses with significant impact on coastal resources, North Carolina realized that varying levels of control were desirable. Therefore a two-tier system was developed to manage desired levels of control.

Coastal Management Within Areas of Environmental Concern - the First Tier

The critical 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 has determined which types of areas should be presently designated as AECs and has established standards for development in those areas. All but a few exempted activities must receive a permit to develop in these areas, and must therefore comply with the appropriate standards. The AECs as designated include: 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. These areas and the standards for development within them are thoroughly described in Chapter Five of this plan as well as the State Guidelines (Appendix B) 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 coastal wetlands 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.

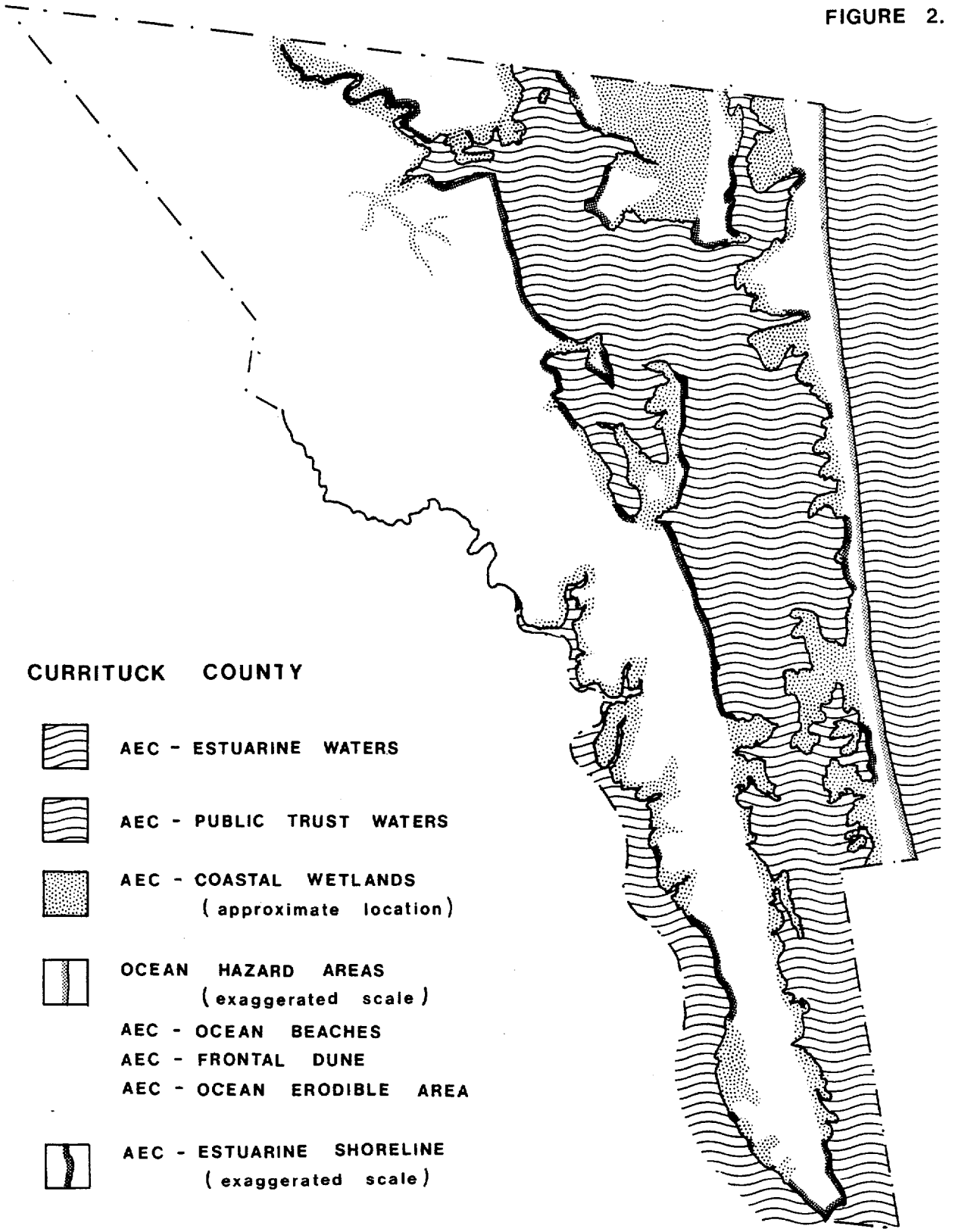
- The CRC is authorized by CAMA to consider designation of AECs from a list of categories that is considerably more inclusive than the areas they have chosen. Therefore, further designations can be made by the CRC if it concludes that regulation of the chosen AECs and existing regulation of development 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.

- 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 DNRCD, the lead agency for North Carolina's coastal management plan. This first tier is more specifically described and management techniques discussed in Chapter Five. Figure 2 illustrates the geographic extent of AECs in one county. AECs form a border around coastal waters.

Management of Areas Outside of AECs the Second Tier

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 of activities involved and the residuals generated; the tendency of the type of project to induce further development; and the scale of the development. The level of control is less intensive in this second tier and management is directed only to uses that have recognized significant impacts. This control is affectuated through existing regulatory programs and through less coercive management tools established specifically for coastal management. The authorities keyed upon to control major uses in the second tier are discussed in detail in Chapter Five.

FIGURE 2.



FIRST TIER AREAS OF ENVIRONMENTAL CONCERN

Boundaries

Section 305(b)(1) of the Federal Coastal Zone Management Act requires that a state's coastal zone management program identify "the boundaries 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.

Definition

As explained earlier in this Chapter, 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 Five) 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." The limits of CRC authority shall not extend beyond the current offshore State jurisdiction as defined by the Federal government. Former Governor James Holshouser, as charged by the CAMA, in Executive Order 5 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 (see Figure 1).

Although North Carolina's coastal area is delineated by political boundaries, environmental factors formed 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 sound. 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 defined 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;
> (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.

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.* The 20 counties 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 (G.S. 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."

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

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 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 th 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 responsiblity and the requirement that they be responsible for planning within their own limits of jurisdiction.

Interstate Legislation

South Carolina has recently adopted legislation comparable to North Carolina's Coastal Area Management Act. Virginia is to consider coastal management legislation in the near future.

South Carolina

The bill passed by the South Carolina legislature defines its management area 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.

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 the Southampton County line. This line joins North Carolina slightly west of our coastal area boundary. The boundaries defined thus far by the two states seem to be compatible.

Excluded Federal Lands

North Carolina must exclude from our coastal zone those "areas owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents." 15 CFR 923.33(a).

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 E as Excluded Federal lands.

This exclusion of Federal lands applies only to authorities granted to North Carolina under the Federal Coastal Zone Management Act of 1972 which became effective upon approval of North Carolina's Coastal Management Plan. It is not intended to exclude activities on federal lands from other existing or future state authorities or controls.

CHAPTER FIVE AUTHORITIES FOR COASTAL MANAGEMENT

Introduction - The Two-Tier Approach and the Major Provisions of CAMA

North Carolina has chosen a two-tiered approach to coastal management because of the need for two levels of management in this State's coastal zone. (See Chapter Four.)

The critical or vital areas in the North Carolina coastal zone are 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 to be the more thoroughly regulated area in North Carolina's coastal zone. The Coastal Resources Commission has designated AECs and has established standards for development in those areas. All but certain exempted activities must receive a CAMA permit to develop in these areas, and must therefore comply with the appropriate standards. The CRCs designated 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 the following section of this plan and will not be further discussed here.

To understand North Carolina's management system for the second tier of its coastal zone, it is helpful to review the definition of "direct and and significant impact" on coastal waters. The second part of North Carolina's definition of "direct and significant impact" 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; the residuals generated; the tendency of the type of project to induce further development; and the size of the development.

The following sections explain in more detail the authorities relied on to manage each tier and the manner in which these authorities will be administered and/or coordinated to implement the policies listed in Chapter Three of this plan.

The First Tier Management of 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. It is the purpose of this section to explain the functional role of AECs in our management system.

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 on coastal waters. Second, AECs are interpreted through the Federal Coastal Zone Management Act to be Areas of Particular Concern (APCs). The emphasis of this chapter is AECs as the first tier of the coastal zone while Chapter Six deals more thoroughly with APC.

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 coastal land and water resources. AECs form the first tier of North Carolina's 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 DNRCD in conjunction with local governments, ensures an intensity of management that is commensurate with the threat of degradation to coastal waters.

Advantages of AECs as a Resource Management Tool

A major advantage given to North Carolina's coastal management program through AECs is its control over impacting uses. 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. As a resource protection strategy, the AEC permit program is unique in North Carolina.

Another important advantage of the AEC program is its flexibility since the designated AECs may be 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. 113115(c)). The process required to implement such desired changes is discussed in Chapter Six.

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 AEC selection is given

here. The source of the standards that were utilized for selecting AECs was the North Carolina Coastal Area Management Act. Section 113A-113 provided that the Coastal Resources Commission may designate as AECs one or more of the following general categories:

(1) coastal wetlands;

(2) estuarine waters;

(3) 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:

(4) fragile or historic areas, and other 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 important historic, cultural, scientific or scenic values of natural systems;

(5) areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights or 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;

(6) 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;

(7) areas which are or may be impacted by key facilities. (See Appendix A for a more complete description of the legislative criteria for AEC selection.)

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

(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 their ratification of this Article and which to the ratification of this Article.

(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."

In 1974, the Coastal Resources Commission, on the basis of the criteria summarized above, began the process of AEC selection that culminated with the designation of AECs in June of 1977.

Alternatives Considered

With the legislation as a starting point, the Coastal Resources Commission and DNRCD 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 designation of the entire Outer Banks as an AEC, the inclusion of prime forestry land 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.

Relationships of AEC Standards to Priority of Uses

Section 305(b) of the FCZMA requires that the state management plan include "broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority" (Section 305(b)). The prioritization of uses within APCs has been a difficult concept to place within the context of North Carolina's coastal management program. However, a synthesis of the use standards developed for the AEC permit program, serve as a listing of priority of uses for each AEC. Appendix B includes the specific standards used in the permit program.

There may be what appears to be an inconsistency in some instances between the AEC standards set forth in Appendix B and

the listing of lowest priority uses in the following discussion. This impression may be received by those readers who believe that the uses described as "inappropriate" in the AEC standards should not be considered uses of lowest priority. However, North Carolina is not attempting to generally prohibit the uses listed as "inappropriate" but to identify uses that normally would not be able to satisfy the performance or "use standards" also described in Appendix B.

Areas of Environmental Concern - Descriptions, Significance and Priority of Uses

Thirteen AECs were selected by the Coastal Resources Commission from the alternatives provided in the Coastal Area Management Act. The descriptions and standards of use for each designated AEC are summarized in the following material. The thirteen AECs are grouped into four broad resource categories: Estuarine System, Ocean Hazard Areas, Public Water Supplies, and Fragile Coastal Natural Resource Areas.

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.

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 will have harmful effects on estuarine waters. As a unified system, changes in an AEC category may effect the function and use within another category. See Figure 4.

AECs Within the Estuarine System

The following defines each AEC within the estuarine system, describes its significance and expresses the priority of uses for each AEC.

AEC Coastal Wetlands

Description

Coastal Wetlands are considered to be those marshes that are subject to regular or occasional flooding by tides, including normal wind tides. Certain vegetative species are included in the technical definition as indicators of the frequency of flooding. (See Appendix B).

Significance

Coastal Wetlands provide plant materials (detritus) that form the basis for the complex food chain of the estuary. Marshes also supply good quality nesting, feeding and refuge areas for waterfowl and wildlife; serve as an erosion buffer for upland areas; act as an effective nutrient and sediment trap; and provide the coast with a unique and pleasant landscape.

Priority of Use

Highest priority of use shall be allocated to the conservation of existing coastal wetlands. Second priority shall be given to those types of development activities that require water access and cannot function elsewhere. Lowest priority will include restaurants 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.

AEC Estuarine Waters

Description

Estuarine Waters are all the waters of the bays, sounds, rivers and their tributaries seaward of a line that separates coastal from inland fishing waters.

Significance

Estuarine waters include the water areas of the coast where freshwater mixes with saltwater to form the productive natural environment of the estuary. Estuarine dependent species of fish and shellfish currently make up over 90 percent of the total value of North Carolina's commercial catch.

Estuarine waters are also the source of economic benefit to the coast resulting from waterfowl hunting, marinas, boatyards, marine repairs and supplies, fish processing operations, tourism, commercial navigation and recreation.

Priority of Use

Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Uses of second priority in estuarine waters shall include those types of development activities that require water access such as simple access channels; structures to prevent erosion; navigation channels; and boat docks, piers, wharfs, and mooring pilings. Lowest priority is allocated to those uses that would adversely impact important marine grass beds; spawning and nursery areas of valuable estuarine dependent species; important nesting, feeding, and wintering sites of waterfowl and wildlife.

AEC Public Trust Areas

Description

Public trust areas are all waters in the coastal zone in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. Public Trust Areas include, in addition to Estuarine Waters, certain water bodies within the coastal zone that are inland from Estuarine Waters.

Significance

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

Priority of Use

Highest priority will be allocated to uses that enhance the rights of the public within public trust areas. Second priority will be given to navigational channels, drainage ditches, the use of bulkheads to prevent erosion and the building of piers, wharfs, or marinas. Lowest priority is given to 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.

AEC Estuarine Shorelines

Description

Estuarine shorelines are the fastlands adjacent to estuarine waters extending landward 75 feet from mean high water or normal high water.

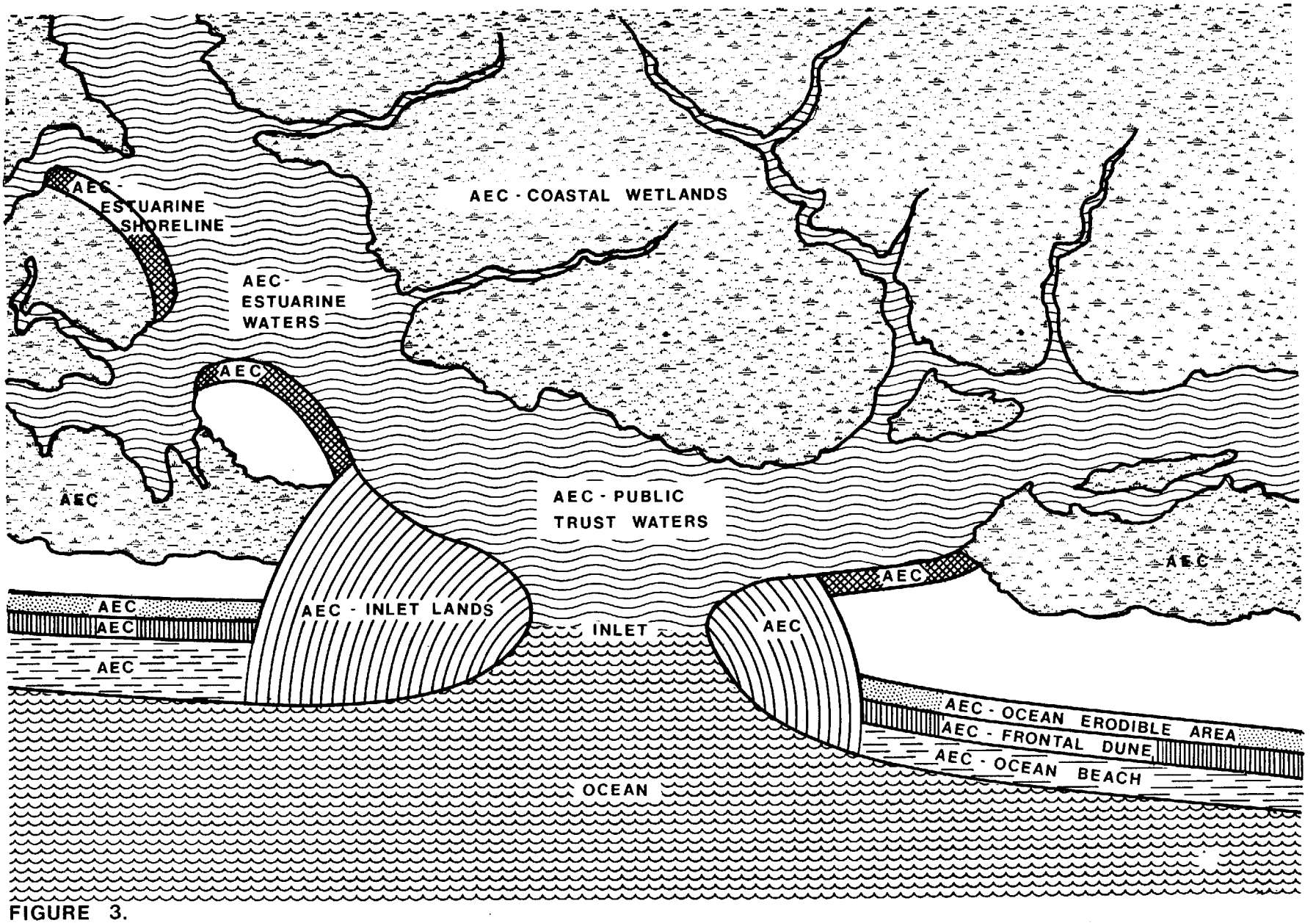
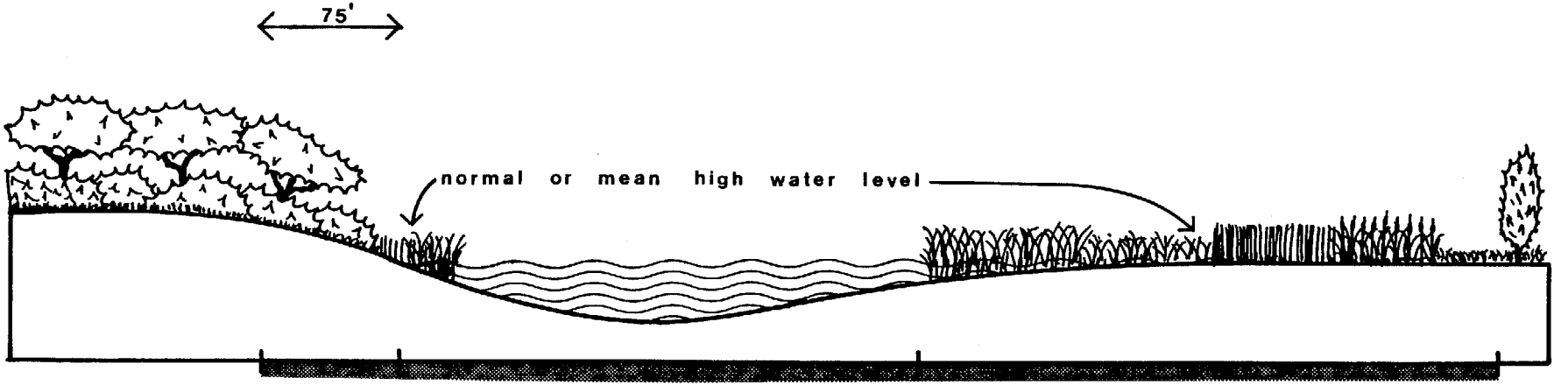

AEC - ESTUARINE SHORELINE
AEC - COASTAL WETLANDS
AEC - ESTUARINE WATERS
AEC
AEC
AEC - PUBLIC TRUST WATERS
AEC
AEC
AEC
AEC - INLET LANDS
INLET
AEC
AEC
AEC - OCEAN ERODIBLE AREA
AEC - FRONTAL DUNE
AEC - OCEAN BEACH
OCEAN

FIGURE 3.



AEC - ESTUARINE SHORELINES	AEC - ESTUARINE WATERS	AEC - COASTAL WETLANDS
75 feet landward of mean high water level	and AEC - PUBLIC TRUST WATERS	cord grass black needlerush glasswort salt grass sea lavender bulrush sawgrass cat-tails salt meadow grass salt reed grass

FIGURE 4. AREAS OF ENVIRONMENTAL CONCERN - ESTUARINE SYSTEM

Significance

Development within the estuarine shorelines of AECs influences the quality of the estuarine system and is subject to the damaging processes of shore front erosion and flooding.

Priority of Use

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

Second priority of land use shall be given to proposals which illustrate a sound understanding of the management principles of this dynamic and susceptible zone. Lowest priority shall be allocated to major public facilities that would promote growth in areas where a substantial possibility of excessive public expenditures for maintaining the use of the facility may result or the facility would result in a loss of significant private resources. Proposed development that may harm estuarine resources or cause damage to riparian properties will also receive lowest priority. See Figure 4.

Ocean Hazard Areas

The next 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.

The following defines each AEC within the ocean hazard area, describes briefly each's significance and outlines the respective priority of uses. Appendix B describes in more detail the standards for each AEC.

AEC Ocean Beaches

Description

Ocean Beaches occur along the Outer Banks. They extend from the Atlantic Ocean landward to a point where either the growth of vegetation or a distinct change in land forms occur. See Figure 5.

Significance

Ocean Beaches in North Carolina represent a dynamic zone of unconsolidated sand that absorbs a great amount of wave energy. Ocean development within this shifting zone may result in a loss of property and possible loss of life. Ocean Beaches are also important recreational areas that attract tourists nationwide.

