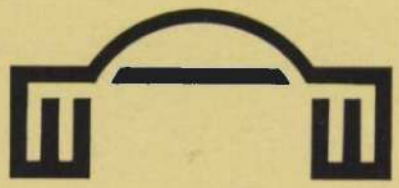
THIS LAND IS YOUR LAND

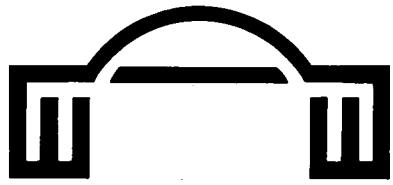
Here's How The State Buys and Sells It



A Report By The N. C. Center
For Public Policy Research

This Land Is Your Land

HERE'S HOW THE STATE BUYS AND SELLS IT



This report was researched and written by Howard Covington, Mercer Doty, Tom Earnhardt and John Eslinger. The largest share of the writing was done by Howard Covington. Edited by John Eslinger.

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The oldest tangible heritage of the people of North Carolina is their public land, and the stewardship of that precious resource is one of the most demanding responsibilities of state government. Proper attention to that responsibility will assure future generations of North Carolinians the full enjoyment of this heritage. It is a responsibility we cannot afford to neglect. This report demonstrates, unfortunately, that it is a responsibility our government has often neglected.

For its first major report, the Board of Directors of the North Carolina Center for Public Policy Research selected the issue of state land management both for its intrinsic importance and because the issue is a good example of why the Center was created, namely, that government at all levels has a poor record of self-examination. Very few institutions in our society, if any, can meet the challenge of renewing themselves without the often unpleasant assistance of independent scrutiny. In the case of governmental institutions, who bears the final responsibility for this scrutiny? In a democracy, the question answers itself---the people do. To assist the people of North Carolina in the necessary evaluation and review of their government, the Center was established earlier this year. The Center is a non-profit and non-partisan research institution, governed by a Board of Directors which is broadly representative of the people of our state. The work of the Center is carried on by a full-time professional staff trained and experienced in law, investigative journalism, fiscal analysis and management, and accounting.

In addition to the publication of several major reports, such as this one, each year, the Center will publish and distribute a magazine devoted to state government issues beginning later this year.

The Center is committed to the principle that, while independent scrutiny of government activities is essential to the improvement of government, only constructive criticism is worthwhile. It is in that spirit that most Center reports will contain proposed remedies for the identified problems. There are many dedicated and talented public officials in North Carolina, we believe, who will respond energetically to a proven need for reform. The problem in the past has been the lack of information about what state government is doing, or failing to do, in the discharge of its responsibilities to all of us. The Center hopes to fill that information gap, and it is our belief that once the facts are known about any particular state government problem, the chances for reform will be enhanced.

The Center, on behalf of the people of North Carolina it will serve, is deeply indebted to the Mary Reynolds Babcock Foundation of Winston-Salem and the Carnegie Corporation of New York for the initial financial support which made possible the establishment of this exciting new institution. These grants were challenges, in a sense, and were given to the Center in the belief that the people of North Carolina will provide the support required for the continuation of the Center's work in future years by contributing to, and becoming members of, the Center. In this way, the Center's work will be sustained directly by the people as a continuing resource of new ideas for the improvement of their state government.

We hope that you find this report interesting. We also hope that you find it disturbing. If you are in a position to correct the problems discussed in the report, we sincerely hope that you will.

November 14, 1977

William G. Hancock
Chairman

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CHAPTER I: INTRODUCTION

State lands have been bought, sold, swapped and even loaned during the past four administrations for the advantage of private interests and at the expense of taxpayers. In managing the public's property, state officials have sometimes relied on wrong or inadequate information, bowed to influential politicians, been victimized by bad judgment and poor planning and even ignored the laws and their own established procedures.

In two instances examined by the North Carolina Center for Public Policy Research, the state bought or swapped for land the sellers didn't even own. In two others, property was loaned to private organizations for use as security for construction loans and mortgages, and in others property was sold for a fraction of its appraised value. These transactions should not be considered a condemnation of all----or even a majority of----land transactions by the state. Neither should they be considered rare or extreme. Some turned up in a simple review of real estate transactions in 15 counties selected for examination because of the heavy concentration of state-owned land or the development potential of the area. Others were suggested by current or former state officials who had been involved, either directly or indirectly and believed the public's interests had not been protected. To fully evaluate the state's property management operations, however, would require a study of all, or at least a large representative sample, of hundreds of sales, purchases, swaps and leases that are handled annually by the state property office, part of the massive Department of Administration. Only recently has the property office even completed its own inventory of more than 389,000 acres of state property located throughout 100 counties. And this does not include thousands of acres of unmapped swamps and marshes that also belong to the public.

BLOOPERS

Two kinds of property transactions are not covered in this report: property rented by and to the state and property used in the construction of highways. The latter is not handled by the Department of Administration's real property office or approved by the Council of State but is under the sole control of the Department of Transportation. Lease transactions may be the subject of a later report.

This report does cover a variety of transactions that were chosen to determine whether the present system for acquiring and disposing of state-owned land has sufficient safeguards to adequately protect the public's interest.

In five specific cases, the Center found shortcomings in the procedures that ended up costing the state money. In three others, state property was used in such a way as to violate the intent, if not the letter, of the law.

Most of these transactions were handled through the normal channels established by law or under the internal procedures that have evolved in the property office. As a result,

each of the examples illustrates problems that have occurred, sometimes more than once, and which can occur again.

---In the case of the North River Game Lands in Currituck County, state property officials and the Wildlife Resources Commission staff members were "stampeded," as one who was involved put it, into a $750,000 land purchase before they had a proper survey of the property or even a complete title search of the ownership.

---In the case of marshland off Figure 8 Island near Wilmington, the Council of State was supplied incorrect information on two separate occasions under two administrations that resulted in the sale of navigable waters, contrary to state law, to resort developers in Wilmington. Today, the state still does not control these channel bottoms.

---The Division of Marine Fisheries invested five years, hundreds of hours in state employees' time and a valuable piece of property in Morehead City in the development of a park and possible office complex that may never be built because someone forgot to get a proper deed from another state agency that controls the land.

---Land developers in Morganton were allowed to profit from the sale of prime commercial property, rather than the taxpayers who owned the land, because state officials disposed of the property through private negotiations rather than a public sale.

---The state Constitution prohibits any exclusive emoluments or privileges for "any person or set of persons" in North Carolina, but the University of North Carolina loaned land to five private fraternities at Chapel Hill which used the property to secure building loans of as much as $120,000. If there is a default on the loans, the bank can take the public's land if the university does not buy the building and pay off the debt.

Each of these transactions, and others detailed in this report, passed through the Department of Administration, which is legally responsible for investigating them before forwarding them for approval to the Council of State----composed of the governor, lieutenant governor, attorney general, secretary of state, treasurer, auditor, superintendent of public instruction and commissioners of insurance, labor and agriculture. The department is charged by law with the job of buying, selling and leasing land for all state agencies except land used in highway construction. This office processes requests from various agencies to buy or sell land for such things as hospitals, prisons, parks, wildlife game areas, easements for use of state channel bottoms and marshes, new state office buildings and the preservation of historic homes.

The real property office was established during the administration of Gov. Luther Hodges. But it was not until 1970, under Gov. Robert W. Scott, that the property office was expanded from a virtually one-man operation into a professional, trained real estate staff of four. The office was given additional responsibilities and authority in 1977 over thousands of acres of state land formerly under the sole control of the departments of correction and human resources.

Despite improvements, the Center found in its own research and interviews with people familiar with state property transactions that the state is still ill-equipped to get the same value for the taxpayers' dollar that private investors get for their money. The state has particular problems in buying land, problems that may simply be inherent in the principle of public ownership.

"The state gets taken because everybody sees you coming," said James Harrington of Raleigh, former secretary of the Department of Natural and Economic Resources. During the recent administration of Gov. James Holshouser, Harrington personally supervised the state's grandest land-buying spree----43,317 acres during the four years---after the legislature gave Gov. Holshouser $17 million for state park land acquisitions. According to Harrington, "I'd have to say we 'got took' in some instances."

The state "telegraphs" its interests in property far in advance of the actual purchases, unlike private buyers who can deal without publicity. Many decisions about how to spend public money on land are made in the legislature where projects are a matter of public record and sometimes open debate. In the case of the purchase of additional land for Stone Mountain State Park in Wilkes County, for example, officials of the Department of Natural and Economic Resources (NER) complained, sometimes openly, that the price of one particular tract was artificially inflated through a series of paper transactions during public discussion of the park development. The sellers denied any such ploy, saying that despite the widespread publicity they were unaware their land was targeted as the next purchase. As it turned out, the property increased from about $80 an acre when the park was first formed to more than $400 an acre seven years later when the state finally settled on the price in a court suit.

The Holshouser administration asked the 1974 session of the General Assembly to approve the establishment of a land-buying arm for the state with authority to get an option on property and thereby nail down a price to avoid unnecessary price escalation. The legislature grudgingly approved the measure, but not before placing restrictions on it that Harrington, who pushed the bill, said make it unworkable.

"How Do You Put A Value On It?"

Harrington said he believed one of the worst deals negotiated during his term in office was the purchase of Jockey's Ridge in Dare County. The state paid about $4,600 an acre for these sand dunes, which are the highest on the East Coast. The Council of State was under intense public pressure to preserve this "living" natural phenomenon when it finally agreed to buy the land, but not without some misgivings. "We ended up paying more for that sandpile than it was worth," Harrington said, "but how do you put a value on it?"

The purchase of unique property, such as the Jockey's Ridge dunes, poses special

problems. Indeed, it is difficult to accurately measure the value, and the state must balance the cost of preservation with the development value of such areas. As a result, political or policy decisions may sometimes override professional advice. This happened during the Holshouser administration and prompted the resignation of the state property officer, Carroll L. Mann Jr., the man who was responsible for raising the standards for state property transactions after he took office in 1969 under Gov. Scott and hired the department's first professional real property staff.

Mann resigned when negotiations with owners of property needed for the Cape Lookout National Seashore and other park land purchases were taken out of his office and handled by political appointees in the Department of Administration and NER. Mann and his chief appraiser, Eugene White, said they believed the state could have done better with a jury setting the price rather than private negotiators. "I don't believe a jury would have given that much money to a non-resident," White said.

Tom Earnhardt, an associate director of the Center who was heavily involved in these negotiations and others for national seashore property, said the out-of-court settlement was preferable because the state could not afford to have the property tied up in court. He said the state risked losing some other property that would revert to the original landowners if the park was not completed by a certain date, and the federal government was anxious to move ahead, even if it did cost more.

Judgment Calls

Another judgment call during the Holshouser administration highlights the changing conditions that face the state today as people become more and more reluctant to part with land. Some of these changes can have far-reaching consequences for future acquisitions, particularly park lands which theoretically are purchased for perpetuity.

In 1974 the state purchased 1,209 acres from the Weyerhaeuser Corp. for use as Goose Creek State Park in Beaufort County, just a few miles east of the small town of Washington. But in an unusual move, contrary to the established Council of State policy at the time, NER agreed to buy the land without the mineral rights. The Council of State rejected the proposed purchase when it was first presented, but later reached an agreement with Weyerhaeuser to buy the land for $1,115,000 but not the mineral and oil rights beneath the property. The state got $50,000 off the Weyerhaeuser asking price for the mineral rights.

Although the state has been given land with the mineral rights excluded (the Mt. Airy Granite Co. still owns portions of Stone Mountain), there had been no purchases that excluded mineral rights. Later, however, the Council reversed its position and agreed to the sale when NER officials restricted the recovery of any minerals or oil to something called "slant drilling." Today, Weyerhaeuser, or whoever may later own the mineral and

oil rights, is prohibited from drilling within 500 feet of the property boundaries or 500 feet of the surface.

Despite this arrangement, NER park planner Alan Eakes said, "I think it is a dangerous precedent." Eakes said he did not know what effect mining or drilling might have on the state's surface property. Former NER Secretary Harrington said he was told by the state geologist that any such drilling probably would not be economical, and he did not believe the state lost anything in the deal.

These are only a few examples of scores of complex and difficult transactions in which reasonable men have differed about the judgments made and the results obtained. In most of the chapters which follow, judgments----adverse judgments----come easier. Many of the mistakes, intended and unintended, could have been avoided if the state's laws and written procedures had provided reasonable safeguards. A more complete discussion of changes which would help North Carolina to protect its people's interest in land transactions is contained in the last chapter of this report. The recommendations are neither complex nor unduly restrictive of the state. Most of them can be adopted by action of the Council of State or by the Department of Administration, which sets the requirements for property transactions in the administrative procedures established for the state property office. These recommendations include:

---the establishment of a screening committee to review land transactions involving large amounts of money or complicated procedures before they go to the Council of State. Such a committee could spot problems, or potential problems, before the matter is added to the heavy agenda handled monthly by the Council of State.

---the tightening of the law regarding public advertisement and bids on the sale of state land to insure that the state gets the full advantage of competition in the real estate market.

---requiring, in the administrative procedures, that all appraisals meet certain minimum standards to insure that the state has the best information available before final negotiations begin on property matters.

---requiring at least two appraisals when the land in question is estimated to be worth $100,000 or more or when the property has certain unique qualities on which even qualified appraisers may disagree.

---requiring title insurance when the value of land is more than $100,000 in order to protect the taxpayers' investment against defects in complicated titles and the loss of land as a result of boundary disputes.

---requiring a survey of all state property to clearly establish what the state owns and where it is. This should include property already owned by the state as well as any new acquisitions. The real property office should formally establish in its administrative procedures minimum standards for surveys.

---opening of the Council of State meetings to the public except when a majority

of the members votes to hold closed sessions for the discussion of sensitive property negotiations.

---requiring that attorneys hired by the state to search titles be chosen for their ability rather than their political allegiance to the governor or attorney general.

The absence of these safeguards made the next eight chapters possible.

CHAPTER II: THE NORTH RIVER GAME LANDS---A PLACE THAT KEEPS "HELL FROM SHOWING THROUGH"

When the State of North Carolina agreed to pay $750,000 for about 6,000 acres of Currituck County swamp and marshland seven years ago, members of the Wildlife Resources Commission (WRC) hoped the land would become a home for a dwindling population of black bears and a joy for eastern North Carolina sportsmen.

Instead, the property known today as the North River Game Lands has been virtually useless to the commission and to hunters. And it has spawned little but trouble since the commission's chairman, Orville L. Woodhouse of Grandy, pushed through the purchase----a transaction that turned a quick $300,000 profit on a $600 investment by a Virginia surveyor whose firm had done work for Woodhouse and his son Larry and their own Currituck land developments. Woodhouse had asked in early 1969 for a staff review of the property for wildlife purposes, but it was not until September of that year, one month after John E. Sirine took an option on the property, that Woodhouse told the commission it was for sale.

USELESS

The purchase was handled through normal channels, but "it is the sloppiest transaction I've ever seen," said one attorney who has attempted to unravel the mess. In the commission's rush to buy the land that the previous owners had not been able to unload for more than a year, one state official after another relied on inaccurate information that drove up the price and set off seven years of boundary disputes.

Moreover, the land that Woodhouse and commission staff members predicted would be a boon to the northeast, providing hunting and fishing pleasure to thousands, is seldom used by sportsmen today. The property cannot be reached by any public road, though some far corners can be reached by boat. Once ashore, the visitor finds that the interior is wet and rough. "That place is a terrible place to walk in," said a WRC surveyor, "even for a young man." Right now, said one top WRC official, the land's only use is "to keep hell from showing through."

Even the stands of pine, black gum and cypress trees, promoted by Woodhouse as justification of the high price tag on the property, won't be ready for harvest until around the year 2000. Today there isn't enough timber ready for cutting to be economical. The chances of recovery are "dismal as can be because of the swampy terrain," a federal wildlife appraiser reported two years after the land was purchased.

The wildlife commission still doesn't know exactly where all the property lines are located. The final survey of the property can't be completed until all adverse claims by adjoining landowners are settled. Then the state must take the entire matter to court for a ruling to settle the boundary disputes once and for all. Until then, the commission has no plans for improvements that might open the land to sportsmen.

The project has had problems from the beginning. The Center found that:

---the commission, the state property office and the state's attorneys based the purchase price on the acreage reported in a survey map which they knew was inaccurate.

---the state's attorney was never asked to research the ownership of more than 600 acres of the tract----part of which is claimed today by a Virginia man who says he has been paying taxes on it for 20 years----because state officials said they were "informed" that no one actually owned the land.

---the wildlife commission settled on an approximate purchase price and arranged for approval of that amount by the state Advisory Budget Commission and the U. S. Bureau of Sport Fisheries and Wildlife before a formal real estate appraisal of the property was in hand.

---when the appraisal was finally delivered, state officials all but ignored its high estimate of the property's value----$1,650,000----rather than question problems in the appraisal which were later pointed out by federal wildlife officials who rejected it.

---state officials either ignored or did not know about a well-advertised auction, held only 14 months before the wildlife commission voted to buy the property, at which previous owners had been unable to sell the land for more than a pittance.

---the Council of State was given incomplete, inaccurate and contradictory information about the deal but approved an unusual payment plan that allowed the commission to buy the property on time without technically violating state laws prohibiting an agency from committing itself beyond its budgeted funds.

---the wildlife commission lost $223,000 in federal money it had planned to use in paying for the property because federal officials, who had warned the state earlier about problems with purchases such as this, refused to reimburse the state for 2,400 acres of the tract's 6,000 acres still clouded by unsettled title disputes.

---so far the wildlife commission has lost more than 200 acres of the property in boundary settlements. And there are still four outstanding boundary claims----one for 450 acres, another for 750 acres, one for about 30 acres and a fourth in which an adjoining property owner claims exclusive hunting rights in the upper portion of the public game lands.

Grand Plans For Development

The land now known as the North River Game Lands had been owned by a number of land and timber speculators before the state agreed to buy it in 1970. In the 'sixties the land, which was divided into two tracts, was optioned by Charles Doak of Rocky Mount and a partner, W. E. Kelly Jr. One tract totaled 3,641.7 acres, according to a 1964 survey. Title to this property was warranted, or guaranteed to be good by its previous owners. This tract lay along the North River, which divides Currituck from Camden

County, and on both sides of Taylor's Bay where the Intracoastal Waterway intersects Currituck County. The second tract, consisting of two parcels, supposedly included about 2,665 acres. The actual acreage is unknown because a survey had never been conducted. In fact, the title had only been freshly minted. Doak says Kelly claimed the land after finding that nobody was paying property taxes on it. This land lay between the first tract and property that fronted on U.S. 158, the main thoroughfare in the county. Together the tracts form a large, irregularly shaped area, portions of which had been cut over by timber companies during the preceeding 40 years.

In 1965, Doak and Kelly arranged for a group of Newport News businessmen and investors to buy the land. The buyers had formed two partnerships, one called Tegey Ltd., and the other called Timber Associates. The Tegey partners paid about $99,000 for the first, warranted, tract and assumed the balance of an outstanding $145,000 loan on it. Timber Associates paid about $1,000 for the second tract, or little more than a finder's fee for Kelly.

Timber and Tegey had grand plans for the property. They had hopes of draining it, cutting the marketable timber and then subdividing the usable land into 5- and 10-acre lots for sale to a growing number of exurbanites attracted to the county from the sprawling Norfolk metropolitan area. A development plan drafted by one of the partners, Eugene Zepkin, called for a return of up to $2.5 million on the land, according to Doak, who had helped the Virginians to put together the ownership package.

Work began, but things did not turn out well. "We were just not equipped to do the job down there," said Zepkin. A canal was dug into the northern tip of the property and some timber was cut, but this part of the project went sour. Rain and the right tides "would bring water in there, I don't know how deep," said D. T. Whitehurst, an Elizabeth City contractor who worked on the project.

"The thing we found was the county was dumping all the water [through drainage ditches] * down on that land," Doak said. "There wasn't any cutting of timber in that swamp unless you had some web feet." Dreams of dividing the land into small parcels also vanished, and the owners finally attempted to sell the property to large timber companies. The companies were not interested. The partners got nowhere.

Finally, in September, 1968, the partners put the property on the auction block at Coinjock, a small Currituck County town that sits astride the Intracoastal Waterway on U.S. 158. An elaborate brochure on the land, complete with aerial photographs, a copy of the 1964 survey of part of the property, and a lot of glowing promises was widely distributed by the Delta Auction Co. of Memphis, Tenn. Wildlife Commissioner Orville Woodhouse said he had heard about the auction but did not attend. He said he had been told that the auction was a ploy by the owners, a ruse designed to settle differences among the partners and not a serious effort to sell the property. But Norfolk real estate man Jock B. Hughes, who allowed the auction company to use his Currituck County

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* Language in brackets is that of the Center.

offices, told the Center that the sale was a sincere effort. He said that although he had authority to sell the property outright before the auction, "there wasn't any interest in the darn thing." The auction turned out about 50 people, including Larry Woodhouse, Orville's son, who said buyers were scared off by uncertainty about the ownership of part of the property. Bids reached about $30 an acre but got no higher. The land which the brochure said "can be turned into profits" didn't turn a dime for the owners. They took the property off the block.

An indication of the prevailing judgment about the land in that area is the price paid for about 60 acres sold by Elijah Tate, a Coinjock shipwright, who said, "When I saw they weren't going to sell, I said, 'here, I got some land I'll sell.' " Tate got $1,000 [about $16 an acre] for his land, waterfront property that adjoined the Tegey-Timber land.

Problems With The Hunters

In December, 1968, the Wildlife Resources Commission was haggling with hunters over the future of black bears in North Carolina. The commission, basing its decision on bleak staff estimates, shortened the bear season because the members believed that the state's bear population was in decline. Hunters were angry, and the commission was interested in promoting big-game management areas to defuse the issue. Former WRC Director Clyde Patton, who is now retired and living in Raleigh, recalled that the commission included in its 1969 legislative package a request for a big-game hunting license. The proceeds would be used to support a big-game program.

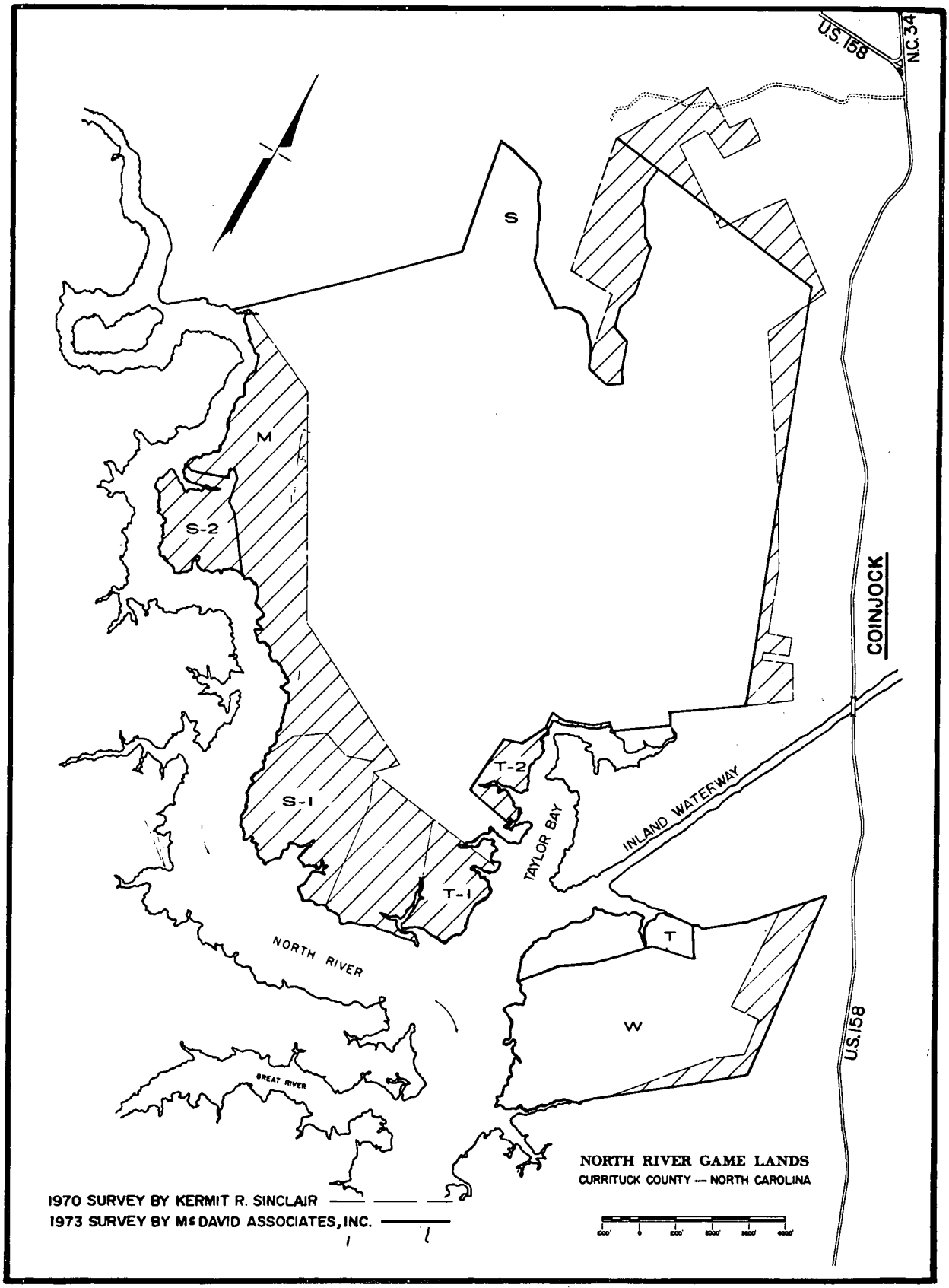
At about the same time the wildlife commission began worrying about bears, a Manteo surveyor, Kermit Sinclair, was hired by someone----the Center has been unable to fix with certainty who it was----to survey the Tegey-Timber lands. Although Sinclair died in 1974, his helper, Clayton Bowser of Columbia, recalls that he and Sinclair made several trips to the Barco backwoods at the northern tip of the property, and up the North River along the shoreline boundary of the land. Although Sinclair certified on his map that his work was done in July, August and September of 1969, Bowser said, "There is no way that survey could have been completed in three months."