Priority of Use

Highest priority shall be allocated to recreational uses that maintain the high quality of the beach while providing access to public beaches. Lowest priority is given to land uses involving the construction of permanent or substantial structures.

AEC Frontal Dunes

Description

Frontal Dunes are mounds of sand located directly landward of the coastal beaches. The AEC extends from the Ocean Beach to the lowest elevation in the depression immediately behind the first dune ridge. See Figure 6.

Significance

Frontal dunes serve a very important function as a protective barrier to development from storm tides. Development with inadequate design may alter the protective character of the dunes and consequently, subject life and property to a substantial risk.

Priority of Use

Highest priority shall be allocated to the preservation of frontal dunes. Lowest priority will be given to development that would involve the removal or relocation of frontal dune sand or vegetation.

AEC Inlet Lands

Description

Inlet lands are lands adjacent to inlets having demonstrated a tendency or a probability of migrating along the Outer Banks. The AEC is defined using the past history of the inlet to predict possible future movements of the inlet. As seen in the illustration, Figure 7, the AEC - Inlet Lands includes those lands that have either eroded within the past 25 years or that are predicted to erode in the future. Predictions were calculated through the use of demonstrated erosion rates. (See Appendix B.)

Significance

The location of an inlet is often a temporary one, such channels often are subject to extensive migration. Coastal inlet lands are therefore, extremely dynamic land areas that are highly susceptible to becoming completely displaced by water.

Priority of Use

Highest priority shall be given to uses that do not involve the construction of substantial structures. Lowest priority will be allocated to major public facilities.

AEC - Ocean Erodible Areas

Description

Ocean Erodible Areas are ocean shoreline areas that have been identified by the state geologist as hazardous to development because of excessive erosion. The Ocean Erodible Area overlays the Frontal Dune and is described as a distance landward from the toe of the Frontal Dune. The distances landward used in this description are based on studies of the probable erosion resulting from a storm surge of a 25 year frequency. See Figure 8.

Significance

Ocean Erodible Areas are extremely dynamic lands, highly susceptible to becoming displaced by periodic storm surges. Figure 9 attempts to demonstrate the effect of this storm surge.

Priority of Use

Highest priority shall be allocated to recreational and other non-structural uses. Lowest priority shall be given to structures for commercial or institutional purposes that encourage growth in these hazardous areas.

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, significance, and the priority of uses for each.

AEC Small Surface Water Supply Watersheds

Description

These are catchment areas which contain freshwater streams that are of the highest quality in the coastal zone. They require a minimum amount of treatment in order to serve as potable water. See Figure 10.

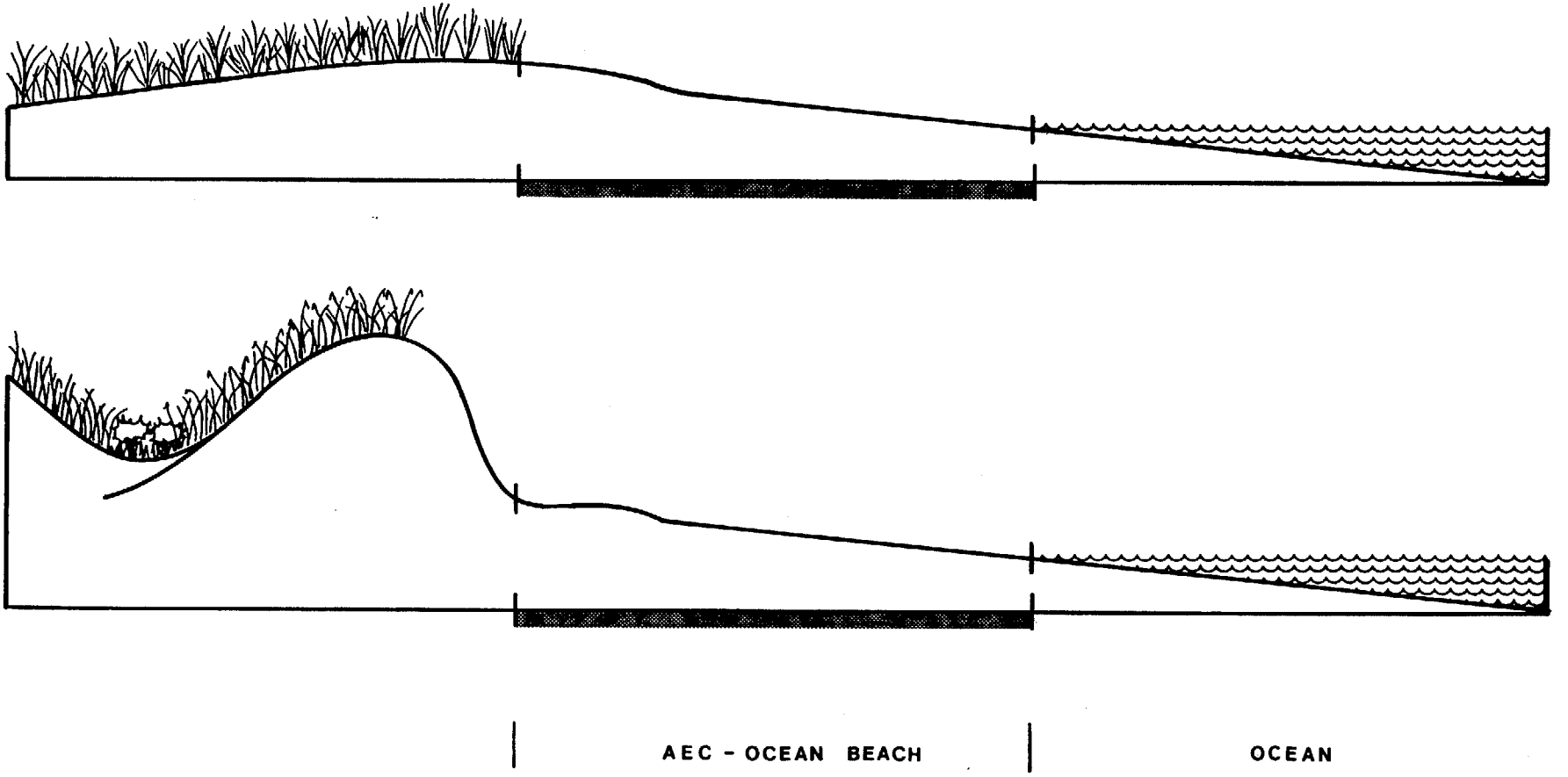


FIGURE 5. AREAS OF ENVIRONMENTAL CONCERN - OCEAN HAZARD AREAS

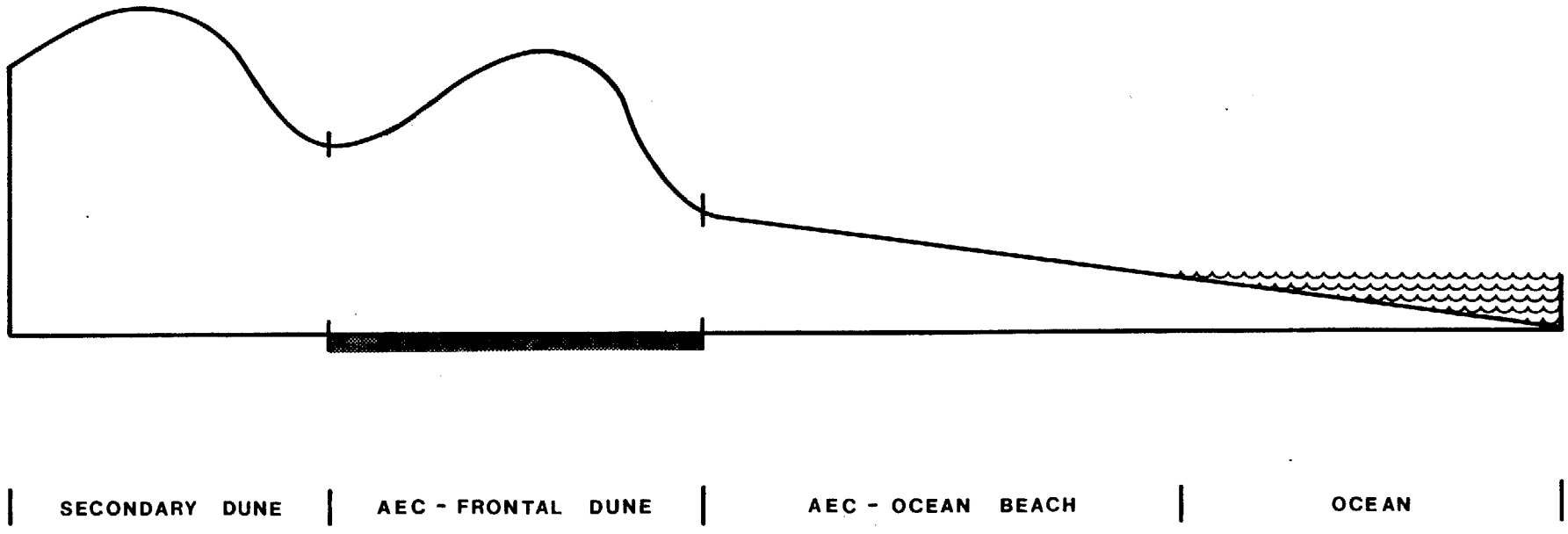
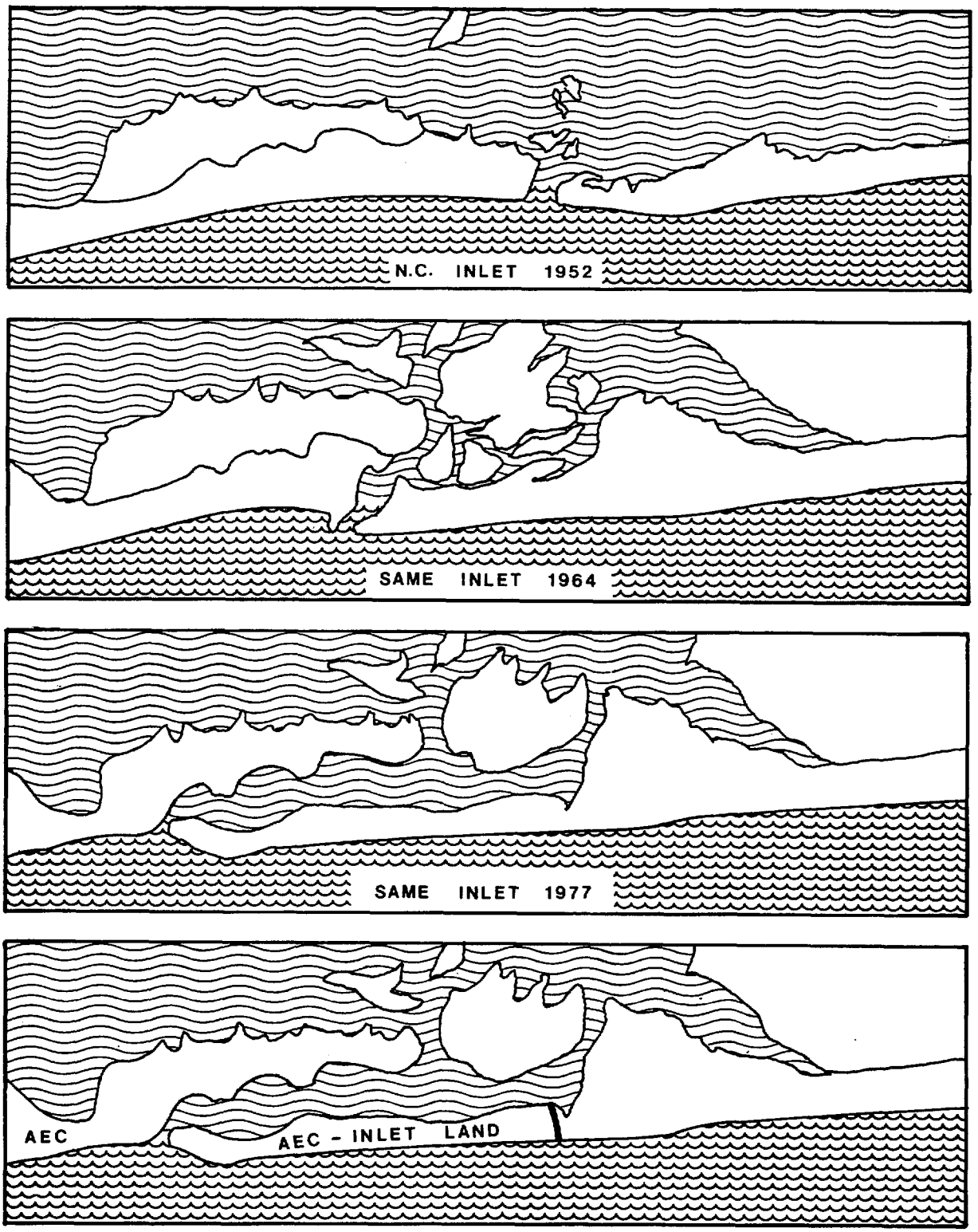


FIGURE 6. AREAS OF ENVIRONMENTAL CONCERN - OCEAN HAZARD AREAS



AEC - INLET LANDS - areas most likely to erode in the next 25 years, based on records of past inlet migration.

AREAS OF ENVIRONMENTAL CONCERN - OCEAN HAZARD AREAS
FIGURE 7.

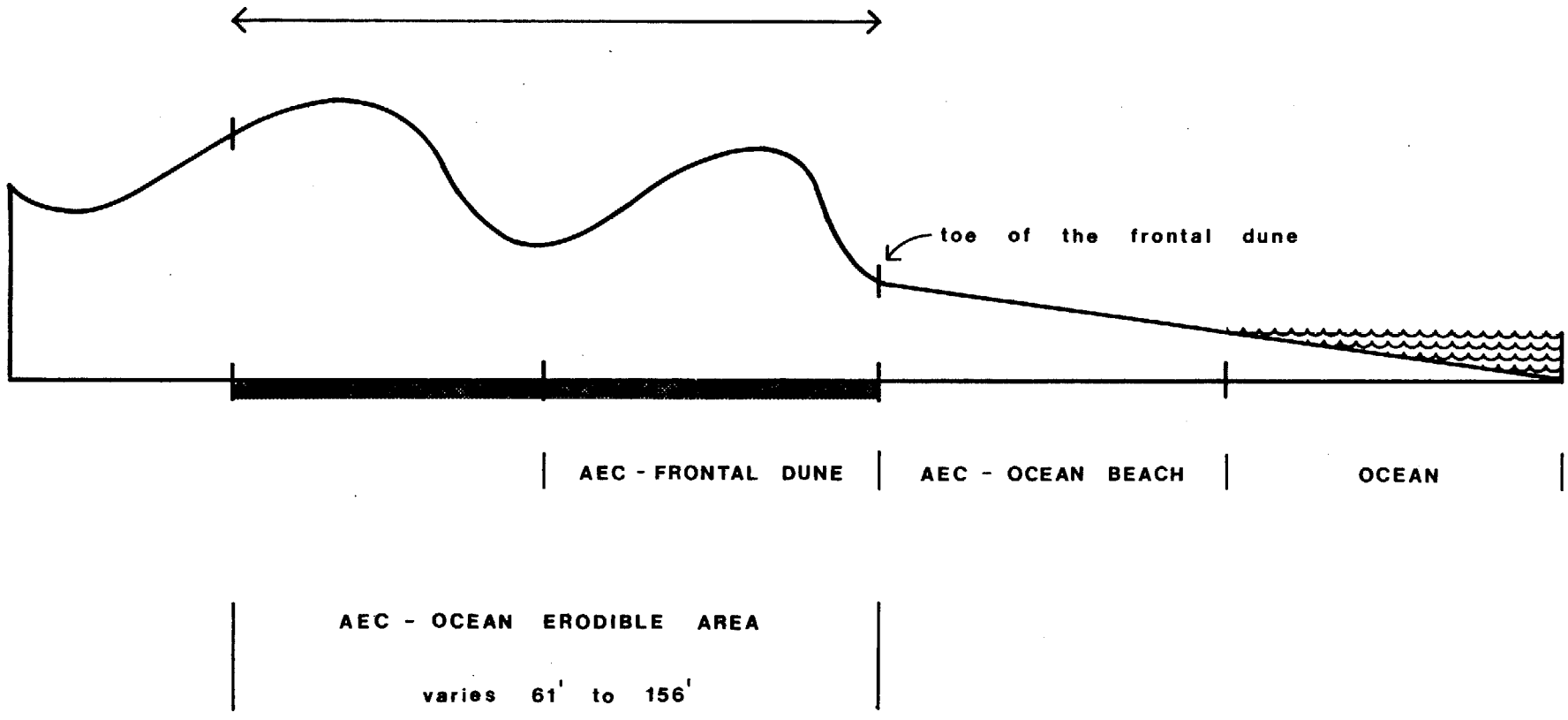


FIGURE 8. AREAS OF ENVIRONMENTAL CONCERN - OCEAN HAZARD AREAS

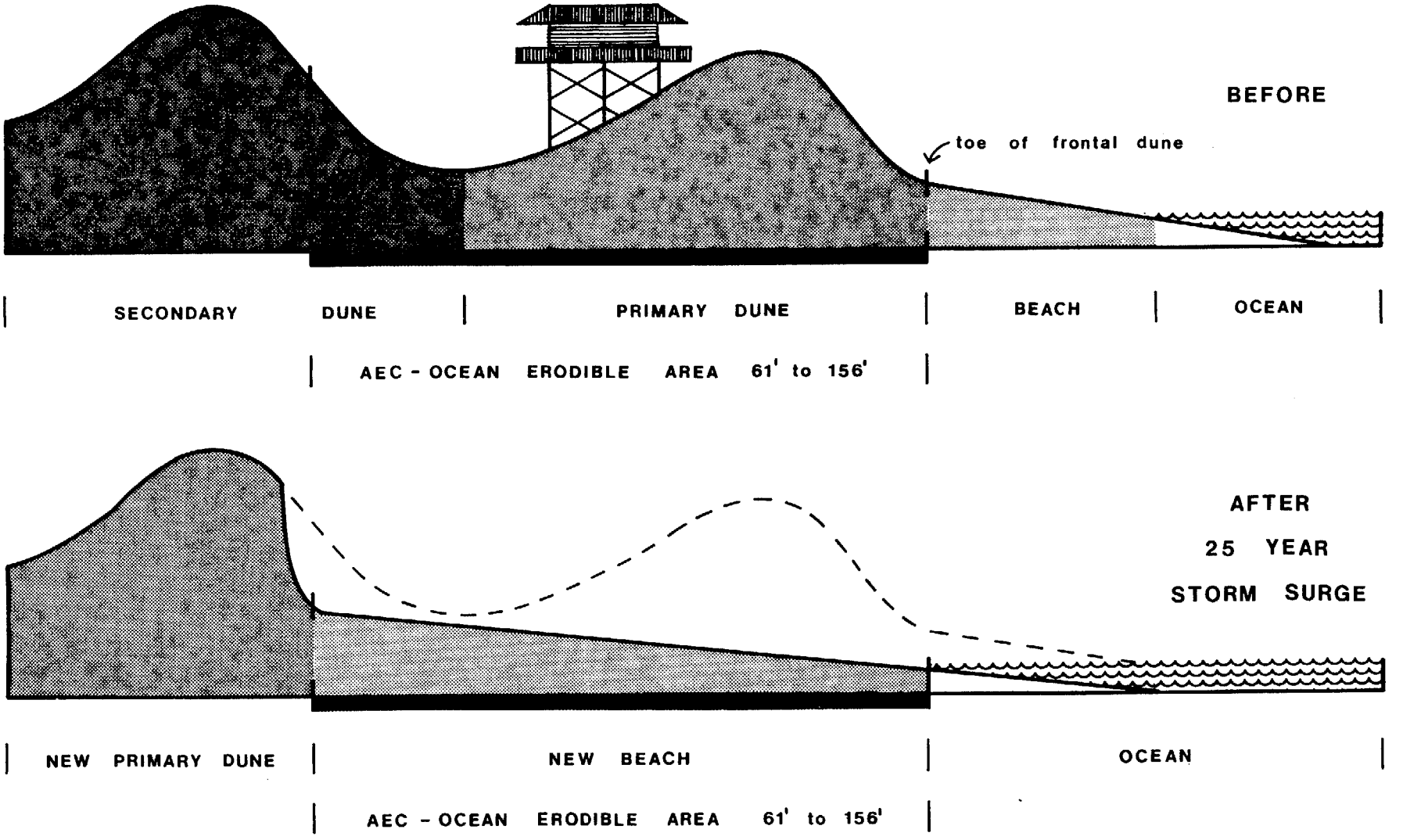


FIGURE 9. SIGNIFICANCE OF OCEAN ERODIBLE AREA

Significance

These critical water supplies, if degraded, could adversely effect public health or require substantial monetary outlays for alternative water source development.

Priority of Use

Highest priority shall be allocated to non-intensive recreational uses. Lowest priority will be given to major land disturbing activities or development that has a possibility of introducing pollutants into the surface waters.

AEC Public Water Supply Well Fields

Description

This AEC includes those well fields judged to be critical as a public water supply by the North Carolina Division of Health Services. See Figure 11.