The map delivered to state officials for negotiating the sale was labeled, "Surveyed for John E. Sirine and Associates," but Sirine, who held an option on the property at the time, said he did not pay for the survey. Sirine said he recalled that the Newport News owners had paid for the survey, but Eugene Zepkin, who handled the affairs of the partnership, said he has no record of having paid Sinclair. R. Cecil Swain helped Sinclair locate certain property lines and told the Center he was paid for his work by Larry Woodhouse, Orville's son. Woodhouse said he was using Sinclair at this time, as did his father, but that he had hired Swain to work on another piece of land. Larry Woodhouse

insisted he had no interest in the project though he confirmed Swain's statement that he had talked about buying property owned by Swain, and which controlled access to the game lands, at about this time. Another owner of adjacent property, who asked not to be identified, said Larry Woodhouse had approached him as well.

This much is clear. The survey was a poor one. It was never completed on the ground, according to Jack McDavid of Farmville, whose engineering firm was later hired by the wildlife commission to mark the game lands' boundaries. "What Sinclair said was on paper was not on the ground," he said in an interview. McDavid could find no physical evidence of a survey in most locations where Sinclair said he had been. Many of Sinclair's lines did not even approximate McDavid's findings. One tract said to include 110 acres included only about 60 acres and was mislocated on Sinclair's map. Another tract was several hundred yards from its actual location. Some of the boundaries did not have distances marked. Even Sinclair had trouble with his maps. The first map he drew "For John E. Sirine and Associates" reported the size of a 2,847.2 parcel of the Tegey land as having 3,389.13 acres. This was later revised downward to 2,996 acres after one negotiating session between the state's attorney and Sirine's lawyer, Fred Riley of Elizabeth City. More than likely, Sinclair's associates say, the map was drawn from deed descriptions and aerial photographs. The Center found aerial photos of the area among Sinclair's old maps, which are now owned by a former part-time assistant. Sinclair's friends say he was getting old and having problems just moving around. An actual survey of the property would have been impossible for him, they said.

The map on the following page shows the great differences between the boundaries outlined in the Sinclair survey and those which the state later found to be accurate.


U.S. 158
N.C. 34
S
M
S-2
S-1
T-2
T-1
T
W
TAYLOR BAY
INLAND WATERWAY
COINJOCK
NORTH RIVER
GREAT RIVER
U.S. 158
NORTH RIVER GAME LANDS
CURRITUCK COUNTY — NORTH CAROLINA
1970 SURVEY BY KERMIT R. SINCLAIR
1973 SURVEY BY McDAVID ASSOCIATES, INC.

The diagonal lines on the map on the adjoining page illustrate the difference between the survey map drawn by Kermit Sinclair and the one drawn for the Wildlife Resources Commission by Jack McDavid and Associates. Two tracts were placed in the wrong locations: S-1 is where Sinclair put land owned by L. L. Stevens but S-2 is where McDavid found it to be. T-1 is where Sinclair located land owned by Elijah Tate, but T-2 is where Tate's land---now owned by B. F. McLeod Jr.---was located by McDavid. The map also shows the four outstanding claims. The tract marked with a "W" is being claimed by John Wright who has cut timber from it. William Tate claims part of the tract marked "T." Cecil Swain claims exclusive hunting rights in the area marked with the "S." And Alvin Margolis claims 750 acres in the area marked with the "M."

A New Chairman

The year 1969 brought important changes to Raleigh and to Currituck County as well. At the wildlife commission's January meeting, Orville Woodhouse was elected chairman. He was the clear choice of Gov. Robert W. Scott, who had just taken office and was welcoming the new General Assembly that same day. Woodhouse had worked hard for Scott, helping him to carry his area in the 1968 campaign. In fact, Woodhouse has worked hard for a number of governors, including Scott's father, Gov. Kerr Scott, and has frequently entertained governors, senators and other notables during duck hunting season in his many Currituck County duck blinds.

The chief of the WRC games division, Frank Barick, says that shortly after the first of the year Woodhouse asked him to check out the Tegey-Timber lands in Currituck. And WRC forester J. P. Brown, who is now retired and living in Pittsboro, made the first of many trips down there "just to see if it was a worthwhile tract from a timber standpoint."

During the ensuing months, Woodhouse's interest in the property was pronounced, according to people who were associated with the wildlife commission at that time. And Woodhouse's enthusiasm for the property coincided with the expansion of the commission's land acquisition plans. Since 1937 the federal government has provided states with up to 75 per cent of the money required for some wildlife projects, including the purchase of land, under the Pittman-Robertson program. North Carolina's wildlife commission filed a state land acquisition plan with the federal Bureau of Sport Fisheries and Wildlife in the spring of 1969 which covered the purchase or lease of thousands of acres in the state----but the plan made no mention of the northeastern part of the state. According to Clyde Patton, who was the commission's director at the time, there was an itch for land in 1969 that just would not be relieved. The commission had more than $250,000 to spend under the federal wildlife program and was anticipating a healthy income from the new big-game license fees. Price was barely considered, Patton said, because "the main thing was getting a deed, get [land] in the state's possession."

A Stroke Of Luck

The Newport News owners of the Currituck land were getting a bit desperate that summer because they had "tried to sell it to everybody and couldn't get any price for it," as one of them put it. Then suddenly the partners had a stroke of what seemed to be remarkably good luck. John E. Sirine, a Virginia Beach surveyor, expressed interest in the land. In August Sirine paid $600 for a 190-day option on the property in which he agreed to pay $118.50 an acre for the approximately 3,600 acres covered by warranted deeds and $2.90 an acre for the approximately 2,665 acres covered by quit claim deeds. The final sale price was $433,102 for all the land.

One month later, at the commission's September 22 meeting, Woodhouse told the commission the land was available for a price of between $700,000 and $750,000, a much higher price than Sirine's option price. According to news accounts of the meeting, Woodhouse recommended the property as the first acquisition for a proposed 35,000-acre wildlife management area that enclosed the upper reaches of the North River. This land project was to be added to the commission's land acquisition plans already on file with federal game officials.

The Center found no evidence that Orville Woodhouse or his son Larry had any personal financial interest in the transaction. In an interview, Woodhouse said there were no hidden motives in his enthusiasm for the purchase and that he only wanted to do "something for the hunters." Woodhouse said although he drove by the property regularly---his home is about eight miles south---he did not know the property was for sale until the late Turner Battle of Rocky Mount, who was then the executive secretary of the N. C. Wildlife Federation, told him and the commission about it. "He said it is right down there in your area and might be the solution to your bear problems," Woodhouse said. Neither Battle's colleagues and contemporaries nor key commission staff members recall any presentation to the commission by Battle.

Woodhouse also told the Center that he knew Sirine only as someone who had done surveying work for his son and had no connection with him. "I've heard of Sirine but never met him. I wouldn't know him if he walked in the door," he said. Woodhouse told the Center, however, that he knew Sirine's brother, Wilmer, who ran Sirine's Currituck County surveying operations. Sirine's firm surveyed a piece of property purchased by Woodhouse in mid-1969 and subsequently developed by Woodhouse's son. Larry Woodhouse said John Sirine began working for his development company in early 1969 when he became disenchanted with local surveyors, including Kermit Sinclair. Larry Woodhouse also said he introduced Sirine to Fred Riley Jr., an Elizabeth City lawyer who handled Woodhouse's legal affairs and who represented Sirine in the sale of the North River Game Lands to the state.

In addition, commission forester J. P. Brown and games division chief Frank Barick told the Center that Woodhouse argued with them over Brown's estimate of the timber value of the property, which was based on a walk through the interior of the property just prior to Woodhouse's presentation to the commission. Woodhouse "seemed to think I was too low, too conservative. He seemed to want more timber value," Brown recalls. Brown had estimated the timber to be worth about $300,000, a figure he reported was probably too high because of the expense and difficulty of logging. Brown said Woodhouse had an earlier timber report----one done for the previous owners in 1965----that set the value at about $500,000, but which did not take into account logging that had been done in the intervening years.

"I know nothing about that," Woodhouse said, adding that "it is a possibility there

was another estimate." A higher timber estimate would, of course, increase the value of the property though the commission reportedly had no plans to cut any trees.

Moreover, commission staff members who compiled information on the property said Woodhouse supplied them with a copy of Sinclair's survey map on the property, the map drawn "for John E. Sirine and Associates," and the only map in the file other than those prepared by the WRC staff.

Woodhouse said Battle gave him a copy of a map of the property when he first told him about the property. "Isn't that in the file?" Woodhouse asked. He suggested the map could have come from one of the partners who was from Rocky Mount. Charles Doak, the only one involved in the Tegey-Timber partnership from Rocky Mount, said he did not know Battle. Doak's attorney at the time, however, was Don Evans, the son of wildlife commissioner Holt Evans from Enfield. Don Evans said he did not know Battle though he did talk to his father, who is now dead, about the proposed purchase. Evans said he cautioned his father about the deal and told him he was contemplating a law suit that at one time threatened to delay the sale. Doak was later paid $24,000 by Sirine's company as a settlement of his claim against the property.

On October 20, the wildlife commission formally voted to buy the land though no price had been negotiated, no real estate appraisal had been done and the titles to the property had not been researched. Evans abstained from voting, saying his son represented one of the partners who owned the property.

Frank Copeland, president of the N. C. Wildlife Federation, was also not secure about the proposed purchase. He directed 11 questions about the land to commission director Patton in a November letter. The last question was: "Why the big rush in a purchase of this magnitude?" Copeland wrote that satisfactory answers from Patton would help him to respond to questions about the purchase and "allay certain fears expressed to me." Patton responded to each of the questions. He answered the last question by saying that "The commission feels that there is some urgency in this purchase because the property might be sold to another buyer for private exploitation if action is delayed."

In an interview recently, Patton said he had not known about the unsuccessful attempt by Tegey and Timber to auction the property or about their unsuccessful efforts to develop it. In fact, Patton said, he recalled few details of the transaction, which he described generally as an unpleasant experience. A biologist by training and an administrator by trade, Patton said he was unsuited to deal in real estate matters, particularly purchases of this size and complexity. Patton said that when the commission voted to buy the land, he happily turned the details over the Department of Administration and the state property officer.

When the North River Game Lands project landed on his desk in late October, Carroll L. Mann Jr. had been property officer for about six weeks. Aside from handling

the daily flow of business---acquisitions, sales, leases---Mann was in the process of reorganizing the office and assembling a professional property management staff. Before he took the position, property management essentially had been the responsibility of one man, the property and construction officer, who worked closely with an attorney assigned by the N. C. Justice Department. For years the attorney who worked most closely with the property officer was the late Parks Icenhour, whose participation in this transaction proved to be crucial. Mann said he relied heavily on Icenhour's experience in handling the North River purchase. He said he also relied on an appraisal of the property conducted by Clyde Idol, an MAI (Member of Appraisers Institute), and on the title search by N. Elton Aydlett, an Elizabeth City attorney chosen by the governor's office who worked with Icenhour. He also depended on Kermit Sinclair's survey, which was forwarded to him by the wildlife commission staff.

A High Appraisal

Appraiser Idol, equipped with Sinclair's map, made several trips to Currituck County that fall, researching the deeds and looking over the property. In mid-December he delivered his appraisal to the state property office. He said the land was worth $1,650,000 or an average of $280 an acre. Idol's figures were surprisingly high. His estimate was nearly double the price that Sirine had asked for the property in a formal offer to the state less than a week earlier. And the estimate was more than triple the price Sirine had agreed to pay for the property.

Part of the reason for the high value Idol placed on the property was an appraiser's normal assumption that all of the land would be delivered under clear, warranted title. Yet more than 2,000 acres were only being offered in a quit claim deed with no warranties for $10 an acre.

Alan Bonsack, a U. S. Interior Department real estate specialist who reviewed the file for the Center, says that "it appears the state paid very little attention to this appraisal." Indeed, if any attention was given to Idol's work it was not noted. The appraisal contained several warning flags, however, which state officials should not have ignored. The appraisal showed that the value of the property had been declining over the years. It also showed the huge difference in the price Sirine agreed to pay for the land in August and the price he was asking from the state in December.

Sometime in December, Sirine turned his option over to a corporation he had helped to form in 1969 and in which he served as an officer, Virginia Beach Aviation Sales, Ltd. And on Jan. 8, 1970, a negotiating session was held in the Department of Administration building in Raleigh. Patton and his deputy, Eugene Schwall, attended the meeting with Chairman Woodhouse but said they took no active part in it. Property officer Carroll Mann

was present, but he says the state's lawyer, Parks Icenhour, and N. Elton Aydlett, the Elizabeth City attorney hired by the state to research the title, handled the state's affairs. Sirine's lawyer, Fred Riley, and Fred Stant Jr., a Norfolk attorney representing Virginia Beach Aviation Sales, spoke for the property owners.

Aydlett had searched the title as well as negotiated with Riley and Kermit Sinclair over the amount of land included in Sinclair's survey. In addition, Aydlett had drafted an option agreement in which the details of the payment of the land were spelled out as well as the acreage to the individual tracts. At some point, Aydlett does not remember when, about 600 acres not included in Sirine's original option were added to the deal. Two years later Justice Department attorneys, then negotiating a claim against the state for a portion of this property, wrote in a letter that title to this property was never searched because the state had been "informed . . . [it] was vacant and unappropriated lands which no one had even been in possession of and no one was asserting title to." About 500 acres of this previously unmentioned property is claimed by Alvin Margolis of Norfolk, who said he has been paying taxes on it since 1958 and for which he claims to have a chain of title that dates to 1821.

"We Were Aghast"

Using Aydlett's draft agreement, Stant and Icenhour worked out the final details of the sale. Stant says he had been hired by Sirine to handle the negotiations for the sale---- the only major transaction in Virginia Beach Aviation Sales' history, according to its president----but he does not recall any of the details. He said he only remembered that there was a difference over acreage, particularly the land in the quit claim deeds. No notes were kept of the meeting, and there is little in the official files to indicate how the final price was arrived at. Schwall said that when he arrived at the meeting he understood the price was to be $700,000. "Someone else negotiated with these people for $750,000. We were aghast," Schwall said. Patton says he believed the additional $50,000 was worked out during the day's negotiating. "I believe that was in connection with the additional acreage that they claimed," he said. Schwall recalls that when the final price was proposed, Woodhouse told the group, "I think the commission can approve that." Woodhouse says he doesn't recall entering the negotiations. If the final sales price was taken back to the commission for approval, it is not reflected in the minutes.

The final agreement called for the state to pay for the property in three installments. With each installment, Virginia Beach Aviation Sales Ltd. turned over deeds to portions of the property. This unusual contract was designed to help the commission, which could not afford to pay for all the property at one time, to get around a state law that prohibits state agencies from committing themselves beyond their budgeted funds.

On Jan. 16, 1970, the Council of State approved the transaction. Council of State

minutes show that the option agreement was approved for the purchase of what is described as 6,300 acres on one page and 5,434.79 acres on another page. Actually, Sinclair's final map, the only description for large portions of the property, indicates that the state bought about 6,090.4 acres.

The Troubles Begin

The deal did not begin to unravel until 1971, after the last payment had been made on the property. The wildlife commission began running into trouble when it applied for federal money for 75 per cent of the $750,000 purchase price and when it hired a surveyor to begin marking the boundaries of its new game lands. Surveyor Jack McDavid said he began encountering irate landowners when he tried to retrace Sinclair's lines. On one occasion someone fired at him and his men. Commission law enforcement agents were called for protection. On another night, he drove his truck into a wide ditch that someone had dug across the road while he was in the backwoods.

Federal officials rejected the first appraisal made by Clyde Idol. In a letter to Director Patton, Ernest Martin of the Bureau of Sport Fisheries and Wildlife wrote: "The appraisal does not satisfactorily describe the property, does not state its highest and best use, does not explain what the market situation is, and does not soundly relate comparable sales to the subject property. From the report, we assume the property has substantial timber value, yet in no way are we told how much they contribute to overall value." Martin also questioned the difference between Sirine's option price and the price paid by the state. And he was puzzled by the acreage of certain tracts on the property which varied from one Sinclair map to another.

As it turned out, Idol had never been informed that he was to follow prescribed federal procedures for the appraisal. Martin had told the commission this would be required when he wrote to Patton in October, 1969. In the same letter he had warned of the dangers in acquiring property by quit claim deed.

Later in 1971 Idol did another appraisal in which he said the property was worth $1,385,000----$165 an acre with a timber value of $475,000. But federal officials rejected this appraisal also, saying it was too high. An Interior Department appraiser reported in September that $750,000 might be a fair and reasonable price if all the land, quit claim land included, was valued at $125 an acre.

Idol justified the great difference between Sirine's option price and the sale price by saying that his investigation revealed joint business arrangements between Sirine and the Newport News partners. It was not an "arms length" transaction, he said. But Zepkin and Sirine insist that this was not the case. "We have no connection with Sirine and his group," Zepkin said. He says that if he had known of the state's interest in the land he would have sold it himself. In a recent interview, Idol could not recall why he said this

was not an "arms length" transaction. He said that after this appraisal he did a lot of work in Currituck County, including appraisals for Larry Woodhouse, and may have only been told of a connection with no evidence to back it up.

During the next six years federal wildlife officials extended their payment deadline several times while waiting for the state to get clear title to the land. Finally, in 1977, they terminated the project rather than tie up indefinitely the remaining $223,000 due on the project----money which could not be allocated to the state until all disputes were settled. It may take years for that, says the state's real property attorney, Buie Costen, whose task it is to clean up the mess.

Two years after the state bought the North River Game Lands, the N. C. Justice Department notified Virginia Beach Aviation Sales Ltd. that it would be liable for any acreage covered by warranted deed and lost to adverse claims. If all claims are settled in favor of the claimants, this could amount to about $150,000 in overpayment. No suit has been filed, however, and none may ever be filed. Virginia Beach Aviation Sales Ltd. stopped paying its Virginia state franchise tax two years ago. The corporation officially went out of business in June, 1977, when its charter was suspended by the Virginia Corporation Commission.

The wildlife commission may console itself in the discovery by surveyor Jack McDavid of about 300 acres of unclaimed land adjacent to the North River Game Lands. This land is to be added to the property purchased in 1970 when those tracts are declared state property in a court proceeding.

Woodhouse still defends the purchase, saying that the property today is worth far more than the approximately $200 an acre the state paid for the major portion covered by clear titles. A check of real estate sales from 1968 to 1972 at the Currituck County Courthouse showed, however, that similar swampland either nearby or adjoining the game lands has sold for a low of $16 an acre and a high of $130 an acre. The high figure was that paid by the wildlife commission on another purchase in 1971----but in this purchase, the state did not pay for the land until a title cleared through the courts was obtained.

In the words of a lawyer who represented the Newport News partners, "I don't think there's any question that the state of North Carolina got took."

CHAPTER III: THE CHANNEL AT FIGURE 8 ISLAND: THEIRS OR OURS?

Figure 8 Island is a coastal playground for the wealthy where expensive, stylish homes are the standard and exclusivity a hallmark. Located just north of Wilmington, with access guarded by a private drawbridge, Figure 8 is described in the developers' brochure as a "serene stretch of land with green highlands, misty valleys, virgin beach forests and rolling dunes laden with sea oats."

And some of this pleasant island development, including the plush marina on the island causeway, sits on property that rightfully belongs to the state of North Carolina.

Sixteen years ago, either through mistake or high-level political maneuvering, state officials sold land covered by navigable waters to the island's developers despite numerous court rulings protecting open waters and a 1959 state law that prohibits state sale of submerged lands. The channels and streams were part of a 683-acre tract of marshland that lies between the island and the mainland. It was sold in September, 1961, to three prominent Wilmington businessmen---brothers Dan D. Cameron and Bruce B. Cameron and their partner Raiford Trask, who paid $25 an acre ($17,075) for the property. The sale came less than one year after the state property officer said the state would not part with the channel bottoms but would sell the balance for $50 an acre. Yet the only thing that changed was the governorship. The Camerons' candidate, Terry Sanford, took office in the interim.

NAVIGABLE WATERS

The state property office file is replete with detailed descriptions of the property, including a 1958 survey map and a 1960 site study that clearly delineate the marsh and open water, but this information was not included in the formal memorandum prepared on the sale and submitted to the Council of State for its approval. In addition, the Council was told that the sale was legal under the state's land law which specifically prohibits the sale of submerged lands. Submerged lands are defined as "navigable waters within the state's boundaries." Aerial photographs, going back many years, all show the existence of large areas of open water in the tract sold by the state.

Misinformation was delivered to the Council on at least one more occasion. Seven years after the sale, as part of the settlement of a state claim arising out of improper dredging operations on the marsh, the Camerons' development company agreed to lease back "683 acres of land conveyed in 1961 . . . consisting of marshland," as the property office memo to the Council described it, for $1 a year for 20 years. Again, there was no mention of navigable waters.

Astoundingly enough, the Center found that the state actually regained control of only 310 acres, not the 683 approved by the Council. At the Center's request, a Raleigh

engineering firm calculated the acreage based on property descriptions in the 1968 lease and the 1961 deed and surveys on file in the New Hanover County Courthouse.

Moreover, the lease did not even include the banks channel portion of the property, part of which has been diverted by the construction of the causeway and which state marine experts say is one of the finest oystering areas in that section of the state. In fact, though the property was owned by the development company, state marine biologists continued to plant oysters in the channel after the sale in 1961, believing it to be a public channel.

The State Rests

State law provides that the attorney general can go into court and ask that deeds be invalidated in cases of fraud or instances of mistakes in material facts. When these transactions were reviewed in 1974 by the N. C. Justice Department, however, the case was dropped following a recommendation by then Associate Attorney General Howard Kramer. Kramer, who is now one of Attorney General Rufus Edmisten's top deputies, wrote, "It is my view that this matter would not be an appropriate action for the state to bring."

In a recent interview, Kramer said he discussed the case with U. S. Senator Robert Morgan, who was attorney general at the time. Kramer said he told Morgan he believed the state could not successfully invalidate one of its own deeds simply because it made a mistake. "The state is supposed to know what it is doing," Kramer said. He said he believed the case would be a futile waste of the department's time and talent. He said Morgan concurred.

Kramer said he never talked to the property owners at the time or knew much more about the case than information turned over to him by a former member of the attorney general's staff, Tom Earnhardt, who is now an associate director of the Center. Kramer said he was not aware that the 1968 lease included less acreage than was reported to the Council of State. He also said he never looked at the property but relied on photographs. The legal research was provided him by a legal intern in the department. "A call was made, and I think a logical call, not to pursue the matter," Kramer said.

How It All Started

In 1957, when the Camerons first approached the state about the sale of the property adjacent to their island, sales of marshland were commonplace. At that time the state Board of Education owned countless thousands of acres of property along the coast and in undeveloped sections of swamps and backwoods in the state's interior. This property was referred to as "vacant and unappropriated" state land and was generally

considered to be of little value. Frankly, no one paid much attention to it.

The Camerons needed the property. With it they would control the marsh between Foys Island---later renamed Figure 8---and the mainland as well as have a route for their causeway at the island's midpoint. Negotiations began with the state Board of Education in August, 1957, but it was October, 1959, before the property was put up for auction at the New Hanover County Courthouse in Wilmington.

In the meantime the 1959 General Assembly revised the state's public lands law, adding among other things a specific provision prohibiting the sale of submerged lands. Submerged lands were defined as "navigable waters within the boundaries of the state" and land under the Atlantic Ocean, three miles out from the coastline. The question of whether waters are navigable in fact has been dealt with by the North Carolina Supreme Court and federal courts on several occasions over the years. Even under the narrowest of interpretations there is no question that channels such as those behind Figure 8 Island, which have been used by a variety of boats, are in fact navigable.

A 1958 survey of the property which the state property officer used in 1960, when a site study was ordered by the Council, shows that nearly one fourth, or 156 acres, of the 683-acre tract was not grassy marsh but open water, from small streams to a broad channel. The 1960 study even showed Masons Inlet, at the island's southern tip, to be within the state's property boundaries though the inlet shifted over the years.

The first offer of $15 an acre, the high bid from Bruce Cameron, was submitted for the Council's approval at its December, 1959, meeting but the Council deferred action on the proposed sale. A few months later, in April, 1960, Henry Von Oeson & Associates, an engineering and planning firm in Wilmington, was hired to report on the development potential of the property. This report was to be the Council's guide in handling sales of coastal property.