Significance

The area, unless protected, could be subjected to development that could adversely effect water quality or quantity. This situation would result in a significant loss of public resources.

Priority of Use

Highest priority shall be allocated to non-intensive uses that offer no threat to water quality such as green spaces, parks, athletic fields and other non-intesive uses. Lowest priority is given to development that requires construction of permanent structures or other impervious surfaces.

Fragile Coastal Natural Resource Areas

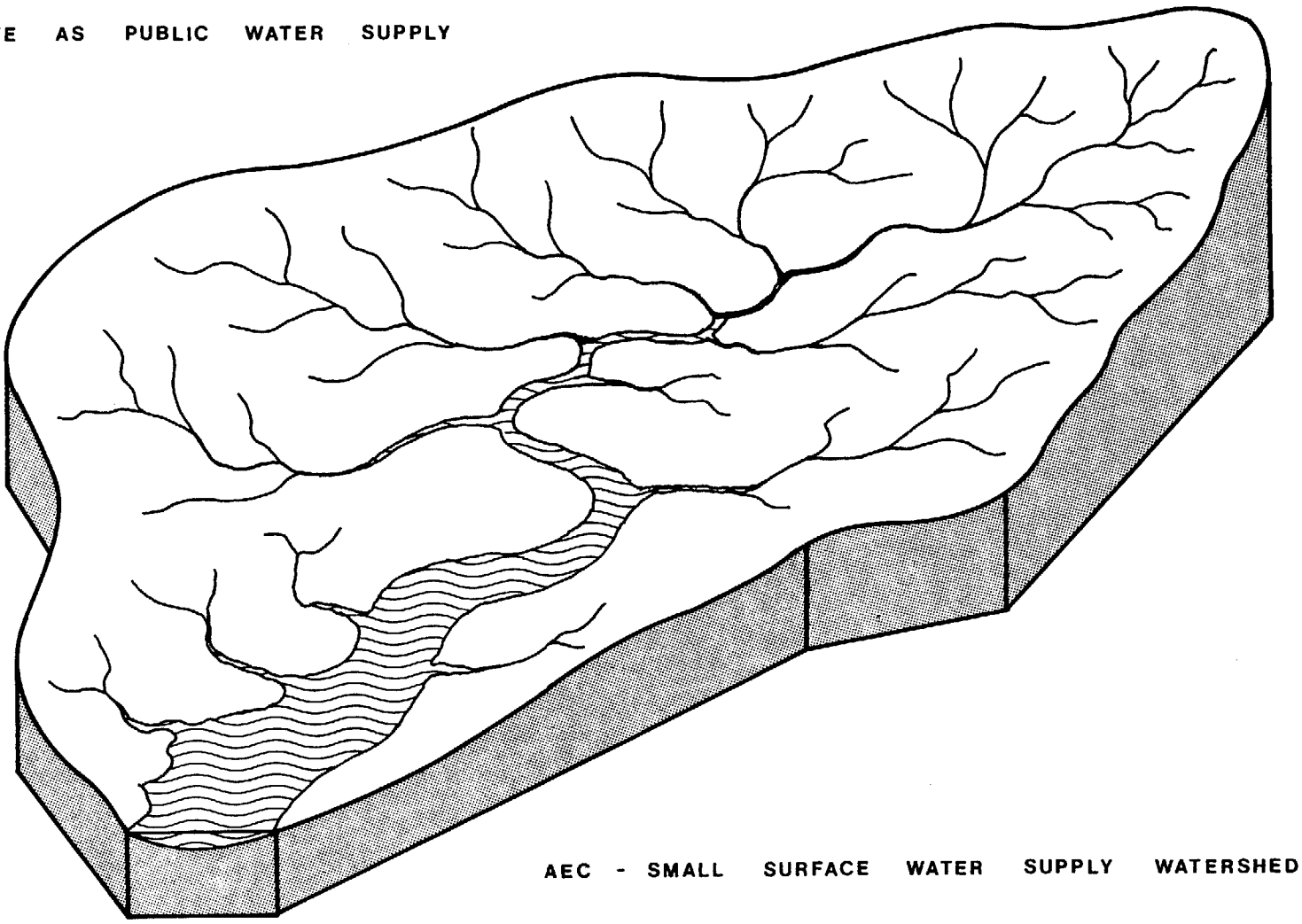
The fourth and final group of AECs is gathered under the heading of Fragile Coastal Natural Resource Areas and is defined as areas containing environmental or natural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems, scientific or educational values, or aesthetic qualities. Three AECs (Coastal Complex Natural Areas, Unique Coastal Geologic Formations and Coastal Areas That Sustain Remnant Species) are included under this major heading.

Nomination of Sites

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.

WATERSHEDS OF CLASS A-II STREAMS

WHICH SERVE AS PUBLIC WATER SUPPLY



AEC - SMALL SURFACE WATER SUPPLY WATERSHEDS

FIGURE 10. AREAS OF ENVIRONMENTAL CONCERN - PUBLIC WATER SUPPLIES

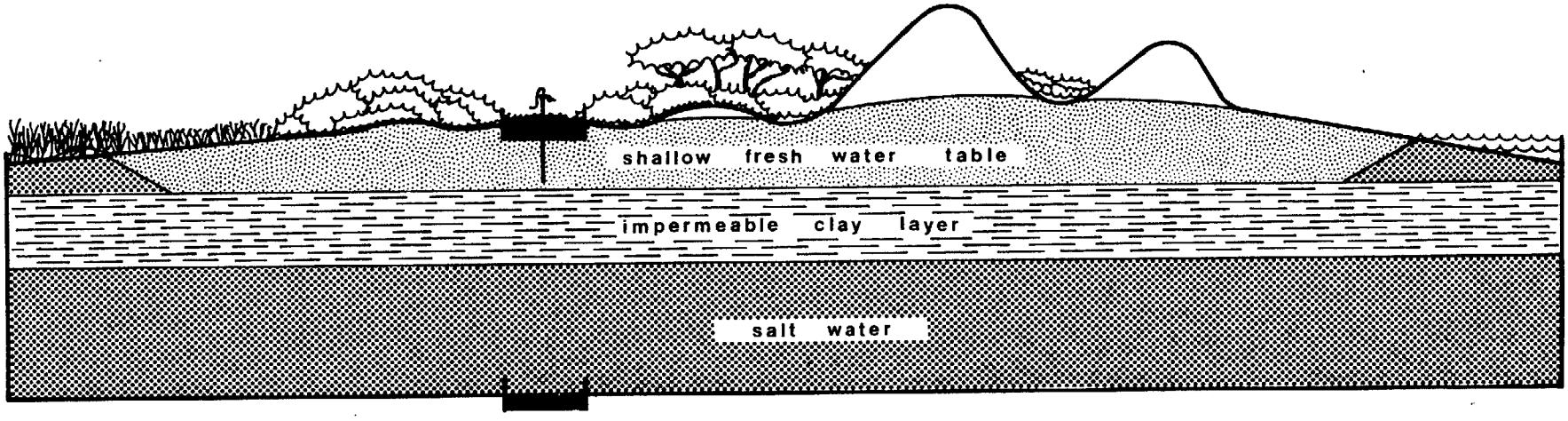


FIGURE 11. AREAS OF ENVIRONMENTAL CONCERN - PUBLIC WATER SUPPLIES

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.

Designation

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 description 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 statement 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 landowners 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.

The description, significance, and priority of uses follow 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.

AEC Coastal Areas that Sustain Remnant Species

Description

Coastal Areas that Sustain Remnant Species are those areas that support native plants or animals threatened and endangered within the coastal area.

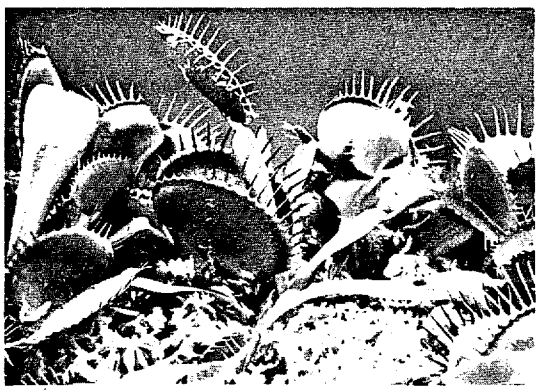
Significance

The continued survival of habitats that support threatened and endangered native plants and animals in the coastal area is vital to the preservation of our natural heritage and to the protection of natural diversity which is related to biological stability.

Bird rookery on coastal island.

Priority of Use

Highest priority shall be given to uses that protect and enhance the habitat conditions essential to threatened and endangered species. Lowest priority is allocated to uses that will involve the alteration of the natural conditions of the site.



Venus Fly Trap - N.C. is the northern most extent of its range.

Alligator - N.C. is the northern most extent of its range.

AEC Coastal Complex Natural Areas

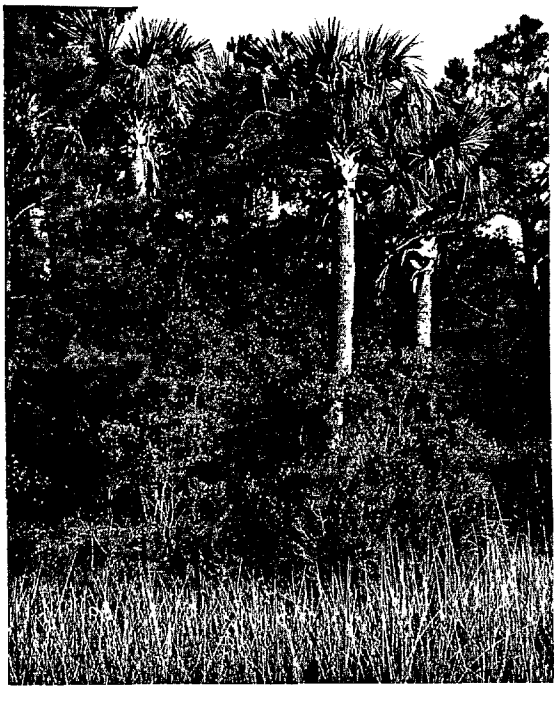
Description

Coastal Complex Natural Areas are defined as lands that support native plants and animal communities providing habitat conditions that have remained essentially unchanged by human activity.

River Swamp.

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.



Northern most extent of the Sabal Palmetto Tree in the East Coast Maritime Forest.

Tidal Marsh.

Priority of Use

Highest priority shall be given to uses that preserve the natural character of the AEC. Lowest priority is given to uses that involve the disturbance of natural vegetation or animal life or increase uncontrolled access to the site.

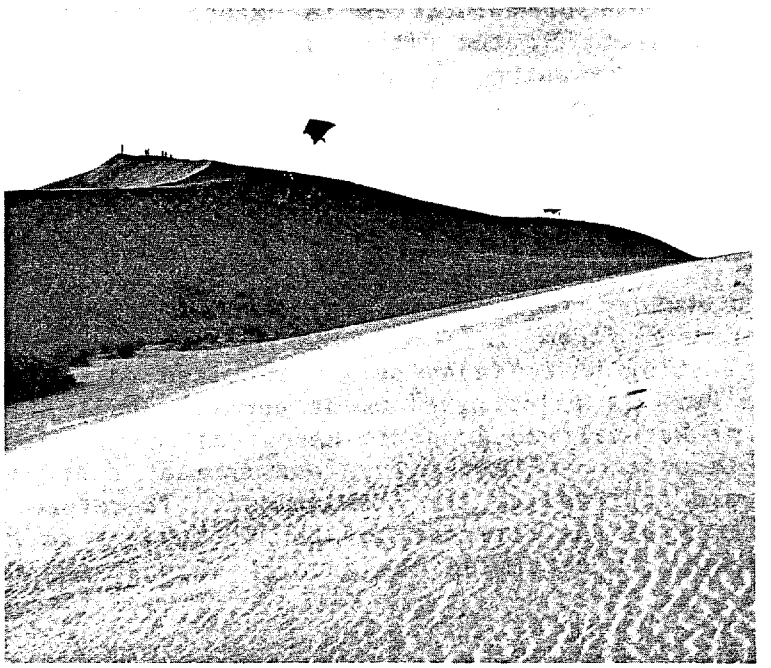
AEC Unique Coastal Geologic Formations

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.



Priority of Use

Highest priority is allocated to uses that enhance the educational and scientific importance of the site. Lowest priority is given to uses that adversely impact the site as a unique scientific or educational resource.

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.

The Major Development Permit Process

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 DNRCD, 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. Most projects in each AEC will be similar, making an elaborate project description unnecessary for a determination of whether a permit should be issued. In those few cases where the initial application does not supply sufficient information, more specific information can be requested or additional site visits can be arranged.

The Distribution

The CAMA permit application will be distributed from at least two locations: (1) at the DNRCD field offices located in Washington and Wilmington and (2) at the Division of Marine Fisheries Office located in Morehead City. 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.

Public Notice Requirements

S.S. 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.

Disposition of Major Development Applications

A decision on the CAMA permit will usually be made after the decision on any other state permits that are required for the project is made. The CAMA permit can be considered the comprehensive or "overview" state permit. Nevertheless, the decision must be made within 90 days, or the permit automatically issues. Thus the CAMA permit should be issued conditional upon the issuance of any permits, such as NPDES, which take more than 90 days for issuance.

At the time that the final decision is made on the CAMA permit, a determination will also be made, where appropriate, on the consistency of the project with the North Carolina Coastal Management Plan.

Further discussion of the disposition of major development permits and the relationship of the permit with other state permits can be found in Chapter Six.

Minor Development Permit Process

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 DNRCD with approval by the CRC.

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 Six). A more complete describtion of the LDO training process is included in Appendix D.

Disposition

It is desirable that other local permits be issued before the CAMA minor development permit is issued. The LDO will be trained to coordinate and/or 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 shorelines, public water supply areas, and public trust areas landward of the line separating estuarine and inland waters. Any other development, by virtue of being in water-covered areas and wetlands, will require a state permit, and thus is major development by definition. Consequently, the local permits that will generally be applicable in addition to the CAMA minor development permit are septic tank approvals, sand dune permits, erosion control 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 also administer sand dune permits in ocean hazard areas and erosion control plans in estuarine shorelines because most minor development will be development in these areas and the CAMA permit standards are very similar to sand dune protection and erosion control standards.

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

Monitoring and Conflict Resolution

Monitoring Local Minor Development Permit Programs

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 Resources 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.

Members of the CRC and the Coastal Resources Advisory Council, most of whom are coastal residents will be available to observe and hear comments from other local residents concerning administration of local permits. Coastal management staff members and field enforcement officers for the major development permits will spot check permit decisions by the LDO's. These monitoring activities will be facilitated by requiring quarterly reports from LDOs summarizing all permit dispositions made during the previous three months.

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 enforcement and implementation plan and specify 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.

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.

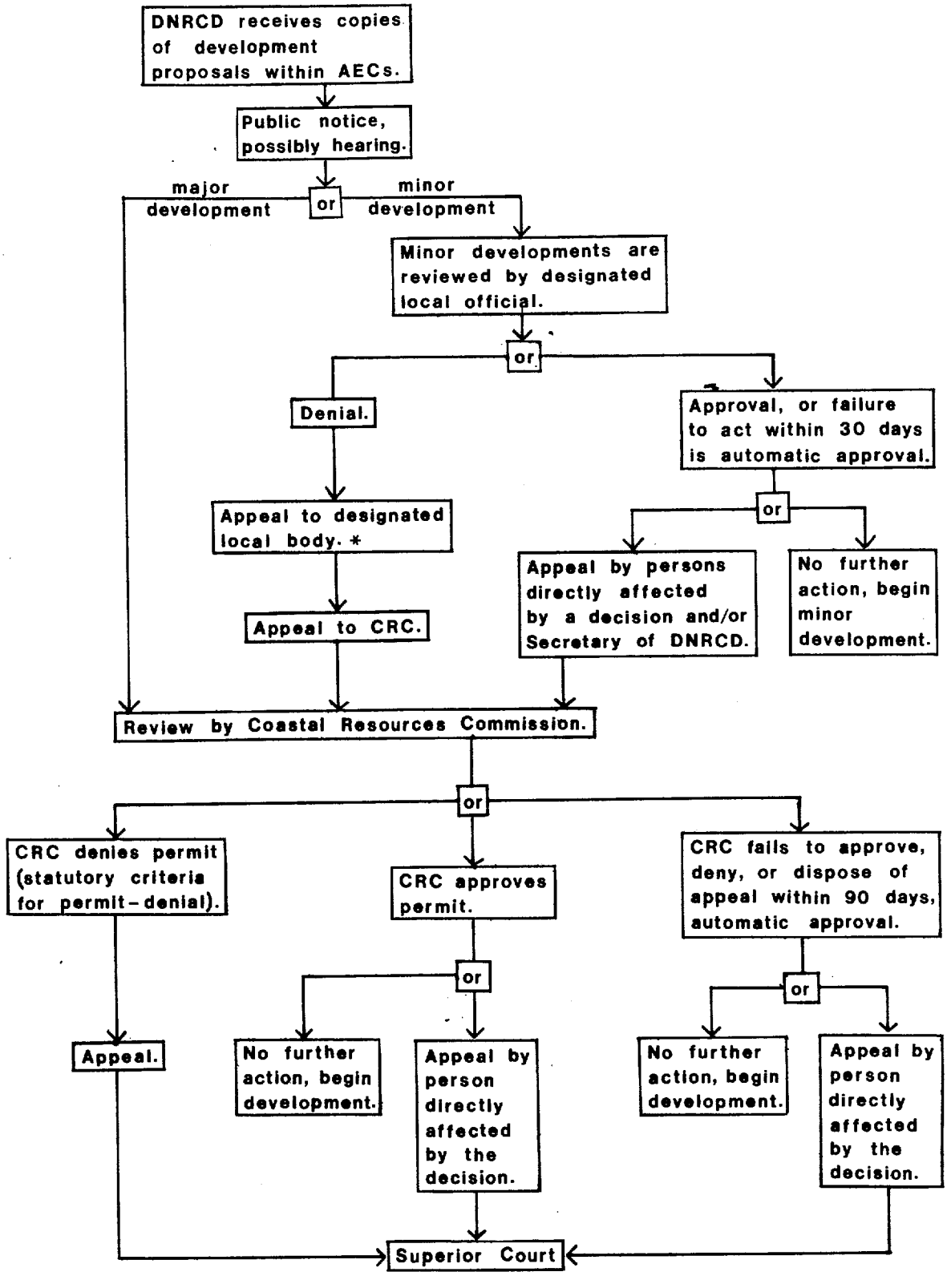
The Second Tier - Management Outside of AECs

North Carolina has employed two broad approaches in establishing a management system for the less vital second tier of its coastal zone. The first 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 effect 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 the combination of permits applicable to a particular critical use should be viewed as a set of "performance standards" for the critical use. It is important to note that North Carolina is relying primarily on this network of coordinated state regulations to directly manage the impacts of critical uses outside of AECs which are likely to affect coastal waters.

The second approach is the promulgation by the Commission of State Guidelines for planning in the coastal zone, 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 responsibility for fleshing out the framework and implementing the plan. Although this approach is considered to be an important aspect of North Carolina's Coastal Management program, it should be again emphasized that it is the first approach (i.e. direct State regulation) that is being relied upon at this time for enforceable state management of critical uses outside of AECs.

This is because the CRC does not have authority to require local governments to implement the local plans through zoning

CHART 4. PERMITS FOR DEVELOPMENTS WITHIN AECs



*Local appeal body is an option available to local government.

ordinances, subdivision regulations, or other types of land use ordinances. (The CRC is authorized to review such local ordinances and recommend changes in them for purposes of enforcing the plans. For more detail on this process, see the discussion of enforcement of local plans later in this Chapter.) However, the Governor's Executive Order (discussed in more detail later in this Chapter) requires that state agency policies and actions concerning coastal resources be consistent to the maximum extent possible with policies set forth in the "State Guidelines for Local Planning". Therefore, inasmuch as the policies set forth in "Guidelines for Local Planning" are a part of the state program and have been followed in the local land use plans, federal agencies should consider pertinent aspects of the applicable local plan before taking actions in the coastal zone. Thus through state and federal agency efforts to be consistent with local plans, those plans will be given a substantial degree of efficacy that will cause them to be taken seriously at all levels of government.

Direct State Regulation of Critical Activities

Description of Authorities

North Carolina has over the past several years developed an extensive array of statutory programs (authorities) which allow the State to influence the impacts of certain types of development considered potentially damaging to natural resources. This composite of authorities can be divided into two categories, which are differentiated based on the type of role that the particular authority allows the State to play. The two categories of authorities are: (1) authorities that allow regulation, primarily of private uses; and (2) 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, an authority that affects government or government financed activities, 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, that provides such direct and complete control of the lands involved.

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 func-

tions 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.

Authority affecting government or government financial activities 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 at 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. This can be termed the "breadth" of the 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 effectuate the policies and address the issues discussed in Chapter Three of this Plan. This can be termed the "scope" of the authorities. 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. This is called the "networking" of authorities.