Gov. Luther Hodges also detailed Paul Johnson, director of the Department of Administration, to look into a recently passed Florida land law. And Gov. Hodges asked Dan Cameron to give him some information on how the state's property would be used.

In a 1960 letter to Gov. Hodges, Dan Cameron wrote: "We are in the enviable position of owning Foy Beach in its entirety with almost a thousand acres of marsh land between the beach and the waterway. The state marsh land (which is criss-crossed with creeks and inundated on high tides) lies to the north of our tract, and though we can build a causeway to the beach without it, we strongly feel that the entire area must be controlled if the desired results are to be obtained." Cameron continued, saying the goal of the partners was "a beach properly controlled and heavily restricted by means of a corporation or club . . ."

Both Dan Cameron and Bruce Cameron said they did not recall any questions being raised concerning the sale of navigable waters. "I don't recall any discussion," Dan Cameron said. Bruce Cameron said such sales of marshes and their streams were "common practice in those days."

Von Oeson's study, which cost $1,050 and was used on only this transaction, the last of the major marshland sales, did not settle many questions. His report was not an appraisal of the current market value of the property so it provided little guide to whether the $15 bid was high, low or just right. Rather, the report was a development plan, complete with a map showing stages of work required to dredge and fill the marshland, build roads and generally open the island to home building. If anything, the report further clouded the issue over sale price and increased the property officer's concern over just what was being sold.

State property officer Frank B. Turner, now retired, wrote Von Oeson about his report in September, 1960, and asked if the main channel from the ocean at the island's south end was included in the property. Turner said, "If Masons Inlet is considered navigable or likely to become navigable in the near future, the state will not surrender title to the waterway as it is the state's desire that these inlets remain free and open for access to the ocean from the intercoastal [sic] waterway to the public." Von Oeson said the inlet was constantly shifting position. But he said, "It would be my consideration that any owner would not wish to close this inlet as it is a fairly usable inlet and its presence would create considerable value to the lands adjacent thereto, however, you could possibly include in any deeds given, the requirement to so maintain this."

In October, Turner notified Bruce Cameron that the Council of State probably would not approve the $15 per acre bid and that the state was not going to "dispose of any portion of this creek, together with Masons Inlet." He said the state might consider an offer of $50 an acre for the balance.

A New Administration

The matter was dropped for the rest of the year. In March, 1961, following the inauguration of Gov. Terry Sanford, Dan Cameron wrote the new Department of Administration director, David Coltrane, thanking him for his visit to the property. He included a bid of $20 an acre for the land. The matter was passed on to Frank Turner, who this time responded: "The land may be worth more but I think the improvements proposed will be a greater asset to the state." Turner's response did not include any mention of the navigable water.

In May, Turner notified Dan Cameron that the property would be advertised for bids from May 30 through June 6 in the Wilmington newspapers. Along with this advance notice, Turner enclosed a copy of the proposed deed and told Cameron that if no one bid higher than his offer of $20 an acre, then the land would probably be his.

The Department of Administration received one response to the advertisement, a bid from Harry Kraly of Wilmington who offered $25 an acre. Dan Cameron did not bid. Kraly was declared the high bidder, but before the deal was closed Kraly assigned his bid

to Bruce Cameron. On September 19 the governor and Council of State approved the sale at $25 per acre.

Other than an exception to oil and mineral rights, Dan Cameron, Bruce Cameron and Raiford Trask took over the 683 acres without any restrictions by the state on the use or control of the inlet, creek or other waters mentioned a year earlier by Turner. Even Von Oeson's modest suggestion that the inlet be properly maintained was not included in the deed.

"We paid for the water too," Bruce Cameron said. Cameron said he did not believe the island's present owners, a California investment company that manages the property through Figure Eight Development Inc., "could keep you off of it." This is unlike the hard attitude taken earlier by the development company of which the Camerons were a part, the Island Development Co. (IDC sold out to another company in 1971 that subsequently went bankrupt. The California company assumed control after that.)

IDC started the development with the construction of a causeway, which was completed in 1965. The island's plush marina is on the causeway where an arm of the main channel once flowed on into the marsh beyond. Under normal circumstances, any dry land created in dredging operations on state bottoms becomes the property of the state, and may be sold. IDC did not have to pay for this land because it already held title to it.

During the height of the Camerons' development of the island, Island Development Co. President Richard Wetherill told the U. S. Corps of Engineers his firm had absolute ownership to the property which had become involved in a dispute with the state. "Our company holds deed to all property in question from the state of North Carolina and there are no exceptions made as to channels, high land, marsh land or otherwise as the purchase was of a fee simple title in and to all property encompassed in the deed and the purchase price was computed on an acreage basis with no exceptions."

The dispute was over whether IDC had improperly dredged the marsh. The state claimed that IDC was responsible for the destruction of one-fourth of the oysters that had been planted in the channel during a two-year period. Diesel fuel spilled into the water from the dredge, silt washed into the channel from newly created peninsulas of land, and the actual dredging itself had destroyed about 6,140 bushels of oysters planted during this time. "One oyster ground has been permanently destroyed and the entire habitat damaged to some extent," a state marine fisheries inspector wrote in November, 1966. The total damage was estimated at $9,210.

In a letter to the Corps commander in Wilmington, Col. Beverly Snow, Wetherill said his company was not informed of the oyster planting on its property. Corps records indicate, however, that IDC had been sent a copy of a map showing the seeded areas. The map had been provided the Corps by the N. C. Department of Water Resources when the IDC dredging permit was approved by the state.

With the oyster claim still unsettled, IDC filed for another dredging permit in the spring of 1968. The application called for dredging to deepen the main channel behind the island, using the spoil for "erosion control" and "hurricane protection" on the island. At a hearing on the application called because of an objection from an adjoining land owner, it became clear that the developers had other purposes in mind, too. IDC intended to create two more peninsulas of land near the southern end of the island and fronting on the channel----peninsulas on which approximately 40 more homes could be built. State officials balked at approving this permit until the oyster claim was settled. "This matter must be resolved before the state will be able to consider your new proposal," Dr. David Adams of the Department of Conservation and Development wrote Dan Cameron in August, 1968. Dr. Adams also had complaints about the permit itself. After a tour of the island given Conservation and Development board members by Dan Cameron, Dr. Adams notified Cameron that "neither the channel alignment nor the amount of filling [described in the permit] agree with that described in our conversation . . ."

"Something" Was Settled

Wilmington attorney L. J. Poisson had been hired by the state to handle the claim. He was working with the real property attorney assigned to the Department of Administration, Parks Icenhour. Icenhour, who died early in 1977, also was the attorney who had drawn the original deed for the property in the 1961 sale. Poisson was waiting for Icenhour to give him the word to proceed on the claim when he said he was told "to just sit tight, they were working on something."

The "something" was a settlement arranged between property officer Turner and IDC. In exchange for state approval of the new dredging permit, IDC was to pay $1,500 to the Conservation and Development Department for the oyster kill and lease back to the state "approximately 500 acres" which would remain in its natural state. This was spelled out in a memorandum from Frank Turner to Gov. Dan Moore's director of administration, Wayne Corpening. On November 22, C & D Director Dan Stewart wrote the Camerons to acknowledge receipt of the $1,500 check.

Though Turner's memo said 500 acres was to be included in the lease, the memorandum (signed by Corpening) to the Council of State read 683 acres. The lease signed by IDC officers Wetherill and Dan Cameron does not mention acreage and the minutes do not report whether there was any discussion of the lease or the reason it was on the agenda. There is no indication, either, why the state did not regain control of the open water where the oyster kill had occurred in the first place. Corpening said he did not recall the details of the settlement or the lease.

The settlement paved the way for more dredging but it left state fisheries officials

hopping mad. The details of the settlement were not relayed to the marine specialists who were still reviewing the permit. In fact, marine fisheries investigator Howard Marshall recommended in January---about two weeks after the lease was approved by the Council ---that the permit not be approved. If it were to be approved, he urged that "an unbreakable agreement" should be reached between IDC and the Corps of Engineers that the channel never be dredged below its current depth.

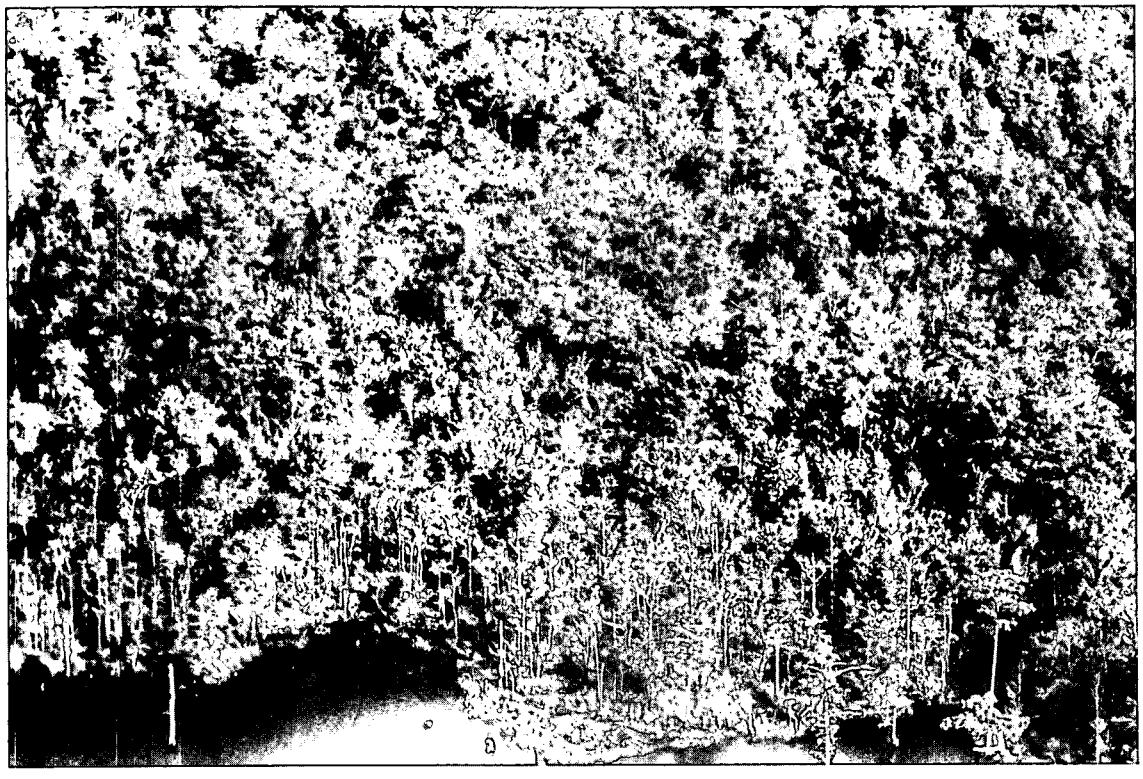
Marshall's boss, marine biologist James Brown, filed his report a day after Marshall reported to him. He told Marine Resources Director Dr. Thomas Linton: "I do not object to the project per se; I do object, however, to the manner which this application (as well as some others recently) have been handled in opposition to the established procedures set up for the consideration of such application." Brown cited the inaccuracy of the work plans for the project, the ambiguity of the permit application, and, in this case, the approval by state officials without notification to the Marine Resources Division and Wildlife Resources Commission.

Brown conceded that Marshall's recommendation about an agreement over depth of the channel was not possible, "especially in light of the original 'boo-boo' a few years ago when the state (being the unquestionable owner of these same marshlands, tidal flats and bottoms) authorized and paid for a development plan by Von Oeson & Associates, and immediately thereafter sold the property (conveying title to about everything but the water flowing across much of it) to its current developers for a little more than enough to pay for the development plan."

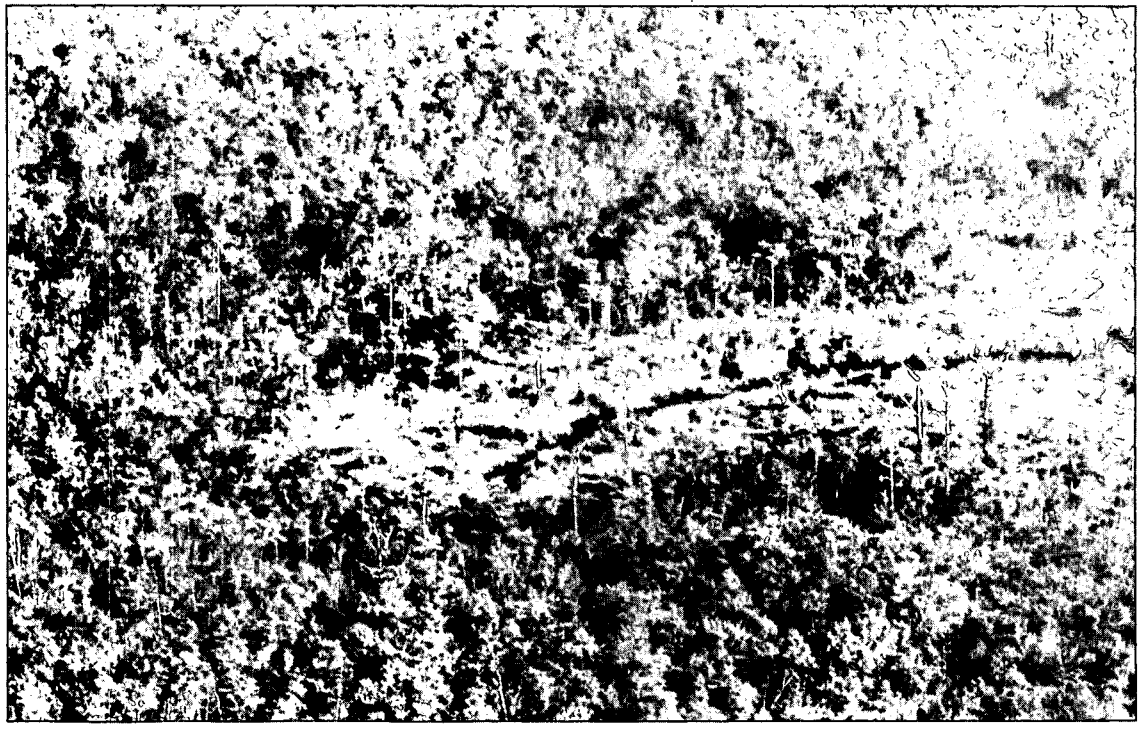
The dredging work permitted in 1968 was completed at about the same time the development changed hands in 1971. The island was taken over by another group of investors headed by attorney Young M. Smith Jr. of Hickory. One of the first jobs Smith's company had to do was remove fill from an area of marsh the Corps said had been filled in without a permit. This was property the Council had been told was covered by its lease. Smith's company went into bankruptcy and in December, 1975, the island development was taken over by Continental Illinois Realty Advisors, Inc., a California corporation whose management company is Figure Eight Development Inc., headed by President Ed Goodwin.

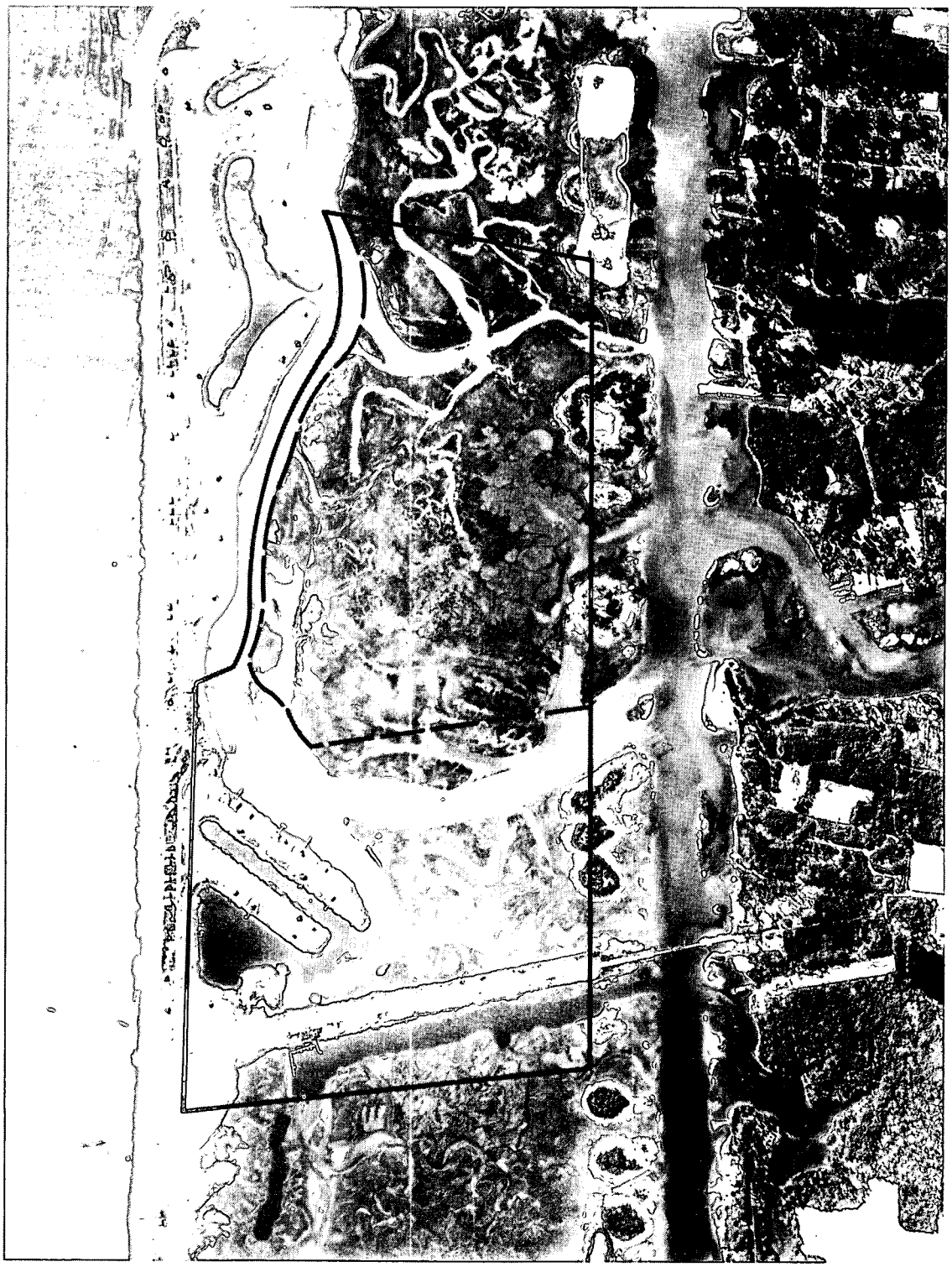
Goodwin said he was not aware of any questions regarding the ownership of the channel. He said as far as he was concerned it belonged to his company and in fact, some development of the shoreline is planned. Goodwin said the approximately 310 acres now under lease to the state will remain under state control indefinitely. "We don't want to do anything with it," he said.

Goodwin's company does have a pending application for a dredging permit. The permit filed with the Corps of Engineers would allow the company to refill the tip of one of the peninsulas created during the dredging work approved in 1968. The flow of water through the channel has washed away up to half of some of the lots on the tip of the peninsula because no bulkhead was installed, as had been required.

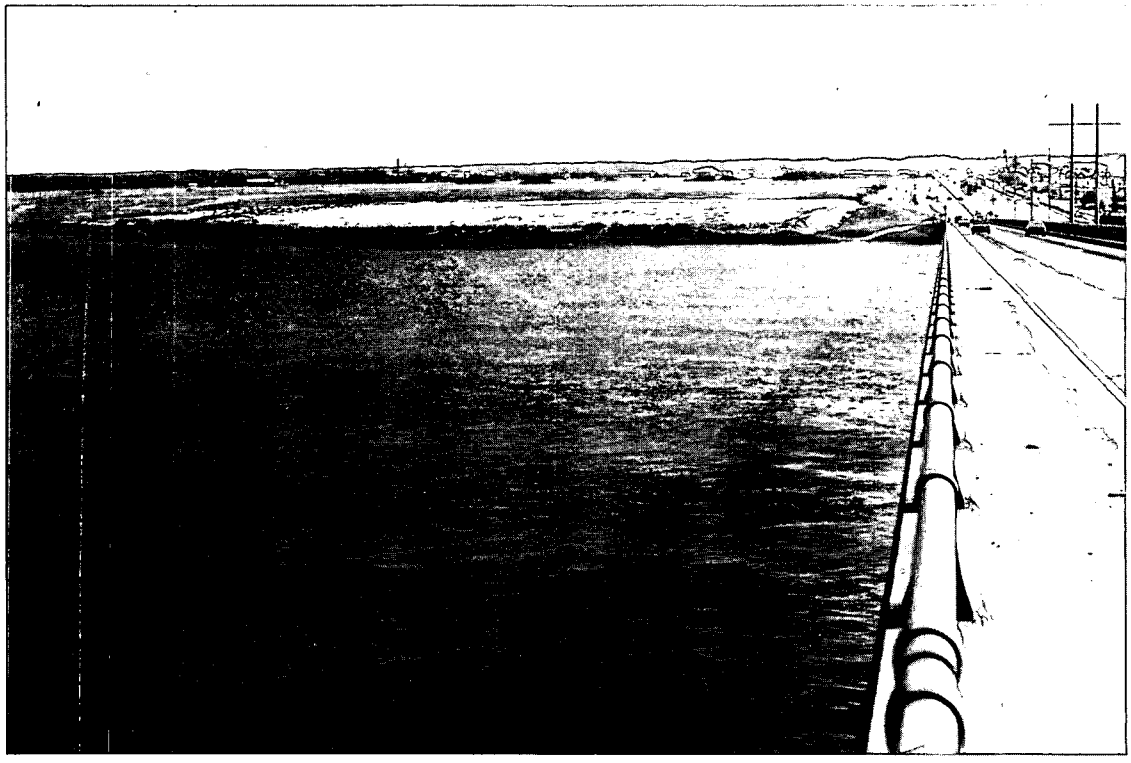


The dense forest of the North River Game Lands extends to the water's edge of the North River (above). There is very little opportunity to even land a boat along this waterfront boundary. Marshes also extend into the woods (below) where some trees have died because of sea water which has been blown into the area by strong winds and storm tides. (Photos by Bryson Lewis.)

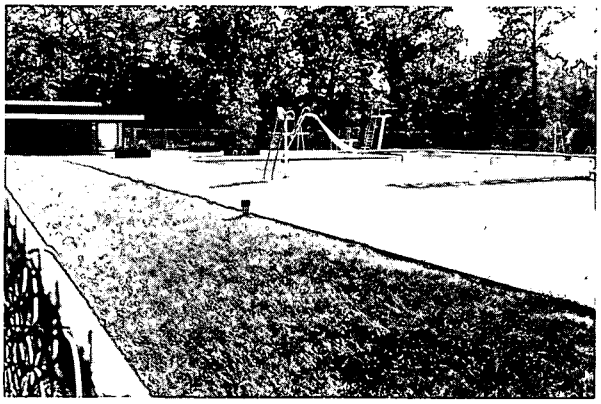


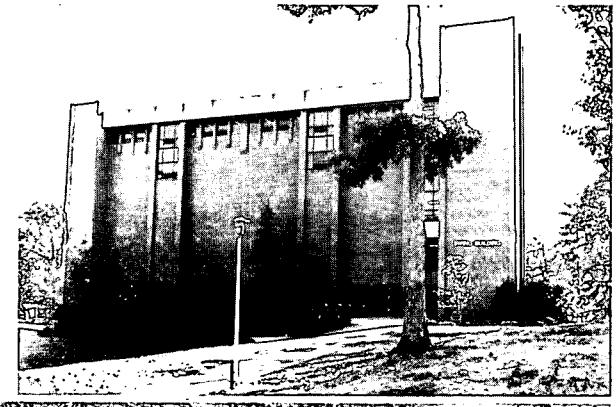


The marsh and waterways sold by the state in 1961 lie between the Intracoastal Waterway and the island within the solid black line drawn on this recent aerial photograph of Figure 8 Island. The marshland leased back to the state seven years later is inside the broken black line. The portion of the open channel included in the 1961 sale and not covered by the 1968 lease is still the property of the Figure 8 Island developers. (Photo courtesy of State Department of Transportation.)



In the hop, skip and jump trade arranged with George (Sonny) Ballou of Morehead City, the state traded just less than 6 acres on the water's edge of the vacant tract pictured above for a smaller piece Ballou held in the middle of this same tract. Then, about two years later, Ballou traded this waterfront property for property in town which now hosts two restaurants near the Carteret County Hospital. (Photos by Raiford Brown.)





The swimming pool (top photo) is one of two at the UNC Faculty-Staff Recreation Association club that was financed along with other improvements with a loan secured by the state land on which it rests. The Swing Building (middle) won't belong to the state until about 1990 though it could not have been built without the "loan" of state property to a private corporation. The Pi Kappa Phi fraternity house (bottom) was built with money borrowed from a lender who has the state property on which it sits as security for the mortgage. (Photos by Bryson Lewis.)