The following discussion addresses the above three factors in the order mentioned. There is first a discussion of the breadth of the authorities. This discussion includes a listing of the uses (called critical or permissible uses) that are subject to management in the Second Tier of the coastal zone. Included in this section is a matrix showing which authorities are applicable to each of the critical uses. Second, concerning "scope" there is a listing of the authorities being relied upon to manage the critical uses and thereby implement the coastal policies. (A more thorough description of the "scope" of each authority, including identification of the administering agency, can be found in Appendix C.) This list includes all authorities that are applicable to each issue as identified and described in Chapter Three. These authorities are categorized there under the Departments responsible for their administration. Third, is the discussion of how the authorities are coordinated or "networked" in order to

insure that they work together toward the accomplishment of the goals and policies of the Coastal Management Plan.

Breadth of Authorities

Permissible Uses and Uses Subject to Management

Uses subject to the management program in the second tier are those uses and activities outside of AECs which are of statewide concern (included are a few uses which will be found within AECs, but which are regulated by an authority that adds 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.

The following is a list of critical uses. Many of these uses have been mentioned in the discussion of issues in Chapter Three of this Plan.

(1) Energy Development Activities
- Petroleum refineries
- Energy generating facilities
- Oil and gas wells
- Major petroleum storage sites

(2) Industrial Activities
- Industrial parks
- Shopping centers
- Agriculture
  - Livestock feedlot operations
  - Livestock grazing on outer banks
  - Pesticide application
  - Large drainage operations
- Manufacturing facilities
- Mining operation
- Commercial Fishing

(3) Residential and Related Activities
(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

(4) Transportation Activities
State Roads and Interstate
Bridges
Commercial Ports
Navigation Projects

(5) Tourist and Recreation Related Activities
(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

(6) Water Control Projects and Impoundments
Large dams
Major water diversions

The following matrix entitled "North Carolina Authorities to Critical Uses," 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. (Several of the authorities such as are applied to certain types of areas, rather than specific uses. Therefore, all uses in those certain areas are subject to regulation unless they are exempted by the authorizing legislation or agency regulations. The most important of these regulated areas are capacity use areas, floodways, sand dune protection areas, and wetlands subject to dredge and fill regulations.)

Scope of Authorities

The matrix is intended to facilitate identification of authorities that apply to critical activities in the coastal zone. The discussion of coastal issues and policies in Chapter Three

sets forth the major policies which guide implementation of these authorities and indicates to which important coastal issues these policies apply. Thus these policy statements in Chapter Three give an indication of the "scope" of these authorities. Appendix C elaborates on the "scope" of each authority by giving more information concerning the goals, objectives, and regulations promulgated by each. These authorities are listed under the state agency responsible for their administration, therefore describing how North Carolina's administrative agencies are organized to implement the Coastal Management plan. Additionally, Appendix C contains a description of the standards and criteria which will be used to make decisions under each authority appearing on the matrix.

Networking of Authorities

CRC Policy-Making Authority Concerning State Agencies' Acquisition, Use and Disposition of Coastal Lands

The CAMA explicitly requires that State policies concerning the acquisition, use and disposition of lands in the coastal area shall be consistent with State Guidelines. The CRC is authorized to develop and issue policies for coastal resource management in the State Guidelines, and therefore can make policies with which other State agencies must be consistent when acquiring, using and disposing of coastal lands. This statutory mandate is explained in detail by the following opinion from the North Carolina Attorney General's office:

> "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.

NORTH CAROLINA AUTHORITIES TO CRITICAL USES

ADMINISTERING AGENCY	Department of Natural Resources and Community Development																								Dept. of Administration			Dept. of Agriculture	Dept. of Commerce		Dept. of Cultural Resources	Dept. of Human Resources			Dept. of Transportation			
	DEM	DEM	DEM	DEM	DEM	DEM	DEM	DEM	DEM	DEM	DMF	DMF	DMF	DMF	DLR	DLR	DLR	DLR	DPR	DPR	DPR	DPR																DMF
STATUTORY AUTHORITY (G.S. CITATION)	143-215.1	143-215.11	143-215.39	143-215.51	143-215.75	143-215.105	87-87	162A-20	162A-26	143-355	113-229	113-230	113-201	113-205	143-215.23	74-48	113-381	113A-50	113-34 et. seq.	113A-30	113A-83	113-29 et. seq.		143B – 437	146-6 (c)	146-3 et. seq.	146-22.1	143-434	62-110	143-217	121-9	130-166.22	130-166.17	130.161.1	136-44.1	136-66.2	136-122	113-251
CRITICAL USES \ AUTHORITIES	Water Quality Control Statutes	Water Use Act	Federal Water Resources Development Act	Floodway Regulation	Oil Pollution Control Act	Air Quality Statutes	Well Construction Act	Regional Water Supply Planning Act	Regional Sewage Disposal Planning Act	Development & Improvement of Harbors	Dredge & Fill Act	Wetland Production Orders	Fisheries Statutes	Registration of Grants in Navigable Waters	Dam Construction Act	Mining Act	Oil & Gas Conservation Act	Sedimentation Pollution Control Act	Acquisition and Management of State Parks	Natural & Scenic Rivers Act	N.C. Trails System Act	Acquisition & Development of State Forests		Investigation of Impact of New & Expanded Industry	Easements To Fill	Easements, Leases, Sale of State Land	Acquisition of Land for Public Purposes	Pesticide Application	Public Utilities Act	State Ports Authority	Acquisition & Management of Historic Properties	Ground Absorption Sewage Disposal Act	Solid Waste Disposal Act	Sewer & Sanitation Act	Highway Safety Act	Streets & Highways in and Around Municipalities	Roadside Advertising	Atlantic States Marine Fisheries Compact
Petroleum Refineries	X			X	X	X					X	X					X	X						X	X													
Energy Generating Facilities	X			X		X					X	X					X	X						X	X				X									
Oil and Gas Wells	X			X	X	X	X				X	X					X	X							X	X												
Mining Operations	X	X		X		X	X				X	X				X								X	X	X												
Major Petroleum Storage Sites	X			X	X						X	X					X	X							X													
State Roads											X	X						X							X	X									X	X	X	
Bridges											X	X						X							X	X												
Commercial Ports	X		X		X	X				X	X	X						X						X	X	X				X								
Navigation Projects	X		X								X	X		X																								
Industrial Parks	X			X		X					X	X						X						X								X	X	X				
Shopping Centers	X			X							X	X						X						X								X	X	X				
Large Subdivisions	X			X		X					X	X						X														X	X	X				
High Rise Apts. or Hotels	X			X							X	X						X															X	X				
Manufacturing Facilities	X			X		X					X	X						X						X								X	X	X				
Livestock Feedlot Operations	X										X	X																										
Pesticide Use																												X										
Large Drainage Operations	X										X	X																										
Large Water Wells	X	X					X	X			X	X																										
Sewage Treatment Facilities	X								X		X	X						X																X				
Public Drinking Water Supplies		X					X	X			X	X																						X				
Solid Waste Disposal Sites						X					X	X						X							X								X					
Large Marinas	X		X								X	X													X							X	X					
State Parks											X	X							X	X	X					X	X											
State Forests																				X	X	X				X	X											
Preservation of Natural and Scenic Rivers																			X	X																		
Preservation of Historic Properties																			X								X				X							
Public Accessways											X	X														X	X											
Large Dams			X								X	X			X											X												
Commercial Fishing												X	X																									X

KEY TO SYMBOLS:
(Abbreviations represent Division with Dept. of NR & CD)
Responsible for program administration

DEM – Div. of Env. Management
DLR – Div. of Land Resources
DMF – Div. of Marine Fisheries
DPR – Div. of Parks & Recreation

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 classificiation system."

The Executive Order

As the above section explains, state agencies must comply with the policies of the CRC in their proprietary activities concerning coastal land.

The bigger issue is whether state agencies must administer their regulatory programs in a manner consistent with validly developed coastal policies. To resolve this confusion or ambiguity, North Carolina has issued an Executive Order to insure consistency.

The following is a copy of the Executive Order and a discussion of its provisions and significance.

EXECUTIVE ORDER NUMBER 15

WHEREAS, the General Assembly of North Carolina, in passing the Coastal Area Management Act, has expressed its desire for a comprehensive, coordinated management system for the protection and orderly development of the coastal area; and,

WHEREAS, the stated goals of the Coastal Area Management Act are:

(1) To preserve and manage 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 aesthetic 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, conservation, 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 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 The Coastal Area Management Act; and

WHEREAS, the Coastal Resources Commission shall be responsible for the preparation, adoption, and amendment of the 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; and

WHEREAS, all local land use plans adopted pursuant to The Coastal Area Management Act within the coastal area shall be consistent with the State guidelines; and

WHEREAS, any State land policies governing the acquisition, use and disposition of land by State department and agencies shall take account of and be consistent with guidelines adopted under The Coastal Area Management Act, insofar as lands within the coastal area are concerned; and

WHEREAS, 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 Coastal Resources Commission. No such existing permits within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Section 1. All State agencies shall take account of and be consistent to the maximum extent possible with the coastal policies, guidelines and standards contained in the State guidelines, with the local land use plans developed under the mandate of The Coastal Area Management Act, and with the North Carolina Coastal Plan prepared under the Federal Coastal Zone Management Act of 1972 in all regulatory programs, use and disposition of state-owned lands, financial assistance for public facilities, and encouragement and location of major public and private growth-inducing facilities.

Section 2. The Secretary of Natural Resources and Community Development and the Coastal Resources Commission shall ensure the opportunity for full participation by affected State agencies in the development of policies and guidelines for the coastal area prior to their adoption.

Section 3. All conflicts arising from the implementation of this order within the Department of Natural Resources and Community Development shall be resolved by the Secretary of that Department, and all conflicts over consistency between the administering coastal management agency (Department of Natural Resources and Community Development) and another department of State government shall be resolved by the Governor.

Section 4. This Executive Order shall be effective immediately.

The main purpose of the Executive Order is to insure that State agencies conduct their regulatory and financial assistance programs, as well as their proprietary programs, in a manner consistent with coastal policies properly established in the State Guidelines, CAMA local land use plans, and the Coastal Management Plan, so long as these policies are consistent with the existing statutory authority under which these programs operate. It should be noted at this point that the State Guidelines are the authoritative statement of policy, and where the local plans and the Guidelines conflict, the latter will control: similarly when policies in the N. C. Coastal Management Plan and provisions of the local land use plan conflict, the Coastal Management Plan policies will control. The CRC will be responsible for interpreting the guidelines and resolving any such inconsistencies. (See the discussion of state and federal consistency in Chapter Six).

To insure that coastal policies are not developed without benefit of the expertise and consideration of the opinions of interested agencies, the Executive Order directs the Secretary of DNRCD and the CRC to allow the opportunity for full participation by all State agencies that would be affected by the policies under consideration. Where agreement concerning consistency with coastal management policies is not reached voluntarily, the Order designates the Secretary of DNRCD to resolve conflicts within his department, and the Governor to resolve conflicts between DNRCD and other agencies.

The efficacy of executive orders divides itself into three major issues:

(1) Authority of the Governor to issue orders; the scope of the orders;
(2) Degree of enforceability of the orders;
(3) Capacity of DNRCD to monitor other projects.
(4) Enforceability by private individuals or groups.

(1) Authority Of The Governor To Issue Orders; The Scope Of The Orders. Bernard Schwartz in A Commentary on the Constitution of the United States notes that the President of the United States constantly issues prescriptions in the form of proclamations, orders and directives. Contrasted with the Presidential model, the North Carolina procedure accepts only a limited number of executive pronouncements. Yet, in theory and practice, the executive orders of each body are nearly identical.

Accordingly, Am Jur 2d notes that "the executive power is vested by the Constitution in the President." (Am Jur 2d, §§ 42). In Article III §1, the North Carolina Constitution provides that "the executive power is vested by the Constitution in the President." (Am Jur 2d, §§ 42). In Article III, 1 the North Carolina Constitution provides that "the executive power of the State shall be vested in the Governor." Under both the U.S. and N.C. Constitutions, the executive's power is to see that "the laws are faithfully executed." (See Art. III, §§ 5(4) of N.C. Constitution.) In the exercise of their executive powers, both figures are accorded discretionary actions which are not subject to judicial control except through impeachment. Where the power of the executive has not been limited by legislation, his regulations cannot be questioned or defined. (Am Jur 2d, §§ 45-46).

In the exercise of the executive function vested in him by the Constitution, the President of the United States may make various proclamations and "executive orders which are regarded as public acts of which all courts of the United States are bound to take notice and to which they must give effect." (Am Jur 2d, §§ 47) Executive orders are accorded the same presumptions as statutes -- they are presumed to have a "valid existence on the day of their date, and no inquiry should be permitted upon the subject." (Am Jur §§ 47). Executive orders often vest "the power to perform certain acts in the various administrative depart-

ments." In the interpretation of executive orders, it is "the duty of a government department to adopt a construction that would give the order validity." (Am Jur § 49) Executive orders which seek to reorganize agencies for "the purpose of rendering those agencies more effective, promoting economy and increasing efficiency of governmental operations and consolidating government functions" are proper. The test of the executive function is that it does not embark on the legislative function. The executive order is marked by a lack of sanctions. (Schwartz, p. 76)

In North Carolina, the Governor has long relied on the aforementioned provisions as authority to issue executive orders to clarify, consolidate and otherwise insure execution of the laws. The Governor's executive order power is only limited to the extent that the order is executive, that it is not inconsistent with existing law or the legislature's intent as expressed in those laws. Research of case law in North Carolina reveals no cases which clarify the basis and efficacy of an executive order. It is, therefore, necessary to examine the scope of the presidential orders. (This analogy is justified because (1) the State constitution may not be inconsistent with the U.S. Constitution and (2) the U.S. Constitution's "granting clauses (as regards the Executive) are nearly identical to the North Carolina Constitution. Decisions by Federal courts have decided that Presidential executive orders are valid and have the force of law where they are based on sufficient statutory authority and where they do not come in conflict with existing laws. (See Farmer v. Philadelphia Electric C., 329 F. 2nd 3 (1965), cert. denied 424 U.S. 966.)

In the present case, North Carolina's governor has issued Executive Order #15. *Like the Farmer order just mentioned, this order is solidly based on existing statutory authority. As set forth in the order itself, the CAMA provides that . . .

> the Coastal Resources Commission shall be responsible for the preparation, adoption and amendment of the 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 . . . [Furthermore,] all local land use plans adopted pursuant to the CAMA within the coastal area shall be consistent with the State Guidelines.

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*Farmer involved enforcement by a third party against a contractor of an anti-discrimination provision in a contract with the U.S. Government. The agency had placed the provision in the contract as a result of executive order. The court held the order had legal force in that it was issued pursuant to the Federal Property and Administrative Services Act of 1949 which authorized the President to issue direction as he deemed necessary to effectuate the Act.

The CAMA not only requires that the Guidelines and local land use plans be consistent, but it also requires that state agency activities be consistent with the Guidelines (hence, indirectly with the local land use plans as well).

> 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 guidelines adopted under the CAMA, insofar as lands within the coastal area are concerned . . . [Furthermore,] from and after "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 Coastal Resources Commission. No existing permits within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission.

With the exception that final decisions concerning regulatory permits remain solely in the authority of the administering agency, it is the clear intent of the legislature that state agency activities be required to be consistent with coastal policies. The broad framework for such policies are explicitly set forth in the CAMA and the Executive Order. Additional statutory foundation for the policies set forth in the Governor's Executive Order may be found in the "Environmental Bill of Rights" of the N. C. Constitution and the State Environmental Policy Act (N.C. G.S. 113A-1.)

The first requirement (in light of Farmer and Am Jur explication concerning executive orders) which demands that there be a statutory basis for the order appears to be amply satisfied. The second requirement which requires that the order not conflict with other state laws revolves about a fair interpretation of the language in the order. The order demands that

> . . .all agencies shall take account of and be consistent to the maximum extent possible (emphasis mine) with the coastal guidelines and standards contained in the State Guidelines, and (be consistent) with the local land use plans developed under the mandate of the Coastal Area Management Act and with the N. C. Coastal Management Plan prepared under the FCZMA of 1972 in all regulatory programs, use and disposition of state owned lands, financial assistance for public facilities, and encouragement and location of major public and private growth inducing facilities.

The key words "consistent to the maximum extent possible" mean to the extent that such coastal policies are not inconsistent with existing legislation.

The order also establishes a mediation process for determining and resolving inconsistencies with the existing law. When the existing law is administered within DNRCD (as is the case with

the majority of important environmental laws), the Secretary of the DNRCD is the mediator. When other departments are concerned, the Governor or his staff will make the decisions. The executive order establishes a procedural framework to protect itself against inconsistencies which might render the order invalid or unenforceable (on a case by case basis).

(2) Degree Of Enforceability Of The Orders. Related to the issue of general efficacy of executive orders is the concern that even if the order is legal and binding, its impact can not reach beyond the departments immediately and completely under the Governor's control. The Governor has the ability to significantly affect the actions of Commissions and Departments that are largely regarded as "independent" of the executive. This ability to color action rests upon his inchoate powers as an executive and his duties in carrying out the laws of the state as well as his power to appoint commission members.

As we mentioned in the prior section, the Governor is designated chief executive in the Constitution. As chief executive, he posseses inherent administrative powers over all agencies executing the laws. All Departments and Commissions have as their sole function the execution and administration of the laws. They are subject to the same legal constraints in administering those laws as are agencies under appointed cabinet members. Furthermore, even employees of Departments with elected heads are subject to the State Personnel Act. All Commissions rely on State Departments for staff services.

The major commissions affecting environmental quality in the state are listed in the following chart. In each instance, the department supplying staff has been listed, the number of members on the commission, their term of office and the person by whom they are appointed have been noted. The chart furthermore outlines the Governor's power to remove for failure to execute the laws of the State and other reasons and his ability to fill vacancies.

CHART 6. Major Commissions Affecting Environmental Quality In North Carolina

Commission	Dept.	#Members	Terms (Yrs.)	# Appointed By Governor	Power to Appoint Chairman	Governor's Power to Appoint Replacements	Governor's Power to Remove For Cause	Governors Power To fill Vacancies
Environmental Management Commission	DNRCD	13	6	13	No	Yes	Yes	Yes
N. C. Mining Commission	DNRCD	9	6	9	No	Yes	Yes	Yes
Sedimentation Control Commission	DNRCD	11	4	7	Yes	Yes	Yes	Yes
North Carolina Utilities Commission	DC	7	8	7	Yes	Yes	No	Yes
Marine Fisheries Commission	DNRCD	15	6	15	?	Yes	Yes*	Yes
Health Services Commission	DHR	11	4	7	?	Yes	Yes	Yes**
N.C. Wildlife Resources Commission	DNRCD	9	6	9	?	Yes	Yes	Yes

* Unlimited

** Limited to his own appointments

Although North Carolina expressed a preference to appoint independent commissions to handle special statewide problems, the legislature has seen fit to extend substantial control to the executive concerning the actions of the commissions. Typically, executive control takes the form of a power of appointment over all or a majority of the members of the commission. In all the above commissions except SCC and Health Services, the governor appoints all members. In situations where the appointment is limited, the limitation is typically expressed in terms of a "knowledge of" a particular field, such as ecology. Although many of the commissioners' terms of office will often exceed that of the governor appointing him, the executive typically has the power to fill more than a majority of all seats on any commission (exception for Utilities Commission, only 50%). Control through the appointment process extends to such collateral matters as the power to fill vacancies and name replacements. Furthermore, the Governor retains the power to remove all commission members for cause. Under the Executive Organization Act of 1973 (see N.C.G.S. 143B-13) cause sufficient for removal is described by the language "misfeasance, malfeasance and nonfeasance." Although we are not aware of any cases interpreting the breadth of this language, we believe that the failure to execute the laws of the State come within the scope of this language.

In addition to selecting the members of the Commission, the Governor has, in some instances, the power to designate the chairman of the Commission. The chairman's position is extremely important in some of the busier commissions, such as the Utility Commission. In this Commission, the chairman, whom the Governor selects to serve for a four-year term concurrent with himself, determines which matters will be heard by the full Commission, which by subcommittees and which by particular members. The chairman furthermore has the power to initiate investigations.

In all, the Governor posseses the potential to exert considerable control over all agencies and departments in the government where the matter at issue involves the execution of the laws of the state.

(3) Capacity Of DNRCD To Monitor Other Projects. The final issue is whether the Coastal Management Agency or DNRCD or its delegee has the capacity to monitor activities of other agencies and to take remedial action where it is necessary? The CRC has a statutory mandate to review important permit decision of other agencies. "From and after 'permit changeover date' all existing regulatory permits within the coastal area shall be administered in coordination and consultation with... the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission." N.C.G.S. 113A-125(g). Permit coordination and consultation will be accomplished by having copies of all permit decisions sent to the CRC (Office of Coastal Management) for review. These permits are listed in Chart 7.