CHAPTER IV: A DUBIOUS EXCHANGE IN MORGANTON

When Interstate 40 was built around Morganton in the early 'sixties, the road isolated 10 acres from the main campus of the North Carolina School for the Deaf. Today, however, because of a privately negotiated deal with two Morganton men, the school now owns 38 isolated acres----instead of just 10----for which it has never had a use.

The school's governing board was persuaded to take the additional 28 acres that adjoined its land across the Interstate by businessmen Harry L. Wilson Jr. and H. L. Riddle Sr. They offered in 1966 to trade this land and $5,000 for 10.7 acres of prime commercial property the school owned near its entrance on the busy U. S. 64-70 bypass that skirts the city's central business district about two miles north of the Interstate. This property also was separated by a road from the school's 220-acre main campus, much of which is open land, but the board repeatedly had declined to sell it despite criticism from townspeople who said the school was stifling development along the city's growing southern rim. The property had recognized potential. A 1961 thoroughfare plan put it squarely on a major street that has since been widened to five lanes and is a major east-west route.

ISOLATED ACRES

The school's 220-acre campus was more than adequate for its foreseeable needs. Indeed, the state owned about 13,000 acres of land in Burke County, which has a mental hospital, a mental retardation center, a major prison, the school for the deaf and state farming operations within its boundaries. But the board of trustees favored the Wilson-Riddle proposal. Superintendent Ben E. Hoffmeyer informed the state property officer, Frank Turner, of this and wrote that "it might be to the advantage of the school and the state to look into the possibility of a trade."

Hoffmeyer, who left the school in 1969 and is now head of the American School for the Deaf in Hartford, Connecticut, told the Center that "at one time we had hoped to get a vocational education center for adult deaf people" which might be located on the hilly, wooded 38 acres across the Interstate. No appropriation had ever been sought, however, and eleven years after the exchange the land is still vacant. John Black, the business manager of the school, said there are no present plans for its use.

Wilson and his business partners have had no trouble finding a use for the 10.7 acres they got from the state. The property has been leveled, and part of it is now the site of a pizza restaurant, a movie theater and a small office building. Another part was used for a time as a mobile home sales lot but was for sale in late 1977.

In studying this transaction, the Center found a number of problems. For example:

---The real estate appraisal made of the 10.7 acres barely described the property and its potential value.

---The need for the trade, getting additional property for the school, was questionable at best. And although little justification for the trade was given the Council of State, the Council approved it nonetheless.

---State officials failed to take into account the considerable commercial value of the property they gave up----value that a public sale with competitive bidding would have highlighted.

A Three-Line Appraisal

Despite the lack of any firm plans for the use of the property, the school was given prompt approval to go ahead with the private swap. Immediately after the property office agreed to the proposal, the school requested appraisals from J. Alex Mull, a Morganton real estate man and developer. Five days later, Mull reported that the school's property was worth $33,000 and the property owned by Wilson and Riddle was worth $28,000.

Under the standards for property appraisals used by the property office today, Mull would have been required to follow the guidelines available in most competent texts on real estate. They include: (1) photographs of the property, (2) a complete and accurate legal description, (3) the purpose of the appraisal, (4) a statement of the highest and best use of the property, (5) an analysis of the general social and economic influences on the value, (6) an explanation of how the value was arrived at, (7) an application of the income, cost and market approaches to value, (8) a reconciliation of the various value estimates, (9) a statement of any limiting conditions, (10) a certification of value in which the appraiser professionally warrants his findings and disclaims any personal interest, (11) the qualifications of the appraiser, and (12) sketches and maps of the property.

Mull presented the state with a one-page report consisting of two typewritten lines evaluating the Wilson-Riddle property and one typewritten line on the state property.

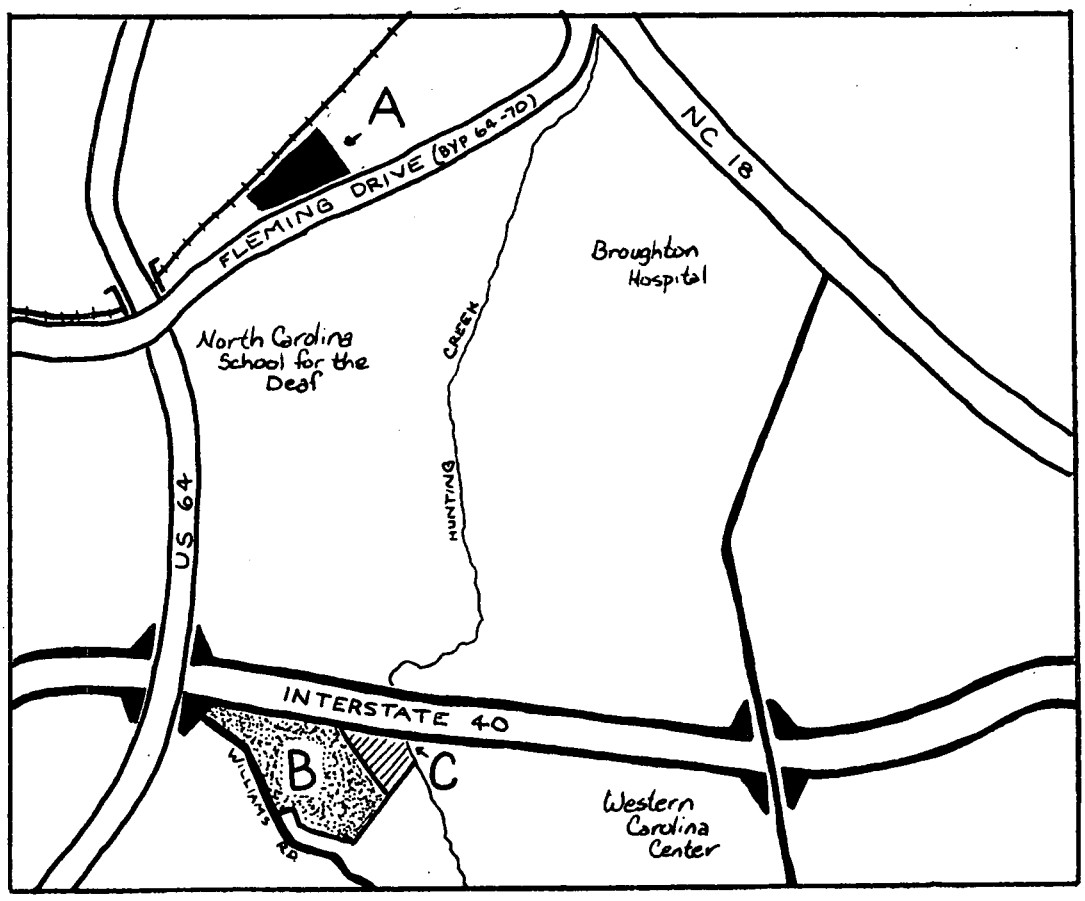
On June 2, 1966, Wilson and Riddle wrote to the president of the school's board, O. H. Pons Sr., and formally offered to exchange their land and $5,000 for the school's land. They also proposed that the school property be rezoned for commercial and/or industrial use and that the dirt that must be moved to level the property be used as fill on other property belonging to the school.

The board voted at its June 5 meeting to approve the exchange. But the board recommended that the 10.7 acres be rezoned for commercial, not industrial, use and that the dirt be moved "only if it was free of cost to the school." On June 8, Superintendent Hoffmeyer notified the state property office of the decision and sent in the necessary forms for approval by the governor and the Council of State.

State law requires that the "Department of Administration shall promptly investigate all aspects of the proposed transaction." There was no investigation. In fact, the

department's report stated part of the deal backwards. The report said the state was to pay $5,000 instead of receiving it. And the language in the report justifying the deal amounted to 10 words. Nevertheless, the department concluded that the transaction was in the best interest of the state and recommended its approval.

The department's memorandum justified the swap by saying that 28 acres would provide access to the 10 acres cut off by the Interstate "and make it a useful portion of the campus." If members of the Council had been shown a map of the area, such as the one on this page, they might have seen that the state already had access to this 10 acres through adjacent state-owned property used by Western Carolina Center, a mental retardation center, and that this swap would merely subtract more taxable property from the county rather than meet some demands of the state agency. If the Council members questioned the deal, their questions were not made a part of the minutes. The swap was approved.



This illustration shows how the school's 10-acre tract (C above) was cut off from the main campus by Interstate 40. The state owned the property adjacent to it at the time of the trade of tract A for tract B. Today, the school has 38 acres isolated from the main campus. (The sketch is not drawn to exact scale.)

Following approval by the Council of State, W. Harry Mitchell, a Valdese lawyer, was hired to search the title to the 28-acre tract. He certified in late August that the land was owned by H. L. Riddle Sr. and his wife, by Harry L. Wilson Jr., as an individual along with his wife and by Harry L. Wilson Jr., as trustee under his mother's will. Mitchell reported that this property, along with other land, was partial security for an $80,000 loan. This was cleared before the transfer.

However, as Mitchell discovered a year later, an error had been made in the title search. Riddle and his wife did not own their interest in the 28 acres as they and the state had believed. They had apparently forgotten that in 1961 they had deeded to their children several tracts of land including the interest in the property sold to the state. In writing to the Department of Administration about this, Mitchell said he had asked H. L. Riddle Sr. about the deed to the children and had been told that it did not include the 28 acres. In a later conversation with the Center he also pointed out that he had relied to some extent on a certificate of title prepared for the Northwestern Bank and Trust Company in connection with a deed of trust that included the same error. To correct this situation another deed to the state was signed by the Riddle children in September, 1967 conveying their interest to the state.

In 1971, a related problem cropped up. H. L. Riddle Sr. claimed that the property he got from the state should have been deeded to his children and their wives. A new deed was drawn and the property went to Riddle's children. Still later, in 1976, Harry L. Wilson Jr. also claimed that the state's deed for the 10.7 acres was in error because it included his wife. Wilson, too, initiated a "deed of correction" and transferred his wife's interest to him individually and as trustee for his mother's estate. Wilson said he did this on the advice of his attorney to preclude tax queries about his relationship as trustee.

Whether or not these last two changes in the deeds were caused by mistakes of the state, the swap clearly illustrates some of the problems that can occur when the state gets into the real estate business. The appraisal barely described the property, the title search was faulty, and the need for the 28 acres was highly questionable. State officials erred most greatly, however, in failing to take into account the considerable commercial value of the property they exchanged.

CHAPTER V: "HEARTLESS" GOVERNMENT CAN BE GENEROUS, TOO

The state's transaction with Triple Ess Shores, Inc., in Carteret County was a relatively uncomplicated matter in which the taxpayers dropped only about $22,300. What makes it interesting is that state officials involved in the deal simply have no plausible explanation of why the state fared so poorly.

In the fall of 1969, Triple Ess had a problem. The company owned a trailer park and a marina on two arms of land which jut out from the Bogue Banks just north of Atlantic Beach. But the channel between the two arms which allowed boats to use the marina had filled in so badly that many boats were having difficulty using the channel. On October 13, S. S. Stevenson of Triple Ess applied to the state for a dredge and fill permit. In March, 1970, Stevenson and I. T. Bagley, Stevenson's son-in-law and manager of the trailer park and marina, wrote to Carroll L. Mann Jr., the state property officer, complaining that "without the permit to maintain this channel, we will be unable to continue marina operations."

SILTING CHANNEL

One of the main attractions of the horseshoe-shaped trailer park was the marina and yacht basin. Along with trailer rentals, Triple Ess also drew income from boat-launching fees, the sale of marina supplies and the rental of boat slips. Spaces for boats of 20 feet and under rented at $200 per year during that period, and the rent for boats over 20 feet was $300. The dredging of the channel was obviously important to the owners.

On March 19, 1970, the Council of State approved a spoil area at the end of the western arm. Because the fill area involved navigable waters on state-owned bottom land, the easement agreement, drawn up on April 1, 1970, stated that "The title to any filled in portion of the above described lands shall vest immediately in the party of the first part [the state of North Carolina]." The filled-in area was to be approximately 250 feet by 300 feet, or 1.9 acres.

Less than a year after the easement was granted, Stevenson wrote to Carroll Mann on March 12, 1971 that ". . . we would like to negotiate with the State of North Carolina for the purchase of this tract [the filled-in area] at a price to be determined by an independent appraiser of your choice. Should the state not want to sell, we would like to enter into a lease for the use of the property."

The state hired Collice Moore, a Greenville Realtor, to do an appraisal. Moore's appraisal for the 1.9 acres of newly created land came to $32,100. This price was rejected by Stevenson, who said he could not afford to pay such a high price for the land. Carlton Myrick of the state property office asked Moore to do a second appraisal, because the first appraisal had not taken into account the fact that the "inside" trailer lots on the new property were less valuable than those located on the water---$350 annual rent for

the inside lots, $400 for the waterfront lots. Moore's estimates reflected a projected use of 20 trailers on the 1.9 acres, which was slightly fewer than the number permitted by local zoning ordinances.