CHART 7: Permits to be Renewed by the
N. C. Coastal Resources Commission

PERMITS	CHAPTERS/ARTICLES
Dredge and Fill Permits	G.S. 113-229
Sand Dune Permits	G.S. 104B-4
Air Pollution Control Permits	G.S. 143-214.1
Water Pollution Control Permits	G.S. 143-215.1
Board of Water and Air Resources Permits	Chapter 143
Capacity Use Area Permits	G.S. 143-215.30
Floodway Permits	G.S. 143-215.54
Water Diversion Authorizations	G.S. 143-354(c)
Oil Refinery Permits	G.S. 143-215.99
Mining Operating Permits	G.S. 74-51
Permissions for Construction of Wells	G.S. 87-88
Restricted-Use Pesticide Permits	G.S. 143-440(b)
Pesticide Applicator Licenses	G.S. 143-452
Water Supply, Drainage or Sewerage Approvals	G.S. 130-161.1f.
Solid Waste Disposal Sites and Facilities	Ch. 130, Article 13B
Sanitation of Shellfish, Crustacea or Scallpops Permits	Ch. 130, Articles 14A or 14B
Mosquito Control Permits	Ch. 130, Article 23
Septic Tanks or Water Well Permits	G.S. 113-391
Oil or Gas Well Regulations and Orders	G.S. 113-391
A Certificate of Public Convenience and Necessity for any Public Utility Plant or System	Chapter 62
Erosion Control Plans	G.S. 113A-60f.

The CRC is also authorized by statute to review state activities concerning acquisition, use and disposition of land. N.C.G.S. 113A-108. This review process will be accomplished by monitoring all projects going through A-95 review, DNRCD Office of Plans and Programs and Environmental Impact Statements. If the Office of Coastal Management should, upon review, disagree with any agency actions, the remedial action is to activate the mediation process explained earlier.

(4) Enforceability by private individuals or groups because of the constitutional basis for both types of executive orders, it seems that North Carolina Executive Order #15 can be enforced by interested members of the public to the same extent as Federal executive orders.

CRC Guidelines and Local Planning

The CAMA establishes a joint planning effort between the State and the local governments in North Carolina's coastal zone. The Act requires that a land use plan be developed for all localities. This plan must be consistent with State Guidelines for land use and resource planning developed by the CRC. 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."

Therefore the policies set forth by the CRC in the Guidelines will be reflected in the local land use plans. 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 especially 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. Briefly, 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. (More detail concerning the five classes of land and the policies for their use may be found in Chapter Two, Part D of the Guidelines. See Appendix C.)

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 effect 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 for these lands. In contrast, lands in the transition class should be taxed to pay for the cost of new public services required to support anticipated growth.

Enforcement of Local Plans

As mentioned above, the local land-use planning process, particularly land classification, is a tool for helping ensure that uses outside of AECs are consistent with state policies. 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 where no critical uses or state agency actions subject to the Executive Order are involved. 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 local planning and land classification system is such a positive tool for guiding growth and its impact on resources. Fifty of the 52 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.

Furthermore, implementation of land use plans is the responsibility of the local government. The plans themselves serving as the expression of the citizens' desires, will be utilized to guide state and federal agency activities through the project review and consistency determination process (see Chapter Six). Ths process will lend efficacy to the local plans.

It is also worth reemphasizing that North Carolina is relying not on the local planning process but rather on a composite of state management programs and authorities mentioned earlier in this Chapter for enforceable management of uses outside of AECs that may directly and significantly affect coastal waters. The local planning program is seen as laying a foundation for better local land use and resource management that will be critical to the long-range success of any program for such a large coastal zone as North Carolina's.

CHAPTER SIX PROCESSES FOR ONGOING MANAGEMENT

Introduction

North Carolina's coastal management system, to be effective, must be dynamic and responsive to emerging coastal problems. Without this flexibility, the machinery for coastal management will be shortly antiquated. This chapter describes the major provisions of the North Carolina coastal zone management program that have been devised to keep coastal management current and relevant.

Policy Development

Because coastal management issues change continuously as the competition for limited coastal resources increases, it is unreasonable to expect that coastal problems will remain static. The development of the coast will result in the emergence of new problems and the re-evaluation of existing resource issues. As these changes occur, North Carolina's coastal management system, to be successful, must be prepared to respond. A response that is particularly necessary, is the development of coastal policies that establish positions and attempt to implement solutions to coastal problems.

Amendment of the State Guidelines - An Authority and Forum for Policy Expression

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 Resources and Community Development 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.

A Process For Coastal Policy Development

The process envisioned for actual development of State policy statements to be incorporated into the State Guidelines and the State management plan emphasizes full participation of all levels of government. A closer working relationship among local, state and federal agencies than has existed proviously was a primary concern in designing our system for policy development.

The process is activated when a policy void is identified by any of the governmental or private sectors involved in coastal resource management. Subjects for policy development will be prioritized in order to focus the energies of the state on the most pressing coastal management issues. The high priority subjects will be selected by the CRC and the Department of Natural Resources and Community Development for investigation. A "Policy

Task Force" will be created consisting of Coastal Resource Commissioners and Advisory Council members. Specialists from appropriate state, local, and federal agencies will be brought together to assist the Task Force in understanding the programs, services, policies, and capabilities of government. The technical staff will attempt to gather all the facts associated with a policy matter needed to educate the Policy Task Force and will be responsible for making policy recommendations. The Policy Task Force will, following their investigation of the existing situation, recommend to the Coastal Resource Commission a policy position. The substance of this policy proposal will be distributed to all affected state and federal agencies and to coastal citizens and governmental units as outlined in Section 113-107 and a public hearing will be held prior to policy adoption.

Following the consideration of comments received through public hearings, the Coastal Resources Commission will make whatever changes are appropriate to the State Guidelines. The Department of Natural Resources and Community Development will make the necessary changes in the coastal management plan. Then, the appropriate changes will be forwarded to the affected local, state or federal agencies.

Through this procedure, the state will for the first time, be in a position to develop a clear and comprehensive set of coastal policies. Offering meaningful participation in policy development to affected parties and incorporating a process for change and updating the outlined policy development procedure is viewed as a significant improvement over the existing situation.

The effectiveness of our policy development approach in the final analysis will be judged by the success of the implementation of policy. The consistency of Federal and State actions with state policy and the incorporation of policy into local planning are considered essential to policy implementation. Each is a subject discussed in the later parts of this chapter.

Land Use Planning

Updating and Implementing Local Plans

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.

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; and 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 eqitable distribution of the land tax burden."

It is the intention of the CRC to provide the greatest possible technical and funding asssitance 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.

Land Use Plan Amendment

The CAMA establishes the following procedural requirement for all land use plan amendements:

> 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." (112A-110(e))

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. 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.

Once a proposed amendment is determined to be substantial, the following process will be followed. The Executive Secretary will 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 will 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. When a local plan is amended, all principally affected state and federal agencies will receive notice of the substance of the modificiation.

Coordination with Federal and State Programs

Coordination with and cooperation between North Carolina's coastal management program and the various other federal and state agencies is critical to our success. Without coordination, the coastal management objectives of the State will be unobtainable. Fortunately, both the Federal Coastal Zone Management Act and North Carolina's Coastal Area Management Act recognized the necessity of coordination and consistency among governmental actions and provided adequate provisions and authorities to accomplish this objective.

Furthermore, throughout the early development of the program, North Carolina has recognized the need for full participation by other governmental agencies if coastal management goals are to be achieved. Chapter Two outlines the communications initiated by the State, as well as the opportunities afforded to the general public, local governments, and state and federal agencies, during program development. As has been the case throughout the program's development, North Carolina will continue to stress full participation of interested parties in the development and implementation of our system of coastal management.

Federal Consistency

THE BASIS

The FCZMA represents a unique opportunity for coastal states to demonstrate their capabilities and willingness to manage responsibly their coastal land and water resources. Federal consistency provisions in the CZMA are the best evidence of the extent of the opportunity. Section 307(C), (D), (E) and (F) provide that: (paraphrased)

(1) Federal activities and development projects significantly affecting the coastal zone shall be conducted consistent with the approved management program to the maximum extent practicable;

(2) No license or permit shall be granted by a Federal agency until the State or its designated agency has concurred with the applicant's certification or until by the State's failure to act, the concurrency is conclusively presumed;

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*OCS Plan - The term "OCS Plan" means any plan for the exploration or development of, production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 USC Sec. 1351 et seq.).

(3) No Federal agency shall grant a license or permit for any activity described in detail in the OCS* (Outer Continental Shelf) plans and that significantly affects any land or water use in the coastal zone until the State concurs with the certification of consistency made by the person submitting the OCS plan;

(4) Federal agencies shall not approve proposed assistance projects to State and local governments that significantly affect the coast zone and are inconsistent with a coastal state's management program.

Section 307 of the Act contains these and other provisions that assure the states that Federal grant programs, licenses and permits, and Federal development projects in the coastal zone will be consistent with the State's approved management programs. In addition, Section 307(c)(3)(A), 307 (c)(3)(B) and 307 (d) provide that the Secretary of the U.S. Department of Commerce may find that a Federal license or permit activity (including OCS permit activity and/or Federal assistance activity), which is inconsistent with a State's management program, may be approved because it is consistent with the objectives and purposes of the FCZMA or because it is in the interest of National Security.

The FCZMA, and in particular the Federal consistency provisions of that Act, provide the State of North Carolina with the opportunity to achieve the State's coastal management objectives. Full consideration of the state's policies and concerns prior to the initiation of significant Federal actions should accrue substantial benefits to North Carolina through enhanced consultatin and coordination early in the Federal decision-making process.

CRITERIA FOR FEDERAL CONSISTENCY

In judging the consistency of Federal actions with the objectives of an approved coastal management program, it is imperative that a definitive listing of the State's policies be available. The foundation of effective Federal consistency is a clear declaration of the State's policies and positions regarding coastal resources. Policies in North Carolina's management program are derived from four sources:

(1) Areas of environmental concern policies and standards (Chapter Five and Appendix B);

(2) Local land use plans (discussed in Chapter Two, synopses available through OCZM);

(3) Present and future statements of policy contained in the State Guidelines (Chapter Six, Appendix B);

(4) The policies contained in the FEIS as developed by relevant state agencies (Chapter Three and Appendix C).

AEC policies and permit standardes are in most instances explicit enough to allow a Federal agency satisfactory guidance on consistency. Statements of policies contained now or in the future in the "State Guidelines" should be addressed specifically in the consistency determination made by Federal agencies. Coastal Management Program policies developed in conjunction with relevant State agencies, and stated in the management plan, will be considered in the analysis of consistency of Federal actions with coastal management objectives. As the program continues to be refined, additional policies may be necessary. Where policies are added to the management plan, the policy development procedure outlined in Chapter 6 will be followed and in conformance with the FCZMA Rules and Regulations.

Finally, local land use plans (LUPs) provide a statement of local goals and the proposed pattern of growth (land classification). These plans have been based on State Guidelines and have been approved by the State. The use of local LUPs has been clarified to reflect that the local LUPs are binding on both State and Federal agency decision-making that involve: 1) critical uses and, 2) public investment expenditures.

(1) The State has identified certain critical uses that are of State interest. Management and regulation of such State-level intersts will be made in accord with local LUPs, except where in conflict with State coastal policies. Federal actions involving these critical uses will also have to be in accord with LUPs except when in conflict with State coatal policy. (When State policies and LUPs conflict, State policies will prevail.)

(2) Public infra-structure investment decisions involving both State and Federal agency participation should be made in accord with the LUPs. Situations in which Federal agencies would be expected to be consistent with the local land use plans are those in which State or local monies are use to match Federal funds. Those Federal agency public infra-structure investment decisions, which would normally involve a State-level action (e.g., Federally funded sewer lines, Federally funded water lines, major highways, etc.), but which may in a particular case be proposed without direct State action or funding are also subject to Federal consistency procedures and must be in accord with local LUPs except where the LUPs are in conflict with State policies.

The use of local land use plans in the consistency determination process is restricted to the established planning jurisdiction articulated in each plan. As such, consistency with local plans would not apply to OCS activities, but would apply to activities and development within the established planning jurisdiction of the local government.

EVAUATION AND CONFLICT RESOLUTION

The State Department of Natural Resources and Community Development's Office of Coastal Management will serve as the single designated State agency for consistency pursuant to Secton 306(c)(5) requirements. Where local governments have minor development permitting responsibilities in AECs, the issuance of the local permit will precede issuance of a consistency determination by DNRCD's Office of Coastal Management.

On occasion, if projects are determined to be inconsistent with coastal management policies of the State, the Federal agencies might request the opportunity to mediate with the State. Mediation would be available through the Secretary of DNRCD.

Since the consistency decision of the Secretary of DNRCD establishes a State position, the determination of Federal Consistency may be challenged by State agencies within or outside the Department. On these occasions, the same conflict resolution process would be followed as is outlined in the Executive Order (Chapter Five). If the agency involved was another Department, the conflict would be resolved by th Governor, while, if the State agency was within the Department, the Secretary of DNRCD would clearly decide the issue.·

In the event that serious disagreemtns arise between the State and a Federal agency that cannot be resolved by the Federal agency and the State, then a mediation and resolution mechanism is available as provided in the CZMA (Sections 307(b)(1) and (b)(2) and proposed regulations adopted pursuant to the Act (15 CFR Sections 930.44 and Subpart G).

FEDERAL ACTIONS, SPONSORED ACTIVITIES, ASSISTACE TO STATE AND LOCAL GOVERNMENT AND PERMITS OF INTEREST TO THE STATE

In order to discuss the substance of Federal consistency determination, it is necessary to understand what Federal Actions are of interest to North Carolina. The following is offered as a preliminary list of those Federal actions. These lists have been altered since the DEIS in response to Federal agency comments. Future adjustments in the list are anticipted as Federal agencies continue their consultation with the State.

FEDERAL LICENSES AND PERMITS

Federal licenses and permits affecting the State's coastal zone will be subject to certification by the North Carolina DNRCD. The following Federal licenses and permits have been identified for review by the State for consistency:

Federal Licenses and Permits

Agency	Licenses and Permits
Army Corps of Engineers Department of Defense	-Permits required under Sections 9 & 10 of the Rivers and Harbors 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 Department of Transportation	-Permits for bridges, causeways, pipelines over navigable waters required under the General Bridge Act of 1946; Rivers and Harbors Act of 1894, 1899 and 1906; 33 CFR 114, 115, 117 -"Deep-water ports" permits
Department of Interior Geological Survey Bureau of Land Management	-Permits required for off-shore drilling -Approval of OCS pipeline corridor rights-of-way
Nuclear Regulatory Commission	-Licenses for siting, construction and operation of nuclear power plants, required under the Atomic Energy Act of 1954, and Title II of the Energy Reorganization Act of 1974
Federal Energy Regulatory Commission	-Permits for construction, operation and mantenance of interstate pipelines facilities required under the Natural Gas Act of 1938

	-Permission required for abandonment of natural gas pipelines and associated facilities under Section 7(b) of the Natural Gas Act of 1938
	-Licenses for construction and operation of non-Federal hydroelectric projects and associated transmission lines under Section 7(c) of the Natural Gas Act of 1938
Economic Regulatory Administration (DOE)	-Permits for construction and operation of facilities needed to import or export natural gas

An applicant for a Federal license or permit is responsible for supplying a consistency determination to the Federal agency before the Federal license or permit can be granted. (It should be noted that the applicant will still apply directly to the Federal agency for the required Federal permit.)

When an application is made for a Federal license or permit, the North Carolina Office of Coastal Management should be notified in writing. This notification should include all corresponding material needed for a State consistency determination to be made on the application. Any necessary State permit required will have to be obtained prior to a State consistency determination being made by DNRCD's Office of Coastal Management. Once a State consistency determination has been made, the application will supply this to the Federal agency in order to complete his application for the Federal license or permit.

In those cases where a major development AEC permit is required in addition to the Federal license or permit, the issuance of the AEC major development permit will serve as the State's consistency certification as well. In those cases where a minor development AEC permit is required, the issuance of this permit by a local government will not serve as the State's consistency determination.

The DNRCD's Office of Coastal Management retains the responsibility for issueing consistency determinations for activities requiring minor development AEC or other State permits.

DIRECT FEDERAL ACTIVITY

The following Federal activities will be reviewed by the State coastal management program for consistency:

- All actions occurring within or adjacent to areas of environmental concern (AECs occur within the coastal zone).
- All purchases, sales or leases of Federal real property above 20 acres in size (within the coastal zone).
- Constructin of major facilities (20 acres disturbed or 60,000 square feet) significantly affecting the coastal zone.
- Federal development projects occurring in or significantly affecting the coastal zone (e.g., Erosion Control, Flood Control ad Navigation Projects).
- All actions of regional or interstate significance.
- Activities on Federal property that result in significant impacts on the coastal zone.*

Federal agencies are required to provide a consistency determination to the DNRCD stating whether or not the proposed Federal activity is consistent with the State's coastal management plan to the maximum extent practicable. Notice of direct Federal activities, including development projects significantly affecting the coastal zone, must be provided to the State by the Federal agency proposing the action 90 days before final approval of the Federal action. Federal agencies may use the State A-95 clearinghouse for this notification. A review period of 90 days will follow, starting from receipt of the notice by the State clearinghouse, resulting in one of the following actions:

- concurrence with the Federal agency determination
- disagreement with the determination;
- no response--presumed concurrence.

FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

The following is a list of Federal assistance activities which the State will use for consistency purposes. As with those direct Federal activities and licenses and permits previously listed, Noth Carolina welcomes the opportunity to refine this list through our continuing consultation with Federal agencies.

*Projects with probable significant impact should be identified through criteria arrived at by the State and Federal agency mutually in the process of consultation.

Federal Assistance to State and Local Governments

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)
10.414	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
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
11.310	Dept. of Commerce	Local Public Works Capital Development and Investment Act of 1976 Projects
11.407	Dept. of Commerce	Commercial Fisheries Research Development

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
13.408	Dept. of HEW	Construction of Public Libraries
13.477	Dept. of HEW	School Assistance in Federally Affected Areas - Construction
13.887	Dept. of HEW	Medical Facilities Construction
14.001	Dept. of Housing and Urban Development	Flood Insurance (Applications for Community Eligibility)
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
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 Construction
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
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
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 - Construction only

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
49.002	Community Services Administration	Community Action
49.011	Community Services Administration	Community Economic Development
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

Applications for Federal assistance (as listed above) by agencies, local governments or related public entities will be routinely forwarded by the statewide A-95 clearinghouse to DNRCD's Office of Coastal Management for consistency determination. In addition, the Office of Coastal Management will periodically monitor assistance activities not listed above in order to update the list and discover unlisted activities of significance. Within the time frame for A-95 review, DNRCD shall notify the clearinghouse as to whether the project is consistent with the State's Coastal Management program. The statewide clearinghouse will forwad these findings to the appropriate Federal agency.

A review period of 90 days will follow, starting from receipt of the notice by the State clearinghouse resulting from one of the following actions:

- o concurrence with the Federal agency determination;
- o disagreement with the determination;
- o no response--presumed concurrence.

State Consistency

As discussed in Chapter Five, state consistency is an additional aspect of North Carolina's program that ensures to the maximum extent possible, consistency between state agency actions and coastal management policies. Through the Executive Order contained in Chapter Five, the state recognizes that intra-state coordination of resource programs are as important as federal consistency. The details of a process to implement the Governor's directive are discussed in pages 210 through 220. But in the end, it is anticipated that his Executive Order will represent a significant additional implementation mechanism.

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)(g) of the FCZMA 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. North Carolina, furthermore, realizes that a vast array of national interests exist which must be considered and provided for in the development and subsequent implementation of the State's coastal program. Through our federal consultation, the magnitude of national interest considerations that must be provided for has become obvious. Some of the federal departments identified as having programs representing national interests include; The Department of Interior; The Department of Transportation, The Department of Defense components, The Department of Health, Education and Welfare, The Department of Commerce, The Department of Housing and Urban Development, The Nuclear Regulatory Commission, The Environmental Protection Agency and The Department of Energy. Each of these agencies and more have participated through Federal consultation in the development of North Carolina's program. The extent of this involvement is explained in Chapter Two and Appendix D. Through this involvement, national interests have been considered in the very design of the program. Examples of this integration of national interests can be seen in the AEC priority of uses in Chapter Five and the AEC Use Standards in the State Guidelines (Appendix B).

The State has also provided for the consideration of national interests by involving state agencies that represent both state and national concerns. These state agencies have been consulted from the stage of early development to the present. Examples of state agencies representing state and national interests include:

1) The Division of Environmental Management within DNRCD which administers Air and Water Quality programs. All standards and requirements of the Federal Water Pollution Control Act, as amended, and The Clean Air Act are enforced by the Division of Environmental Management and are incorporated into our management program. The AEC permit standards embrace all the FWPCA requirements and should assist in accomplishing the national goals of clean air and water.

2) The Division of Parks and Recreation within DNRCD which has responsibility for developing and implementing the SCORP plan and has been involved in designing North Carolina's State Guidelines and the coastal management element on beach access/island preservation. Parks and Recreation has and will continue to assist the coastal management effort in ensuring adequate consideration of recreation and tourism in the local land use plans.

3) The Department of Cultural Resources in conjunction with the Division of Parks and Recreation, the Wildlife Resources Commission and the Department of Agriculture have assisted the Coastal Resources Commission in providing for the protection of threatened and endangered species, historic sites and unique natural coastal environments. This protection is accomplished through AEC regulations and/or local land use planning mechanisms.

4) The Division of Marine Fisheries is responsible for the protection and management of the State's marine fisheries and coastal wetlands. The Division has been closely involved in the development of North Carolina's coastal program. The AEC standards for Estuarine Waters, Public Trust Waters and Coastal Wetlands are designed to protect the nation's interests in the important marine environments and species. The Division will also be involved significantly in the implementation of the coastal management program.

These examples are by no means exhaustive since various other state agencies also represent national interests. More information on the missions and authorities of the State agencies involved in the creation of our state management program is found in Appendix C.

North Carolina, although promoting the consideration of national interests in program development, also realizes that many national interests compete and in some cases are incompatible. Therefore, the state must ensure that national interests are recognized and balanced in order to protect the overall public welfare. When national interests are clearly paramont as in the case of the preservation of national security and the protection of the water and air quality then the balancing of natural interests is unnecessary.

Tradeoffs may be necessary in other situations, however, as for example when meeting of the nation's energy needs is incompatible with the protection of the nation's marine resources. The consistency determination procedures described later in this chapter will allow for the consideration of these tradeoffs. North Carolina believes that through the consistency determination procedures, the combination of the Coastal Area Management Act policies and authorities, other state authorities, local land use planning consistent with State Guidelines and the continued involvement of federal agencies in program development and implementation, that national needs and resources will be properly considered and protected in the coastal area of North Carolina.

North Carolina recognizes its important contribution to national objectives as evidenced through the existence of the multitude of federal facilities on the coast. Even a list of the extensive federal land holdings as seen in Appendix E is not indicative of the extent of national interest on North Carolina's coast. The following description of some of the national interests associated with North Carolina's coastal area is provided in order to give the reader an appreciation of the magnitude of these national needs provided for by the state.

National Defense

National defense is an important activity in the coastal zone from both an economic and national security standpoint. Numerous facilities such as the Cherry Point Marine Air Corp Station, Camp Le-Jeune, the Stumpy Point Target Range, The Military Ocean Terminal, Dare County Target Range, and various other facilities provide the nation with a service of the highest priority to all citizens. All the major branches of the military including the Coast Guard have facilities within the coastal zone that are essential to national defense. North Carolina recognizes the need to maintain the military readiness of these facilities and to provide for their necessary operation and expansion without unnecessary and unjustified interference by the State and local governments. North Carolina's management efforts will not interfere with or jeopardize national security missions carried out on these military reservations. The Department of the Air Force, the Coast Guard and the Department of the Navy have identified the need for North Carolina to consider defense as a national interest.

Recreation

Coastal North Carolina provides a recreational paradise for the citizens of this nation as evidenced by the Cape Hatteras and Cape Lookout National Seashore. It is the State's objective to enhance this national resource in order to provide for an obvious national need. Our program will in the near future initiate efforts to identify and plan for adequate water and beach access as a concrete step towards satisfying the recreational needs of both North Carolina and the citizens of our nation.

Energy Transmission and Production

Major energy transmission facilities and power plants such as the nuclear facility in Southport are needed by the State and nation. Recognizing the requirement for reasonably priced energy and at the same time the possible environmental impacts of energy facilities, North Carolina hopes to develop a process for locating energy facilities on the coast without the uncertainty and lengthy delays now encountered while at the same time providing for the maximum protection of coastal resources. Section 305(b)(8) of the FCZMA offers the State the resources necessary to accomplish this task. The Department of Energy in our consultation sessions has specifically identified electric supply and reliability and natural gas transportation as national interest concerns that should be considered by North Carolina.

Transportation, Ports and Navigation

Vital highways to neighboring states, two important port facilities and international and interstate navigational channels are located within the coastal area. These facilities serve a national economic need among others and nothing in our management plan will arbitrarily restrict or unnecessarily interfere with these important activities. The Maritime Administration in the Department of Commerce has urged North Carolina to consider specifically port planning and development as an issue of national interest.

National Fisheries

North Carolina's estuaries support a large variety of species important in the nation's commercial fisheries. Our management program embraces the objective of enhancing these fisheries and protecting their resources.

Regional Water and Waste Treatment Facilities

The State 303 Water Quality Plan and the various 201 facilities plans have been considered in the development of this management program and are important in arriving at the local land classifications. The State Guidelines emphasize the need for localities to recognize both the need and cost for these regional treatment plants.

Water and Air

The protection of water and air quality is of paramount importance to North Carolina and as set for in the Federal Coastal Zone Management Act and the North Carolina Coastal Area Management Act, nothing in our program will interfere with the enforcement of National Air and Water Quality Standards.

Wetlands

The benefits contributed to North Carolina and the United States by certain wetland habitats are recognized by our coastal management program. It is our objective to preserve and enhance the values derived from wetlands and to manage the uses occurring in coastal wetlands through a regulatory scheme that is cognizant of their contribution to the public.

Endangered Flora and Fauna

North Carolina, through coastal management, will attempt to promote the protection of endangered flora and fauna species as a national and state replacement resource. The Fish and Wildlife Service has stressed their concern that North Carolina consider endangered species to be of national interest and we have accepted the issue as such.

Floodplains and Erosion Hazard Areas

The scope of the problem associated with development within flood plains and other hazard areas is of national proportion. North Carolina, through its coastal management efforts in AECs and with the cooperation of the Federal Insurance Administration will attempt to address effectively this resource management issue.

Barrier Islands

North Carolina has an extensive system of barrier islands that represent a unique state and national resource. Our management program will attempt to preserve certain undeveloped island within the state and protect the resources located upon those islands that are or have developed.

Historic Sites and Districts

North Carolina is rich in historic sites of national and state significance. The coastal management program intends to protect and enhance the state's heritage for benefit of our citizens.

Wildlife Refuges

As evidenced in Appendix E, North Carolina has many refuges and preserves for wildlife and waterfowl in the coastal zone. We recognize their national importance and are committed to their purposes.

Minerals

North Carolina realizes that the state has a responsibility to the nation and the world in supplying phosphate ore that is essential to agriculture. Our management program is keenly aware of the need to recognize this national concern and to protect all other significant mineral resources through our management program.

Prime Agricultural Lands and Forests

The dependence of the nation on North Carolina agriculture and forest products is accounted for in our management program. Provisions for a minimum of interference with these industries are incorporated into our state coastal management legislation.

Living Marine Resources

The issue of protecting and enhancing marine resources is the foundation of our program. We are designing our program to accomplish the goal of protecting the state's marine resources for the benefit of the state and nation.

Areas of Unique Cultural Significance

The unique cultural significance of certain coastal areas is of a concern in our coastal management efforts and of recognized national interest.

Specific policies defining the state's treatment of national interest issues can be found on: pages 150, 151 and 152 for energy production; pages 144, 145 and 146 for transportation, ports and navigation; pages 153 and 154 for regional water and waste treatment; page 149 for historic sites; page 142 for minerals; page 104 for prime agricultural lands and forests; page 138 for living marine resources and page 149 for areas of unique cultural significance.

Additionally, AEC policies (see Appendix B) that will be implemented through a permit program address the national interest for the protection and management of fisheries, water and air quality wetlands, endangered flora and fauna, erosion hazard areas, portions of barrier islands and living marine resources. The land use planning guidelines furthermore require special treatment of wetlands, sites supporting endangered flora and fauna, floodplains, areas of unique cultural significance, wildlife refuges and prime agricultural lands and forests.

Obviously, the plan cannot list all the national interests considered in our planning and management program. The above list is only a sampling of some of the important national concerns recognized by the State. The reader is referred to Chapter Three and Appendix B (AEC standards) to observe the treatment of the national interest issued through established coastal policies.

Federal Lands

As discussed in Chapter Four, in the early stages of North Carolina's program a great deal of concern revolved around the issue of the program's impact on federal activities on federal lands. In response to that concern and in accordance with the opinions provided by the Department of Justice, the State has excluded from the coastal zone all those lands owned, leased or held in trust by the federal government.

Uses, activities, or development projects on excluded Federal lands are, exempt from the state's management program, except where the impacts of those uses or activities extend beyond the Federal property boundaries and significantly affect the State's coastal zone. Federal activities that affect significantly the State's coastal zone must be conducted in a manner consistent to the maximum extent practicable with the approved program. However, it is our expectation that federal agencies will consider the management principles of our program and conduct themselves on federal property in the same responsible manner as will be required of all others. The exclusion of Federal lands is a provision that should further ensure a minimum of interference in activities of national concern.

This exclusion of federal lands applies only to authorities granted to North Carolina under the Federal Coastal Zone Management Act of 1972 which became effective upon approval of North Carolina's Coastal Management Plan. It is not intended to exclude activities on federal lands from other existing or future state authorities or controls.

Continuing Consultation

In the future as the coastal management program continues to evolve, it will be extremely important to continue the consultation between levels of government that have characterized North Carolina's program in the past. The major changes that will eventually take place should benefit from the same extensive public participation and intergovernmental involvement that initial program design received. Fortunately, the CAMA has adequately provided for the interaction desired. As explained in this chapter, the amendment of local land use plans requires extensive public participation, including local public hearings. Similarly, AEC changes require that public hearings be held and that the resulting evidence be considered by the CRC prior to designation. The State will furthermore notify all interested federal, state or local government agencies of proposed changes in any of the major aspects of the program. This includes policy development actions described previously in this chapter. North Carolina, in summary, will continue to provide at every opportunity a means for public comment and intergovernmental involvement into the necessary management decision.

Beyond public involvement, the CAMA also recognizes the need for state management decisions to be cognizant of local regulations. Therefore, Section 113A-111 provides a mechanism for continual review of local ordinances and regulations by the Coastal Resources Commission. Local regulations in designated AECs must be consistent with the local land use plans. Outside AECs, the CRC is given the opportunity to review local ordinances and make suggestions as to possible changes that would ensure consistency. Either way, the State has a mechanism for reviewing all local regulations and interacting with local governments on the effects of management decisions on local concerns. The

coastal management staff will use this mechanism to give adequate notice to counties and cities of possible conflicts between state and local objectives and furthermore, as required in FCZMA 306(c)(B) the staff will provide a 30-day comment period to local governments. Public hearings may follow if significant conflicts are identified.

Uses of Regional Benefit

Subsection 306(e)(2) of the Federal Coastal Zone Management Act requires prior to the approval of a state's coastal management implementation plan, that the state provide for a method of assuring that local land and water regulations do not unreasonably restrict or exclude land and water uses of regional benefit. The first step in satisfying this requirement is the identification of those uses. Using the technique suggested in 15CFR 923.13(c), North Carolina has decided to list uses which we perceive will affect or produce some regional benefit. Those uses are:

1. Public recreational facilities of a regional or statewide significance;

2. Major energy transmission or generating facilities;

3. Major transportation facilities such as interstate highways, ports, airports, and important navigational projects;

4. Regional water and waste treatment facilities; and

5. Major public facilities such as multi-purpose reservoirs, state and federal prisons, hospitals and universities.

The next step in providing for uses of regional benefit is the State's identification of the methods that shall be relied upon to assure that unreasonable restrictions or exclusions do not occur.

North Carolina will rely on two techniques to ensure that an adequate amount of specific sites are set aside to meet a projection of reasonable and forseeable demand for uses of regional benefit. The first technique is state acquisition of sites as the need arises for particular uses of regional benefit and the second technique is the designation of "areas which are or may be impacted by key facilities" (G.S. 113A-113) as areas of environmental concern. Both methods can ensure that local regulations do not unreasonably restrict uses of regional benefit.

Various agencies, including the Coastal Resources Commission, have the authority to "recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, of lands of any interest in any lands" within the coastal zone. (G.S. 113A-125(c)(2). The Department of Administration

through the State Properties Office pursuant to G.S. 146-22.1 is authorized and empowered to acquire: lands necessary for public parks and forestry purposes; land 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 acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123. In addition, G.S. 40-2 empowers the State to use the powers of eminent domain to acquire real property for various other purposes including: the construction of water and sewer systems; the development of electric light plants or the distribution of electric power; the provision of educational, penal, hospital or other institutions incorporated or chartered by the State; and the acquisition of property necessary for the building of highways and roads. Through the State's power to acquire property, North Carolina can ensure that an adequate amount of specific sites are available for uses of reasonable benefit.

The second technique does not depend upon the State's acquisition powers and therefore can be used to anticipate future acquisitions. The Coastal Resources Commission may designate "areas which are or may be impacted by key facilities" as areas of environmental concern (G.S. 113A-113(b)(7)). Key facilities include the site location of major improvement and major access features of key facilities. Public facilities, as determined by the Commission, on non-federal lands which tend to induce development and urbanization of more than local impact and major facilities on non-federal lands for the development, generation and transmission of energy are considered key facilities (G.S. 113A-103(6)). Pursuant to the authority of the Coastal Area Management Act, the Commission can then control development within the AEC through the prescribed permit program. Furthermore, through G.S. 113A-111, the Commission can ensure that within AECs, local regulations and ordinances are consistent with the approved land use plans. In effect, this means that the Commission, through the combined responsibility to designate AECs and approve local land use plans according to the requirements of the State Guidelines, can ensure that recognized uses of regional benefit are not unreasonably excluded by local land and water regulations.

The procedure envisioned in designating AECs for areas impacted by key facilities is very similar to the process used in the original AEC designations. The Commission would entertain recommendations for AEC designation from any sector including state and federal agencies. The staff of DNRCD would pursue an investigation of the facts with emphasis upon the extent of the problem and the need for designation. Following this process, the Commission and staff would consult with the interested parties including local governments, state and federal agencies and if a resolution of the problem of unreasonable exclusion could not be resolved through consultation, the Commission would propose the area be designated an AEC. Adequate notice of the proposal would be given according to G.S. 113A-115 and through our federal consultation procedures. A public hearing would be held in the

county or counties affected and the responses considered by the Commission prior to deciding the question of designation. If the Commission found that the designation was justified and needed in order to preserve adequate sites for uses of regional benefit, designation and regulation would follow.

Areas of Particular Concern

Introduction

North Carolina's coastal management program recognizes three types of areas of particular concern (APCs). 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 APCs 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 APC 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 APCs for preservation and restoration by state and local governments; and (3) designation and management of APCs through local initiatives. Although the three APC types are not mutually exclusive (i.e. certain categories of AECs may also be considered APCs for preservation and restoration), the various APC management strategies reflect the opinion that the degree of importance and the most appropriate management scheme is not necessarily identical for all APCs.

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 Five). On the other hand, APCs 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, APCs 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 APC protection through local initiatives.

The AECs are extensively discussed in Chapter Five; in keeping with the theme of this Chapter, the remaining two types of APCs and the AEC amendment process will be discussed in this section. The amendment process, the APCs for preservation and restoration, as well as the APCs protected by local initiatives represent a new and continuing aspect of our coastal management program.

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 formally notify and seek comments from all interested federal agencies. All such agencies will 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. Federal agency comment should be provided before the final date set for public hearing.

Areas For Preservation and Restoration

The second major category of APCs discussed is areas designated for preservation and restoration. APCs included under this heading are dealt with somewhat differently from other APCs 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 any practical use, then 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. The following describes the principle programs for achieving preservation and restoration of APCs.

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 and Recreation in DNRCD 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 by the State as parks, natural areas, or under other acquisition programs. These areas include Goose Creek, Little Goose Creek, Dismal Swamp, Green Swamp Nature Conservancy, Hammock Beach, 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 Game Land, Gull Rock Game Land, Pamlico Point Game Land, Bald Head Island marshes, several oyster management areas and nursery management areas.

The Division of State Parks use a general set of criteria to prioritize possible future acquisition and inclusions into the Park system. Generally, the Division attempts to provide a park within 50 miles of every citizen. When selecting sites that satisfy this geographic criteria comparisons of the proposed area with existing park sites in the region are conducted. Evaluations of natural features, the quality and scarcity of the parks resources, what facilities can be provided and the regional demand for park facilities are all considered.

Then, using these evaluations, the sites are ranked in order of importance. Land areas necessary to protect key qualities are identified and appraised. Then, a priority list is taken to the legislature for appropriations.

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 DNRCD, 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.

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)).

Furthermore, CAMA (G.S. 113A-113(b)(4)) authorizes the designation of the following as AECs:

> "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:...
>
> (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 as AECs by the CRC include the three areas listed above; Coastal Areas that Sustain Remnant Species, Coastal Complex Natural Areas and Unique Coastal Geologic Formations. (See Chapter Five.) 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". The criteria used in the evaluation of proposed sites for inclusion under the three AEC categories are described in Chapter Five. All three 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.

Local Government Initiatives for Special Management Activities

Areas within the coastal boundaries other than AECs and areas for preservation and restoration may also be important for similar reasons although they are presently not recognized as 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 objectives. These areas represent a lower priority of APC 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 APCs. 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., may be felt not 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 with the assistance of the State management agency will be to develop broad policies; to assist local governments upon request in identifying such areas developing appropriate 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 APCs 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.

Research and Education

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 and education 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 in one of the purposes of the coastal management plan. Another objective of the agency with cooperation from the Office of Marine Affairs, Sea Grant, and the Coastal Plains Center for Marine Development Service, will be to sponsor and encourage educational activities concerning coastal resources over issues.

Research and Technical Assistance Role of Coastal Management (CM) 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 CM 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.

Research Sponsorship

Section 310 of the Coastal Zone Management Act of 1972 enables the Secretary of Commerce to provide funds for 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)). The State 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 ensure that the State's interests be represented.

Section 310(b) offers more definite support through direct grants to North Carolina for research, studies and training which will meet the objectives of the State. Administering this aspect of our coastal management requires: 1) continual assessment of CM technical assistance and research needs within the state; 2) prioritization of state needs and assignment of adequate funding levels; 3) development of 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).

Coordination

Besides the assistance and support made available through the FCZMA there are various state supported research programs dealing with coastal resource management issue North Carolina's Department of Administration, because of its over all administrative and coordination responsibilities as described in Appendix C, will coordinate the activities of these programs, so to maximize their contributions in solving coastal problems. Because of the interdepartmental role of the Department of Administration, duplication of research will be minimized and the State can ensure that the subjects proposed for research will be relevant to the resource management objectives of State. Additionally, the Department of Administration can be a convenient contact point for agencies interested in the results of research efforts because of its established role in coastal research.

Program and Policy Development

The CM agency (DNRCD) has a greater responsibility in promoting coastal management objectives than merely initiating research and providing technical assistance. It must also initiate responses to new resource management problems of the coast through both established and new governmental programs. Therefore, the CM agency will continually be called on 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 appropriate administrative and organizational arrangements needed to execute the new or expanded state objectives associated with the coastal management program will be designed as appropriate.

Finally, the CM 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 (see Policy Development). In addition, the CM agency will periodically, upon discovering the lack of clear State direction, suggest policy statements to the appropriate governmental body.

In this manner, the CM agency can bridge the obvious gap between perception of a coastal resource problem and the stimulation of effective governmental action. The CM agency in summary clearly plays the lead role in the efforts of state government in resource management.

GLOSSARY

AREAS OF ENVIRONMENTAL CONCERN (AECs): Those areas of the zone where uncontrolled development, unregulated use, or other man-related activities could result in major or irreversible damage to important resource values, or natural systems or processes, which are of more than local significance, or could unreasonably endanger life or property as a result of natural hazards, or could result in loss of continued long-range productivity in renewable resource areas.

COASTAL AREA: The 20 counties that are adjacent to, adjoining intersected by or bounded by the Atlantic Ocean or any coastal sound. This area is subject to the provisions of the CAMA and are considered North Carolina's coastal zone. The coastal area extends offshore to the limits of state jurisdiction.

COASTAL AREA MANAGEMENT ACT OF 1974 (CAMA): An act relating to the management of the coastal area of North Carolina. This state legislation establishes the framework for the North Carolina coastal management program.

COASTAL MANAGEMENT STAFF: The organization or office within the Department of Natural Resources and Community Development (DNRCD) designated by the Secretary of DNRCD to develop and carry out the State Coastal Program.

COASTAL RESOURCES ADVISORY COUNCIL (CRAC): A 47-member body created by the 1974 General Assembly through the Coastal Area Management Act (G.S. 113A-105). It is composed of a broad cross-section of coastal interests to advise the Coastal Resources Commission.

COASTAL RESOURCES COMMISSION (CRC): A 15 member body appointed by the Governor representing various prescribed coastal interests which serves as the primary policy-making group for coastal management in North Carolina.

COASTAL SOUND: Coastal Sound means the Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. Sounds are large bodies of water behind the Outer Banks that typify recent geologic development of the coastal plain.

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT (DNRCD): Previously the Department of Natural and Economic Resources (DNER); has primary responsibility for administering environmental and natural resource management program and is the principal coastal management agency.

DESIGNATED LOCAL OFFICIAL (DLO): Local employee whose duty is to administer the CAMA local minor development permit program.

DEVELOPMENT: Any activity in an Area of Environ mental Concern involving, requiring, or consisting of 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. All of these activities with certain specified exemptions are subject to the provisions of the CAMA permit program.

EMERGENCY MAINTENANCE OR REPAIRS: Any activity that occurs as a result of a sudden or unexpected happening which significantly affects life or property, which activity has as its objective the preservation of life or the preservation and repair of property which is significantly endangered is not development. Although this provision is to be liberally construed, the excluded maintenance or repair is limited to those activities that wither limit further danger to lives or property or whih restore the structure to its condition immediately preceding the emergency. No additions, expansions, or major modifications to the existing structure or other property are within the contemplation of this definition.

FCZMA: Federal Coastal Zone Management Act.

INLETS: Inlets are breaks in the Outer Banks that allow free passage of the water from the Atlantic Ocean to the coastal sounds. There are presently some twenty-two active and open inlets in the entire barrier island system of North Carolina.

INTERIM AREAS OF ENVIRONMENTAL CONCERN (IAEC): Prior to the official designation of Areas of Environmental Concern, the Coastal Resources Commission officially adopted definitions for Interim Areas of Environmental Concern. These definitions served as the first attempt by the Coastal Resources Commission to identify critical resource areas that might be designated as final Areas of Environmental Concern. The Coastal Area Management Act requires that developers, 60 days prior to initiating development notify the Coastal Resources Commission of the proposed activity in the IAEC (G.S. 113A-114(e)).

LAND USE PLANS: Plans developed by local governments to guide future growth and land uses consistent with locally stated goals and objectives and the requirements of the Coastal Area Management Act.

LITTORAL DRIFT: Sand movement parallel to the shore by wave action.

MEAN HIGH WATER (MHW): In bodies of water having six inches or more lunar tidal influence, mean high water is the average height of the high water over a 19 year period.

MEAN WATER LEVEL OR NORMAL WATER LEVEL: In bodies of water having less than six inches lunar tidal influence, and excluding tropical storm and hurricane conditions, mean water level is the average height of all water levels.

MILLION GALLONS PER DAY (mgd): A liquid flow rate.

NPDES: National Pollution Discharge Elimination System.

OUTER BANKS: The Outer Banks are a thin chain of barrier islands which protect or enclose North Carolina's sounds and bays.

PERMIT CHANGEOVER DATE: The date established by the Coastal Area Management Act for the Implementation of the CAMA permit program, March 1, 1978.

STATE GUIDELINES: A document prepared by the Coastal Resources Commission to aid local governments in the preparation of land use plans. A statement of objectives, policies and standards to be followed by local governments in designating public and private uses of land and water areas in the coastal area.

SYNOPSIS: Summaries of individual CAMA land use plans containing the substantive elements of the local planning process, and distributed to each household in the coastal area. These summaries are to serve as an important public information material.

TWO TIER COASTAL ZONE (TWO TIERED MANAGEMENT SYSTEM): This refers to a coastal zone which is divided into two areas which have different levels of state management and regulation. In North Carolina, the first tier consists of all AECs and is thoroughly and strictly managed by the State by means of the CAMA permit; the second tier consists of the remainder of the 20 coastal counties in which only certain high impact uses are regulated by the State.

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PART III

FINAL ENVIRONMENTAL IMPACT STATEMENT

CHAPTER ONE: DESCRIPTION OF THE ENVIRONMENT AFFECTED

The State of North Carolina has identified a 20-county area as the coastal zone boundary under Federal requirements. This areas has significance for both the State and the Nation. It is an important natural and economic resource for North Carolina. The following is a description of the environment affected by this coastal management program.

A. The Coastal Environment and Its Boundaries

The North Carolina coastal zone is a gradual transition from land to sea dominated by rivers, estuaries and bays. The entire coastal environment is influenced by and intimately linked to the vast lagoon-estuary areas of North Carolina. The inland extent of the coastal plain actually begins many miles inland from the boundaries of the coastal area. Although land use activities in the upper coastal plain, as well as the piedmont and mountains, affect the coastal resources, the impacts of such activity are less direct and significant than the impacts resulting from development occurring directly within the coastal area.

The North Carolina coast has a relatively significant probability of hurricane and severe storm occurrence each year. Although it has been a number of years since the last such occurrence, development has continued in natural hazard areas. Such trends have been noted and considered by North Carolina.

The State legislature in developing the CAMA tried to select a boundary that would include development activities having a direct and significant impact on coastal resources. After careful study, a water quality standard of 200 mgs. per liter of chloride was used to identify points of confluence on major tributaries that represented the inland extent of the area directly influenced by the marine environment. The coastal area then was defined in the Coastal Area Management Act, Section 113A-103(2) as, "...the counties that are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean.....or any coastal sound." The inland limit of the coastal sound was defined in Section 113A-103(3),"... as the limits of sea water encroachment on said tributary river under normal conditions...with the limits of sea water encroachment...to be the confluence of a sound tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic saltwater under normal conditions...". The definition continues to identify specific points of confluence along five of the major sounds' tributaries.

The identified coastal area includes 20 of North Carolina's 100 counties. Within this coastal area, the State has developed a two-tiered management approach.1/

Part II, Chapter 4 of the management plan introduces the two-tier concept and Part II, Chapter 5 carefully analyzes the authorities for coastal management within each tier. Briefly, the first tier includes the critical Areas of Environmental Concern in the North Carolina coastal zone: Estuarine Resources (pp. 178); Ocean and Inlet Hazard Areas (pp. 183); Public Water Supplies (pp. 185), and Fragile Coastal Natural Resource Areas (pp. 191). Within these areas, permits will be required for any project initiating development as defined in the CAMA G.S. 113A-118(d)(1&2).

The second management tier includes all areas outside of AECs but within the 20-county coastal area. These areas will be managed with existing State authorities with development in these areas guided by the local land use plans. Additionally, an Executive Order has been signed which requires State agency actions to be consistent with State coastal policies as outlined in the coastal management plan as well as with State Guidelines (for a full description see Appendix B and the local LUPs.

B. Socio-Economic Setting

The economic and social conditions in the 20-county coastal area are of mixed prosperity and poverty. A large portion of the coastal area is rural with scattered small communities, while at the same time, this area contains one large metropolitan area, Wilmington, and a number of other areas slightly less developed but of economic significance including New Bern, Morehead City and vicinity, Elizabeth City, Washington, Manteo and the Dare County beach communities. In 1970, twenty-one percent of the families in the coastal area earned an income below the established poverty level. Also, seventeen percent of the homes did not have complete plumbing facilities. In several counties, the percentage of homes with incomplete plumbing ranged as high as 35 to 45 percent. In contrast, the prosperity can be recognized in the beach areas where some ocean front lots are reported to sell for over $700/per front foot. While in recent years the economic disparity is reported to have narrowed, these statistics cannot be ignored when considering the area's economic development.

1/ Many sources of environmental information are available on the coastal area of North Carolina including publications available thru: the North Carolina Sea Grant Program, National Marine Fisheries Service, National Ocean Survey, National Weather Service, Environmental Data Service.

The backbone of coastal industry consists of agriculture, forestry, mining and fishing. Farms are traditionally small and operated by a single family for several generations. In recent years, however, corporate interests have amassed considerable land holdings; the largest exceeding 300,000 acres. It is anticipated that these "super farms" will dramatically affect the agricultural sector of the coastal area and the State. The forestry industry offers a variety of mixed hardwoods in swamp areas and vast areas of pine in upland areas. Croatan National Forest is among the many forest areas managed for timber production. Mining, the newest industry in the North Carolina coastal area, centers around extensive phosphate deposits in Beaufort and Pamlico counties and is already a major source of fertilizer for the Nation. Finally, the commercial sports fishing industry contributes "substantially" to the coastal economy with the potential of growing many times over in the near future.

The coastal area is one of the richest sections of the State for recreational activities and tourist attractions offering fishing, boating, swimming as well as a rich heritage seen in the historical landmarks. Prominent National Parks enrich the recreational opportunities to both seasonal and permanent residents alike.

North Carolina has two major ports located at Wilmington and Morehead City, numrous small harbors servicing the fishing fleet and the Intracoastal Water Way serving as a major shipping corridor. It is estimated that more than 300,000 tons of cargo were moved through the Morehead City and Wilmington ports in 1976. Phosphate, tobacco, petroleum, steel, and forestry products were the primary import and export commodities. The smaller ports servicing the fishing industry have steadily increased in number and at the present time a new port and fish processing facility is being constructed in Wanchese. Finally, the Intracoastal Waterway is a major north-south shipping corridor that is used to transport nearly 16 percent of the State's tonnage.

A more thorough discussion of the elements that comprise the socio-economic setting is given in the Management Plan.

C. Institutional Setting

In North Carolina, Federal, State, county and local governments all influence the use of the coastal area. On some issues, there has been direct and ongoing communication and coordination. However, some coastal issues have rarely been addressed in a comprehensive or coordinated manner. Similarly, resource management activities are distributed among different State agencies, as well as different levels of government. The policies that exist at the different levels of government may conflict with each other.

Therefore, the management system that has existed in the past has been, in some instances, fragmented in its interpretation and implementation.

With the development of the State's Coastal Area Management Act, greater coordination is evolving. Under CAMA, the State Coastal Resources Commission was established. The CRC (as described in the management plan) is a regional commission empowered to help develop a coastal resource management system.

Because the coastal area is, for the most part, rural in nature, county governments have provided a great deal of assistance to local governments during their planning process.

Development of North Carolina's Coastal Management Program has also involved Districts and Associations such as the Soil and Water Conservation Districts and the Sewer and Water Associations which were organized by county governments to effectively pool their resources in addressing certain issues. Also, the Regional Councils of Governments provide services to local governments such as planning assistance in obtaining State and federal grants and assistance in completing the A-95 review process. It is anticipated that with Federal approval of a Coastl Management Program in North Carolina, coordination of existing resource management activities and regulatory functions will be greatly enhanced.

CHAPTER TWO: PROBABLE IMPACT OF THE NORTH CAROLINA MANAGEMENT PROGRAM

An Environmental Impact Statement normally contains two sections at this point, one describing the relationship of the proposed action to land and water use plans, policies and controls for the area; and the other, assessing the probable impact of the proposed action on the environment. In this assessment, it is convenient to examine these two sections in one step as follows:

The North Carolina Coastal Management Program represents an effort to develop a rational environmental program that will accommodate development and economic growth while maintaining or enhancing the quality of the natural environment. The program will serve as a blueprint for the use of the resources specific to the North Carolina coast by providing a set of carefully conceived land and water use standards, guidelines and policies. The impacts of this program have been assessed at each development phase, and it is anticipated that a net gain in environmental quality will result. Four categories have been selected as topics in analyzing the program's impacts. These topics include: regulation, policy development and implementation, consistency and coordination, research and inventory.

A. Regulation

North Carolina's resource management program depends on State regulation to achieve the State's objectives and policies for coastal management. This program document outlines two different levels of management and regulation. The most intensive level of management is centered in "areas of environmental concern". These are geographically defined areas where it has been determined that the coastal environment is most sensitive and needs the greatest degree of management control.

A second level of management exists in those coastal areas outside of the defined AECs since there are uses within these non-AEC areas that might have direct and significant impact on coastal resources. Management in these areas is less comprehensive than in AECs, as only critical uses are to be regulated.

With Federal approval of the State's coastal management program, this State regulation process will be affected in certain ways.

a. There will be additional State government enforcement personnel.

b. The permitting process should become more coordinated between State agencies.

c. This more coordinated approach to regulation and coastal management should improve the environmental quality in sensitive areas.

The impacts of program approval on AECs will be to give highest priority to the protection and coordinated management of these areas 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 or public resources.

It is anticipated that the cumulative effects of regulating AECs will have an overall positive impact on the integrated coastal resource system.

There are also impacts of program approval on areas outside of AECs. The State intends to regulate certain uses outside of AECs that might have a damaging effect on coastal resources. This level of management will not require new or different State regulation. Rather program development under the FCZMA has influenced the emphasis of existing State legislation. Better coordination and implementation of current State laws regulating coastal areas, as well as conformance by State agencies, in their decision-making, to State coastal policies and objectives, will produce a more comprehensive approach to coastal management.

The Executive Order, which was needed to ensure Federal program approval, will have a significant impact by requiring that state regulatory and management decisions in the coastal areas be made in accordance with the coastal policies in Part II, Chapter III.

B. Policy Development and Implementation

The North Carolina Management Program establishes several modes for policy expression including the State Guidelines, the local land use plans required by the Coastal Area Management Act, and the State Coastal Management Plan. The State Guidelines contain policies adopted by the Coastal Resources Commission that serve as the framework for the development of the local land use plans, establish the standards for Areas of Environmental Concern and represent the overall State policy on coastal issues. The local land use plans further define these State policies by applying the policies contained in the Guidelines to local situations and circumstances. Consistency of local actions with State policies is promoted through this planning arrangement because of the required approval of the local plans by the Coastal Resources Commission. The North Carolina Coastal Management Plan incorporates the policies from both the Guidelines and the land use plans, as well as other State

Coastal policies derived from various official policy sources.

North Carolina's Coastal Management Plan describes a policy development process that will be used to formulate future policies for incorporation into the Management Plan. The procedure will involve: first, the identification of important coastal issues; second, the gathering of the information necessary to understand the issues; third, the development of policies addressing the issues, and finally, the implementation of the stated policies. The procedure in detail includes the following steps: (1) The staff of the Office of Coastal Management (DNRCD) consults with the Secretary of the Department of Natural Resources and Community Development as well as other State agencies to identify the most urgent needs for State coastal policy; (2) Staff presents recommendations to the Coastal Resources Commission. The Commission designates the areas for study and appoints a "Policy Task Force" consisting of three Commission members and three Advisory Council members to work on the subject under study; (3) Specialists from appropriate State, local and Federal agencies are brought together to serve the Task Force in understanding the programs, services, policies and capabilities of government in addressing the problem; (4) These specialists would assess the needs; educate the Task Force, and make recommendations to the Task Force for policies and guidelines for the coastal area; (5) The Task Force makes recommendations to the Commission on the proposed policies and upon adoption, holds a public hearing; (6) The Commission may choose to adopt these recommendations as State Tuideline Amendments and the Department of NRCD will incorporate these amendments in the State management plan; (7) Inclusion of specific policies in the State management plan and in the "Guidelines" will serve as criteria in guiding State and Federal actions through consistency determination in the implementation phase; (8) Local governments will be required to address the new elements in the "Guidelines" in their next revision of their local land use plans; (9) The local plans reflecting the local desires and situation relative to the new planning element will serve as one of the criteria for consistency determination for State actions; (1) The Task Force is dissolved and the process is repeated as needed.

The process described above serves as a clearly recognizable policy development mechanism that is accessible to all levels of government as well as to the citizen. Furthermore, the mechanism proceeds along a rational series of steps that build on the information available and culminate with a specific policy response. The effect of instituting this policy development procedure is to make the local, regional and State governments of North Carolina effective partners with the Federal government in coastal resource management.

Both the Federal Coastal Zone Management Act and the State Coastal Area Management Act indicate within their legislative findings that the reason for ineffective coastal resource management at the State and local level has been the lack of a clear review procedure and sets of policies. This condition has ultimately resulted in the assumption of responsibilities by numerous State and Federal agencies and the consequent erosion of local prerogatives and powers.

The development and implementation of state policies will ensure that the merits of a project can be quickly considered based on broad criteria rather than the narrow criteria common in current decision-making.

The most immediate issues to which the policy development process will be applied are:

Shorefront Access and Coastal Recreation

These policies will help to maintain the cultural, ecological, and aesthetic qualities of the coastal area. The cultural and aesthetic richness of the coast has been used frequently to promote the statewide tourist industry. Many vacationers are attracted each year to the coast.

Local recreational needs and opportunities have not been given adequate consideration in the past. As a result those coastal areas of Statewide, regional, and/or national interest have received a greater part of the financial aid available to the State. It is anticipated that with State coastal policies, there will be a greater degree of predictability in the distribution of these funds.

Providing adequate beach access is another issue that will be addressed through State coastal policy. These policies will help to secure funds to purchase access points and facilities such as walkways. Funds will also be available for development of plans to adequately manage these sites. Technical assistance to localities will be available from the State in developing management plans.

Shoreline Erosion/Mitigation Planning

These policies support the need for: inventory and analysis of shoreline erosion areas; an analysis of current shore erosion management practices; research into the potential causes of shoreline erosion along North Carolina's coast.

These same policies are designed to reflect the adequacy or inadequacy of existing State management programs (including AECs). Relevant erosion planning policies will be endorsed and/or recommendations for new and more comprehensive policies will be made.

It is anticipated that this new and more comprehensive approach to shoreline erosion planning will help simplify the permitting process for the potential applicant.

The policies developed for shoreline erosion planning will also recommend a State participation formula that considers social, physical, and economic thresholds which could be used to give priority to requested erosion control civil works projects.

Energy Development

The policies addressing energy development will establish a mechanism to reflect the concerns of State and local governments in facility construction and establish a planning framework to assist local governments in planning and mitigating potential environmental and socio-economic impacts. Also, assurances will be made to include all relevant State agencies in the review of individual projects. Locally, the policies will provide a strong voice in project review and will insure the availability of funds in planning for such developments.

C. Consistency and Coordination

A primary goal of the North Carolina Coastal Management Program is to develop a comprehensive resource management system. This is possible only through coordination of local, State and Federal government actions. With the approval of North Carolina's program, financial support will be provided to local governments to encourage consistency of local actions and decision-making with the State's program goals and policies. Additionally, program approval will ensure that State agency decision-making is closely coordinated and in conformance with State coastal program goals and policies.

Through Federal consistency provisions (Section 307 of the Federal Coastal Zone Management Act), Federal agency actions will also have to be consistent, to the maximum extent possible, with State coastal program goals and policies. It is anticipated that the impact of Federal consistency within the State's coastal area will mean greater State control and influence over Federal activity here.

The Coastal Resources Commission and the Secretary of the DNRCD view Federal consistency as a rare opportunity to greatly improve existing relationships with the Federal Government. Policy statements will be expressed clearly and concisely allowing Federal agencies to accurately make consistency determinations. Through each step of policy development, great efforts have and will be made to consult with and reflect the concerns expressed by Federal agencies. Also, particular attention has been given to incorporate the provisions of the Federal Air and Water Laws and comments made by the agencies charged with implementing them.

D. Research and Inventory

Section 310 of the Federal Coastal Zone Management Act of 1972, as amended, provides funds to establish a program of research, study and training to implement management objectives. North Carolina plans to place an emphasis on research applied to relevant coastal issues such as Beach Access and Island Preservation, Shoreline Erosion Planning and Mitigation, Marine Fisheries Management, Waste Disposal Alternatives, Inventories of Significant Estuarine Resources and Energy Facilities Siting. Each of these topics and more will be addressed in our program of applied research described on page 254.

Research and inventories on the subject of beach access and island preservation will provide the State with an understanding of the problems from a local, regional and State perspective regarding coastal recreation and beach use. The result of this research will hopefully be a clear course of action that can lead to better utilization of the public beaches and islands with a minimum of negative effects resulting from recreational use.

Shoreline erosion is a significant problem in North Carolina. However, at this time, governmental reaction to the problem is uncertain and uncoordinated. Investigations as to the extent of the problem and methods for erosion mitigation will assist government agencies at the State and local level to better understand and deal with the program.

North Carolina has an extensive estuarine system and bountiful marine fishery. If this resource is to be fully utilized, however, the State must know more about the species present, the population levels, the migration patterns and other relevant data. The result of our research will be an economic benefit to the coast.

Waste disposal is a serious problem in coastal North Carolina because of the unsuitable soils present. If North Carolina is to preserve its natural coastal resources while providing for the growth expected, alternatives to the present sewerage disposal systems for individuals and municipalities must be devised.

Inventories of significant estuarine resources can supply the State with the information necessary to evaluate proposed governmental projects and permit applications. An appraisal of the anticipated effects can be accomplished with this information. Consequently, the design can be modified or mitigation measures employed that will preserve the quality of our estuarine resources.

Energy facilities will in the future become more prevalent in the coastal area. North Carolina must be prepared to examine the effects of each facility and provide the best available sites for the facility. Through this process, the State can become an effective decision-making body for energy facilities without unnecessarily delaying the development of our Nation's energy resources.

It is realized that the effectiveness of North Carolina's coastal management depends to a large degree on the adequacy of technical assistance and research that can be applied to coastal issues. In part, as a result of these continuing research efforts, better decisions with respect to coastal resources can be expected within the public and private sector. The application of this research should lead to enhanced environmental quality and more informed economic decisions.

CHAPTER THREE: ALTERNATIVES TO THE PROPOSED ACTION

A. INTRODUCTION

Given the nature of the proposed action, which is approval of the North Carolina Management Program, all alternatives would involve a decision to delay or deny approval. Delay or denial of approval could be based on failure of the North Carolina Program to meet any one of the requirements of the Federal Coastal Zone Management Act (CZMA). In approving a CZM program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on over twenty such requirements.

The North Carolina response to the need for wise coastal management was enactment of an innovative and unique law, the Coastal Area Management Act. The law is multi-faceted; it calls for regulation, planning, policy development, and coordination of government at all levels. Additionally, the State has expanded the scope of the program by coordinating all state agency functions by means of a Gubernatorial Executive Order. Thus North Carolina has taken significant action, with both the legislative and the Executive branches, to address the State's coastal resource issues.

Nevertheless, in the course of development of the North Carolina program, several potential deficiencies were identified. These deficiencies have now been addressed by North Carolina and the Assistant Administrator has made a preliminary determination that North Carolina has met the requirements for approval under Section 306 of the Coastal Zone Management Act. In order to elicit public and agency comment and assure that the Assistant Administrator's preliminary assessment is correct, this section identified areas where there are possible deficiencies and considers alternatives of delay or denial based upon each. Before examining the alternatives, the following section identifies the general impacts that would result from delay or denial on any basis.

The generalized impacts of delay or denial of approval of the North Carolina Coastal Management Program, regardless of the basis of delay or denial, are as follows:

(1) Loss of Federal monies to administer the program. Under Section 306, North Carolina would receive approximately $1.3M per year to administer its coastal management program. Most basic to a loss of Federal funds will be the inability of the State to provide adequate staffing and administrative support to their permitting program throughout the coastal area and, in particular, areas of environmental concern (AECs).

Additionally, problems identified by North Carolina may continue due to a lack of funds to address them. Local governments would also be without the funds necessary to revise their land use plans and to bring them into closer alignment with the State's coastal policies and objectives. Such refinement would be essential for the most effective coastal management program.

Delay or denial of this program would also make it difficult for the State to give needed consideration to shorefront access, shoreline erosion, and OCS development.

(2) Loss of consistency of Federal actions with North Carolina's Coastal Management Program and its stated policies. Program approval would mean that Federal actions, in or affecting the North Carolina coastal area, would have to be consistent with the State's management program under Section 307(c) of the CZMA. This would be of particular concern to the State of North Carolina as the coastal area is heavily influenced by Federal activity.

(3) Loss of adequate consideration of the national interest in the siting of facilities which are other than local in nature as required by Section 306(c)(8) of the CZMA. By delaying or denying program approval states and local governments would be under no obligation to give adequate consideration to coastal resources and facilities that are of national interest. This may result in loss of public benefit that the use of such resources may provide. For example, failure to allow expansion of port facilities in the national interest to accommodate trans-shipment of coal for energy production may result in the need to use a different energy source. This may add to higher energy costs to the public. However, the national interest also encompasses a concern for the protection of resources such as water, air, wetlands and wildlife. Consideration of the need for the national interest in facilities must take into account the impacts of facilities on these key resources.

Program approval would mean that the State could undertake increased technical assistance to local governments and improved implementation of existing State programs. This would give the State and local governments an opportunity to give balanced consideration to both facilities and resources in the national interest. Lacking program approval, these considerations affecting resources in the national interest might not be made.

B. FEDERAL ALTERNATIVES:

Alternative 1 - The Assistant Administrator could delay or deny program approval if the "Areas of Environmental Concern" are not geographically broad enough.

The Federal Act requires States to identify land and water uses which have direct and significant impacts on coastal waters. The States must also inventory areas of special management concern. For purposes of management, North Carolina has used a two-tiered approach.

The first tier, which is the more thoroughly regulated area in North Carolina's coastal zone, is made up of "areas of environmental concern" (AECs). AECs are regulated by permit under the State's Coastal Area Management Act (CAMA). The designated AECs include: 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.

All of the AECs mentioned here combine to create a zone that includes all estuarine waters and a narrow buffer zone around them. Further AEC designations can be made by the Coastal Resources Commission (CRC) if it is necessary to better regulate development outside of the currently designated AECs.

The second management tier includes all those areas that lie outside of designated AECs and are in the 20 counties comprising the State's coastal zone. The level of control in this second tier is directed to uses that have a direct or significant impact on the coastal waters. Control over this second tier is based on existing State regulatory programs and authorities and a Gubernatorial Executive Order.

There have been concerns expressed during the program development that the current AECs have not been defined broadly enough to ensure that all areas of concern to this program can be managed adequately. For example, the controls over fresh water wetland areas that lie outside of AECs are limited. Similarly, some believe that the entire Barrier Islands System off the coast of North Carolina should be managed as an AEC; this alternative was considered and rejected by the State in favor of their AEC management technique.

North Carolina originally proposed developing a Federally approvable Coastal Management Program based solely on defined AECs managed directly by the State. A determination was made at that time that certain uses outside the AEC area had the potential for direct and significant impact on coastal waters and therefore needed to be controlled by the program also.

The 20-coastal county area was considered the optimum size for managing such uses.

The State subsequently developed their program with the two-tiered management approach discussed above. The Assistant Administrator is satisfied that this approach now fulfills our program requirements. In addition, the State now has an Executive Order which helps to network the existing State agency authorities in areas outside of AECs, thus strengthening the management approach in the second tier. The mechanism for future AEC designation can be utilized if the CRC concludes, as circumstances change, 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.

Because of the questions concerning the comprehensiveness of current AEC designation, the Assistant Administrator could delay or deny program approval. The State could:

(1) do nothing

(2) have the CRC designate additional AECs prior to program approval

If the State determined to "do nothing", the impacts would be those generalized impacts identified above for delay or denial of program approval.

Under the second option, the State would request that the CRC designate those areas of State management concern that currently lie outside of AECs. The mechanism for designation is already in place and such a designation would enhance the management technique.

> Alternative 2 - The Assistant Administrator could delay or deny program approval if the State lacks the ability to insure State agency compliance with the coastal policies in areas outside AECs.

A key element of North Carolina's coastal management technique, as discussed in Alternative 2, is the Executive Order. The Executive Order provides a mandate that State agency decision-making be consistent, to the maximum extent possible, with coastal goals and policies as outlined in the North Carolina Coastal Management Plan; with the State Guidelines; and with the local land use plans. Such State agency consistency provides the special management attention needed in coastal areas outside of designated AECs. All regulatory programs, all financial assistance programs, and all public development projects are therefore subject to these consistency provisions.

While the State believes that current State agency regulations are designed to pursue objectives consistent with wise coastal resource management, the Executive Order ensures that the development and implementation of new coastal policies can continue as needed and that State authorities will be administered in accord with such policies.

It should be noted here that the State's coastal policies, as articulated in the Coastal Management Plan and the State Guidelines, are the authoritative statement of policy, and where local plans conflict with these policies, the latter will control. The DNRCD is responsible for monitoring agency actions and for resolving inconsistencies between the local land use plans and State coastal policies.

During North Carolina's program development, OCZM identified the lack of adequate networking of State agency authorities as a deficiency. As a result of this identified deficiency, the State drew up the Executive Order which addresses these inadequacies. Other concerns have been identified, however, regarding the authority of the Governor to issue Executive Orders and the enforceability of Executive Orders on certain independent government bodies.

As a result of the criticism regarding the unresolved questions about the Executive Order, the North Carolina legal staff has done additional research on the question of the legal status of Executive Orders in North Carolina and the applicability of an Executive Order to State Commissions and other independent governmental bodies. Their arguments have been included in the document as part of the discussion of Executive Orders in Part II, Chapter Five, and are summarized briefly below.

Legality of Executive Order

Although no North Carolina case law exists which clarifies the status of an Executive Order, the North Carolina staff argues that decisions by Federal courts regarding Presidential Orders should be useful in analyzing the status of North Carolina Gubernatorial Orders, since the clause in the North Carolina Constitution granting the Executive Powers is nearly identical to the "granting clause" in the U. S. Constitution. Federal cases have held that Executive Orders are valid and have the force of law where: (1) they are based on sufficient statutory authority; and (2) where they do not conflict with existing laws. The North Carolina legal staff believes that both of these requirements are met. As to the first requirement, the statutory authority for the Executive Order is solidly based on language in the CAMA (Sections 113A-107, 113A-108, and 3113A-125). Concerning the second requirement, the Executive Order language "to the maximum extent possible" insures that the Order operates only within the framework of existing law.

Effect of Executive Order on Commissions

A second concern is that a Gubernatorial Executive Order may not be applied to Commissions and agencies not immediately and completely under the Governor's control. The State's response to that suggestion is as follows:

The Governor is designated Chief Executive in the Constitution. As Chief Executive he posseses inherent administrative powers over all agencies executing the laws. All Departments and Commissions have as their sole function the execution and administration of the laws. They are subject to the same legal constraints in administering those laws as are agencies under appointed cabinet members. Additionally, employees of Departments with elected heads are subject to the State Personnel Act and all Commissions rely on State Departments for staff services.

Although North Carolina expressed a preference to appoint independent commissions to handle special statewide problems, the legislature has seen fit to extend substantial control to the Chief Executive concerning the actions of these commissions. Typically, Executive control takes the form of power of appointment over all or a majority of the members of the commission. In all the Commissions, except the Sedimentation Control Commission and Health Services, the Governor appoints all members. Although many of the commissioners terms of office will often exceed that of the Governor appointing him, the executive typically has the power to fill more than a majority of all seats on any commission (exception for Utilities Commission, only 50%). Control through the appointment process extends to such collateral matters as the power to fill vacancies and name replacements. Furthermore, the Governor retains the power to remove all commission members for cause. Under the Executive Organization Act of 1973 (see N.C.G.S. 143B-13), cause sufficient for removal is described by the language "misfeasance, malfeasance and nonfeasance." Although we are not aware of any cases interpreting the breadth of this language, we believe that the failure t execute the laws of the State come within the scope of this language.

In addition to selecting the members of the Commission, the Governor has, in some instances, the power to designate the chairman of the Commission. The chairman's position is extremely important in some of the commissions, such as the Utility Commission. In this Commission, the chairman, whom the Governor selects to serve for a four-year term concurrent with himself, determines which matters will be heard by the full Commission, which by subcommittees and which by particular members. The chairman, furthermore, has the power to initiate investigations.

In all, the Governor possesses the potential to exert considerable control over all agencies and departments in the government where the matter at issue involves the execution of the laws of the state.

Monitoring Conformance With Executive Order

A third question which has arisen concerns the issue of who will monitor State agency action to insure that the Governor's mandate is carried out. According to CAMA, the State agency may not issue, modify, renew, or terminate a State permit within the coastal area until it has consulted with the CRC (N.C.G.S. 113A-125(G)). Accordingly, the CRC will be informed by the State agencies of all permit applications and proposed agency actions. The staff will review proposed agency actions and inform the CRC and the Secretary of DNRCD where an action inconsistent with the State policies or a local land use plan is proposed. This will trigger the mediation process described in the Executive Order. If the conflict involves a dispute between units of DNRCD, the Secretary will settle the dispute. All conflicts over consistency between the administering coastal management agency (DNRCD) and another department of State government shall be resolved by the Governor. The CRC is also authorized by statute to review state activities concerning acquisition, use and disposition of land. This review process will be accomplished by monitoring all projects going through A-95 review. If the DNRCD should, upon review, disagree with any agency actions, the conflict resolution process would be triggered. The Assistant Administrator believes that the legal arguments supporting the legality of the Executive Order and its application to Commissions are valid. If, however, legal questions remain concerning this networking mechanism, the State can respond in two ways:

(1) do nothing

(2) obtain an Attorney General's opinion

Under Option (1) above, the generic effects to North Carolina's program would be those already discussed.

Under Option (2) above, the State would need to request a formal opinion from the State Attorney General. An attorney General's opinion would augment the position taken on these legal issues.

Alternative 3 - The Assistant Administrator could delay or deny program approval if local governments are not obligated to enforce the State approved local land use plans.

State laws require coastal counties to adopt local land use plans (LUPs) which are consistent with State Guidelines, both within and outside areas of environmental concern (AECs).

AECs are regulated by permit under the State's Coastal Area Management Act (CAMA). Areas outside of the defined AECs are managed with existing State authorities and guided in their development by the local LUPs. Local governments are not, however, statutorily mandated with the LUPs in their zoning and subdivision authority in conformance with the LUPs in areas outside AECs. Therefore, the State can ensure adoption of a conforming plan, but it cannot ensure that the local government will enforce the plan in coastal areas that are not AECs.

The lack of enforceability of local LUPs has raised some questions as to the State's ability to control some uses in areas outside of AECs that have a direct or significant impact on coastal waters.

Despite the inability of the State to force local governments to enforce the local land use plans, the State is not without authority in non-AEC areas. Each major use in coastal areas outside AECs is presently regulated by the State. The Executive Order signed by the Governor requires each State agency with relevant authorities related to each major use to exercise such authority in conformance with State coastal policies and with local land use plans. Thus State agencies will be managing and regulating each non-AEC use subject to the management program in conformance with State policy as well as with local land use plans. Of course, in those instances where a local land use plan conflicts with State coastal policy, the State policy controls. But except for such a conflicting situation, the local land use plans will be honored by State agencies where non-AEC uses, which have a direct and significant impact on coastal waters, are involved. Admittedly it is the State and not the local government that is mandated by the Executive Order to enforce the local plans. This State enforcement, which will be accomplished through regulatory programs as well as through State activities involving the use and disposition of State-owned lands, financial assistance for public facilities, and encouragement and location of major public and private growth-inducing facilities, is pervasive and will affect both local governments and private developers' activities.

Because of the questions concerning the need for enforceable local LUPs, the Assistant Administrator could delay or deny program approval. The State could then:

(1) do nothing

(2) rely on existing case law

If the State determined to "do nothing", the impacts would be those generalized impacts identified above for delay or denial of program approval.

Under option 2, the State would have to develop a strong legal argument through research and an analysis of existing North Carolina case law. There appears to be evidence that existing case law requires that local zoning and land use decisions conform to comprehensive land use plans. If such an argument could be made, this would provide a legal basis for the State to go to court if and when the comprehensive land use plan (local LUPs) are not upheld and enforced.

CHAPTER FOUR: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS OF THE PROGRAM WHICH CANNOT BE AVOIDED

The act of approving the North Carolina Coastal Management Program will not in itself lead to the loss of resources. Overall, the anticipated effects of the program are positive. However, we recognize the possibility that revenues will be lost to the State by discouraging development in certain areas of the coast. For example, second home and industrial development, both vital to a growing coastal economy, will be discouraged from locating in certain Areas of Environmental Concern such as the Ocean Hazard Areas and in areas identified by local government as unsuitable for development. While some economic benefits may, in the short run, be sacrificed by this aspect of implementation, it should be minimized because the program also identified areas in which development will be encouraged.

Another concern with the program is that it will contribute to the general erosion of private property rights and values. While such concerns are valid in any regulatory program, it is the intent of the Commission and the Secretary of DNRCD to carefully implement the program in order to minimize this impact to the greatest extent possible. The program has been and will continue to be very conscious of the trade-offs involved in restricting private actions and providing for the general public benfit. Nevertheless, the program can be expected to restrict private actions and to depress the property values for certain landowners. However, the magnitude of these potential losses is unknown at the present time. In fact, some property values may be inflated because of the government's encouragement to develop within these areas as manifested through capital investments and lack of restrictions.

Concern has also been expressed that new permitting procedures will add to the confusion and delays that already occur in permitting of activities. This is a very real possibility in the short run but in the long run the confusion and delays will be reduced. The program has been specifically mandated to report to the General Assembly of North Carolina on means of shortening and simplifying the State's coastal permit procedures. The State is committed to this objective. The Coastal Area Management Act, in delegating police powers stresses the importance of expeditious processing of permit applications. CAMA also instructs the Secretary of DNRCD to develop criteria for local assumption of minor development permitting so as to emphasize permit coordination. (G.S. 113A-117(a)). The Coastal Resources Commission is instructed to conduct an ongoing study of permit coordination and to report to the General Assembly every two years on the progress of this study (G.S. 113A-125(d)).

The Coastal Zone Management Act requires the States to consider the National Interest in the siting of facilities and to ensure that local governments do not restrict or exclude uses of regional benefit. These two requirements may facilitate the siting of

various types of development which might otherwise be excluded from the coastal area and which might have some adverse impact on the environment.

Another potentially adverse impact relates to the coverage and scope of the areas of environmental concern. The fact that certain biologically important areas, such as the interior of a barrier island are not included within the AECs, could result in adverse impacts to such areas. A discussion of the sufficiency of AEC coverage is dealt with in the Alternatives section of this document.

CHAPTER FIVE: THE RELATIONSHIP BETWEEN LOCAL, SHORT TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG TERM PRODUCTIVITY

Central to the theme of the North Carolina Coastal Management Program is that restrictions on the short term use of the environment will be balanced with a long term perspective assuring that the natural resources and benefits of the North Carolina coast will be available for future use and enjoyment. The program recognizes that development will continue to occur but it establishes a system to guide growth based on the use standards for Areas of Environmental Concern and on State policies for coastal land and water uses.

A basic precept of this management program is to recognize the interdependences of natural systems as well as th need to expand and improve the socio-economic conditions of the people that must coexist with them. Without a system of management, intense short term development uses and benefits, such as those realized thourh residential and industrial development, would unfairly accrue to a small portion of the private sector. Such short term benefits would most likely result in future restrictions on resource use and benefits because of degradation and loss of basic resources. This fact is substantiated by the increasing number of areas in North Carolina that are being closed to the taking of shellfish.

400,000 acres of shellfishing waters are presently closed to shellfishing which is a full 20% of the potential shellfishing waters. The closing of shellfish waters has continued for many years peaking in 1975 when 640,000 acres were closed. Although in recent years this total number of restricted areas have decreased, this has been due largely to the monitoring of waters of previously unknown quality. The reasons for the closing of these waters included spetic tanks, point discharges and agricultural runoff.

CHAPTER SIX: IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

The approval of the North Carolina Coastal Management Program will not in itself lead to the loss of resources as would a site specific project. As described, this program is simply a process of focusing on and balancing various development trade-offs that can no longer be given haphazard attention if the quality of the coastal environment is to be maintained and enhanced. The resolution of these development conflicts will cause certain areas to be developed more intensely which will, in fact, be an irreversible and irretrievable commitment of resources.

These decisions will allow other areas to remain less intensely developed, based on land and water resource considerations. Also, the review process described in this program will complement the checks and balances instituted through other programs.

CHAPTER SEVEN: CONSULTATION AND COORDINATION WITH OTHERS

1. Past Involvement

During the development of this coastal program, both the State and CRC members were keenly aware of the need for a comprehensive approach to coastal resource management, meriting the involvement of all interested State, Federal and area-wide agencies. In order to fulfill this goal, the Department of Natural and Economic Resources sponsored an introductory Federal consultation meeting in November of 1975. This early involvement aided the State by providing a forum of educated opinions from which to gain guidance and to coordinate future participation. Federal agency participants received information on all aspects of the program which might affect them. Ultimately, the purpose of this meeting was to acquaint Federal agencies with CAMA, FCZMA, the management program outline, and the representatives of DNCD with whom they would be working as the program developed.

Shortly, thereafter, in December 1975, Federal contacts were sent a letter to solicit their views and positions on a variety of issues that were introduced at the initial meeting a month earlier. Briefly, the information which was requested included (1) permit review responsibilities, (2) a list of lands under Federal jurisdiction, (3) regulatory authorities, and (4) the form of future or desired interaction. Appendix D contains documentation of these responses.

2. Direct Participation

Immediately following these initial contacts, both State and Federal agency representatives were requested to participate in the planning phases of the program. This direct involvement and exchange of ideas involved six major aspects of program development which are explained below:

a. Local Draft Plan Preparation and Review - During December and January of 1975-76, the local draft plan review process occurred whereby Federal and State agencies made comments as to consistency and/or compatibility with their respective jurisdictions, laws and programs. Many helpful comments were relayed back to local planners to amend the identified conflicts and deficiencies.

b. Final Review of Land Use Plans - In May-June of 1976, the final plan review process was organized primarily to test the technical accuracy of land classification schemes to ensure consistency with State, area-wide and Federal agency goals and policies. Conflicts with State and national

interests were identified and forwarded to local governments to consider.

c. Designation of Interim Areas of Environmental Concern (IAEC) - Again, all interested parties, governmental agencies and the general public were given full opportunity to participate directly with the IAEC selection process. In May, 1976, Federal and State contacts responded to the public notices with very constructive comments and recommendations.

d. Designation of Final AECs - Over the course of one year, from May 1976 till June 1977, various Federal and State agencies served as consultants and researchers for the Commission to give assistance in developing the rationale to designate AECs. The State CRC staff had very close contacts with these agencies as data was generated, analyzed, and formulated into policy.

e. State Management Plan Development and Review - At the completion of these four program development phases, mentioned above, excellent communication channels were established between the involved State and Federal agencies. Many of the expectations and identified problem areas became commonly known to the CZM staff that had to be addressed within the plan. Formal requests for comments were released in April of 1977 and most of the Federal and State agencies responded with valuable comments and recommendations.

f. Review of Local Ordinances - This task is yet to be completed but will be essential to determine inconsistencies between AEC standards and local regulations. State and Federal agencies may want to participate to determine incompatibility with their programs and identify conflicts with State goals and national interests.

In each of these six major phases of the program's development, coordination between all levels of government became a reality and without such cooperation this comprehensive management program could not have been realized.

3. Future Coordination

Since the Federal CZMA requires that all Federal grant programs, permits and Federal development projects in the State's identified coastal zone must be consistent "to the maximum extent practicable" with this management program, North Carolina recognizes the need to consult with Federal

agencies early in the Federal decision-making process. This need has been met through the design of "the Federal Consistency Determination Process" as explained in the management plan on pages 230-240.

Briefly, this process envisions a communication procedure among all affected Federal, State and local interests. After a coordinated State response is assembled, it shall then be forwarded from the Secretary's office of DNRCD to the appropriate Federal agency, after which further consultation may be necessary. It is believed that all Federal interests and national needs will be properly considered and adequately protected by these consistency determination procedures.