Moore's second appraisal on April 20, 1971, came in at $26,000. Although the figure was more than $6,000 lower than that of the first appraisal, Stevenson still felt it was too high. Stevenson told Myrick on May 6 that he couldn't afford the appraised values because he had already spent $22,296 to build the bulkhead required and to do the dredging. And in letters written to the property office during this period, Stevenson argued that the cost of providing water and sewer connections and preparing the lots for use by mobile homes should be considered by the state when it priced the land----hardly a normal practice.

Nonetheless, the property office agreed to sell Stevenson the property for the difference between the appraised value and the amount Stevenson had spent to create the land, or $3,700. In a memorandum to Mann dated July 9, 1971, Myrick laid out the terms of the proposed sale and included this interesting comment: "There was some misunderstanding by Mr. Stevenson that title would vest in the state after being filled. Mr. Stevenson is 87 years old and it appears that he did not understand all the terms of the easement . . ." This was a curious observation in view of the fact that the fill easement agreement had clearly stated that the land would belong to the state. Further, Stevenson had asked to buy the land "at a price to be determined by an independent appraiser of your choice" on March 12, 1971.

Favors Plus . . .

The decision made by the state's officials in this case is inexplicable. It was as if the state had written Stevenson a check for his expenses in building the bulkhead and dredging the channel. Yet when the state permitted Triple Ess to dredge the channel, it enabled the company to continue a commercially profitable business. And when the state permitted the company to put the spoil at the end of the peninsula, it saved the company a considerable sum of money----piping the spoil 2,000 feet to the nearest available fill area on high ground would have been much more expensive.

Moreover, the reasonableness of the appraisal is hardly in doubt. The 20 new trailer lots created in 1971 were rented at $350 and $400. With full occupancy that would amount to annual revenues of about $7,500. In 1977 the lots were renting for $550 and $600, or an annual revenue of $11,500 with full occupancy. According to sources at the trailer park, vacancies have not been a problem.

The state's generosity to Stevenson, who died this year, and to Triple Ess has not been explained. M. E. (Gene) White, who was chief of the real property section in 1971, told the Center that there was no "policy or procedure on matters like this." He said the

municipalities of New Bern and Washington had earlier built bulkheads and filled in over state-owned bottoms to create land which the state had transferred to them at a negligible price. The property office merely wanted to "treat everyone alike" in these matters, he said. Thus was born in the property office the unique idea that a state should extend the same privileges to private businessmen that it extends to its own municipalities.

White admitted that "maybe he [Stevenson] did get an advantage. He may have benefitted." Carlton Myrick, whose memorandum informed the property officer about the proposed terms of the sale in 1971, could say only that "I can't tell why the decision was made. It was an administrative decision of the powers that be."

CHAPTER VI: THE RIGHT HAND AND THE LEFT HAND

The N. C. Division of Marine Fisheries invested more than five years and hundreds of man hours in planning park facilities, a boat launching area and even new quarters for its Morehead City operation only to find out that it doesn't even own the land it had planned to use.

To make matters worse, the division may have unwittingly traded away its most valuable asset, a choice piece of property on Morehead City's main street, for nothing more than a five-acre tract of sand that is of no use to the division without the adjacent property which division officials thought had been given them by the State Ports Authority (SPA). Together the two tracts were to have become a major division development for the Morehead City waterfront. So far, the only beneficiary of this misguided effort is a Morehead City real estate broker, George R. (Sonny) Ballou, who was able to nearly double his money when state officials decided to trade him the division's Morehead City property for his sandy, waterfront tract that is useless to the division without the adjacent 22 acres owned by the SPA. Although the SPA had indicated at one time it would give the property to the division, SPA Comptroller Ruff DeVane said the authority intends to hold onto it now. James T. Brown, who heads the division's operations in Morehead City, said if he had known of this at the time of the trade with Ballou, "we would have had nothing to do with it."

SANDY TRACT

An independent state agency, the State Ports Authority has the unique power to hold property in its own name. Although there is some indication that the SPA voted in December, 1972, to give its 22 acres to the division, no one followed up to see that a deed was drawn. This was even overlooked by lawyers from the attorney general's office who advised top-level state officials in 1974 that a simple "allocation" of the land was legal. Yet in an August, 1977, opinion written by an assistant attorney general, George J. Oliver, this letter of allocation was held to be "without legal authority and as such is not enforceable or binding."

Oliver's decision came as a shock to Brown, who had been working with local people, the Corps of Engineers, the SPA and state park planners since 1968 to make the most out of the 27-acre tract of vacant, sandy waterfront property that lies just north of U. S. 70 on the Morehead City-Beaufort causeway in Carteret County. The property had been created from sand and dirt pumped out of nearby waterways and dumped, under Corps of Engineers supervision, within a designated 70-acre spoil area. The SPA had established the spoil area in 1960 for the Corps' use during dredging of the Morehead City harbor.

The SPA owned all of the 27 acres of the new land that had been created by 1972 except for a 3.2-acre piece that unfortunately sat right in the middle. Comptroller DeVane

said he did not know why the SPA had not acquired the 3.2 acres when other private owners were being bought out in 1960. Although the state had negotiated with the owner, P. K. Ball of Morehead City, SPA officials settled for a short-term easement to deposit fill instead of outright purchase, state property office records indicate.

This spoil area had been a constant source of irritation for just about everyone. Motorists complained about sand which blew from the property onto the nearby highway. State highway workers and ports authority officials had attempted to correct the problems, bringing in the Corps of Engineers from time to time to help. Finally, in 1968, the Corps was going to plant grass on the area but stopped when workers found that the area included some private property. Ball's property in the middle had been forgotten over the years and had been filled along with that which belonged to the SPA.

Ball's real estate agent was Ballou, who reportedly was asking about $50,000 for Ball's land. But in 1972, Ball sold his 3.2 acres and riparian interests to Ballou for $33,000. At about the same time, the SPA was talking about turning over its property to the marine fisheries division for development. As a result, Brown had all of the property surveyed and arranged with Ballou to trade him 5.2 acres on the end of the 27-acre tract which would settle some leftover legal claims from Ball and open up the remaining 22 acres for development. In December, 1972, the SPA voted to accept the swap negotiated with Ballou by Brown.

The Way Is Cleared

The Council of State approved the swap at its January, 1973, meeting when members were told that the deal cleared the way to make the SPA's land "a more suitable area for development." Indeed, Brown had already begun drawing plans, using surveys and plats produced by his surveyors and planners in other departments of state government. A conceptual plan from the Corps of Engineers had already been drawn as well.

The transfer of the remaining 22 acres to NER was approved at the SPA's Dec. 14, 1972, meeting, according to a formal request for the transfer forwarded to the Department of Administration by SPA Director James W. Davis in June, 1973. Assistant Attorney General Oliver said, however, that a search of the SPA minutes turned up no such approval for the transfer. The state property office files also include no evidence of any further action beyond Davis' request.

Despite the lack of a title to the property, Brown continued with his planning. "At the time we thought it was ours," he said. Brown said people from his office, and others in state government, spent more than 1,000 hours working on the land. There were plans to make part of the area a park, with picnic tables and boat launching facilities. Brown also envisioned using the property for expansion of the marine fisheries offices later when water and sewer lines were extended to reach the property. Brown said in the

interim, "I've answered 100 letters" in response to complaints about the blowing sand, a continuing problem despite some efforts to correct it.

In February, 1974, Secretary of Administration William Bondurant circulated for the signatures of Bruce Lentz, secretary of transportation, and James Harrington, secretary of natural and economic resources, an allocation of a portion of the SPA land to NER. Lentz said that before he signed, he requested advice on the transfer from the attorney general's office and was told that SPA Director Davis' signature was necessary. There was no mention of a need for a deed. Bruce White, who handles transportation department matters for the attorney general's office, said he knew of no request from Lentz. He said "Lentz with monotonous regularity did not ask my opinion." The amount of land involved in the allocation was just less than three acres.

Assuming that the land was under NER, Brown began talking with Ballou about acquiring the 5.2 acres Ballou had gotten from the SPA. Ballou had installed a bulkhead on the waterfront of the property though it had not been completely filled. Ballou said he would be agreeable to a trade---his 5.2 acres for 2.78 acres NER owned in Morehead City.

The fisheries division had been using this land and an old house located on it for storage of old tires, used equipment and other material. Brown said this had drawn complaints from townspeople, some of whom considered it quite an eyesore on the city's main thoroughfare. A local women's group had coupled their objections with a request, taken all the way to the governor's office, that the property be donated to the city for use as a park.

According to the marine fisheries division chief, Ed McCoy, this request was followed by "Mr. Ballou's efforts to obtain the property." Ballou's interest prompted an appraisal of both this land and the 5.2 acres that Ballou owned across the bridge and adjacent to the property the division thought it had been given by the SPA.

A Thorough Appraisal

In early May, real estate appraiser David L. Harvey of Rocky Mount reported to the property office that Ballou's land was worth about $75,000 and the state's property was worth about $133,500. Harvey's appraisal was a thorough examination of both tracts and met the standards then required by property officer Nat Robb. Harvey's estimate of the value of the state's property, however, was based on his judgment that it would be difficult to get this property rezoned from its residential classification to a more valued commercial classification. The best that an owner could hope for, Harvey reported after talking with city officials, would be rezoning that would accommodate medical or professional buildings.

Ballou argued in his negotiations with the state that "your property has the very

worst zoning possible, and I am not sure I could alter it." He turned down the state's offer of a swap of lands with Ballou paying an additional $65,000 to make up the difference in the value of the two properties. After some discussion, however, the state property officials agreed to the exchange with Ballou paying only $45,000. Ballou accepted a condition that his land be filled either by the Corps or at his expense as it was not usable in its present state. The filling cost Ballou nothing. Brown had already arranged for the Corps of Engineers to deposit spoil behind Ballou's bulkhead at no cost.

Nat Robb, state property officer, said he believed the state got a good deal in the exchange. "The way I remember it, we got more out of it than we expected to," he said. Robb, now in the real estate business in Raleigh, said there was no discussion about a public sale or advertisement of the property, rather than a privately negotiated swap, which might have realized even more income for the state. Robb said in this case neither side wanted to sell their property, and a swap was the only option open.

The zoning restrictions didn't stop Ballou from attracting buyers. Within three months after the exchange was approved by the Council of State, Ballou was negotiating with property agents for the McDonald's hamburger chain. Ballou asked for the state's help in getting the property rezoned. He was getting complaints from the women's group which, he said, "felt I kept them from acquiring the land or getting the land as a gift for a park." The department refused to get involved, but Ballou finally succeeded in persuading city officials to rezone the property for commercial use. He said, however, it cost him $25,000 and a lengthy court fight. "The only way I could get out of it was to fight my way out of it," Ballou said of his zoning battle.

Successful Entrepreneurship

"It was the sorriest piece of business I ever conducted," Ballou said. "It may look good now but it was a poor piece of business at the time." For his investment, however, Ballou has done fairly well. In July, 1976, less than a year after he acquired the property, he sold a little more than one-and-a-half acres for $117,000 to the Franchise Interstate Corp., the property scouts for McDonald's Corp. In two related sales, he picked up another $100,500 for less than an acre that is now the site for a pizza restaurant. The third lot, a valuable corner lot, is still on the market. Ballou would not say what he is asking for it. Although Ballou had other expenses, including the cost of constructing a bulkhead and attorney fees, he has received $217,500 from his $78,000 investment ($33,000 paid to Ball and $45,000 paid to the state).

With Ballou off the other property, fisheries division officials began moving on their plans. The last hurdle was supposed to have been cleared on Oct. 5, 1975, just before the Ballou deal was closed, when Bruce Lentz, who had become secretary of administration, and Jacob Alexander, secretary of the transportation department, rewrote

the original allocation letter signed over a year before. The new allocation transferred nearly 22 acres to NER, not the two acres or so in the allocation agreement signed by SPA director Davis. But this agreement, too, has been declared invalid.

Brown didn't find out about the problem, however, until August, 1977, when Assistant Attorney General Oliver answered state property officer J. K. Sherron's question about who owned the property alongside U. S. 70. The state was again receiving complaints about blowing sand. In addition, officials in Morehead City wanted to use some of the sand and had inquired in Raleigh about getting it.

Though there is correspondence in the state property office files from former SPA Board Chairman Woodrow Price concerning the use of the property as a park, Oliver said he could find no evidence that the SPA ever formally acted to turn the property over to NER. In addition, the Corps of Engineers still has a permanent easement to dump spoil on the 27 acres plus the 45 remaining acres in the original 70-acre spoil disposal area.

SPA Comptroller DeVane said the Corps of Engineers would probably require the SPA to find another spoil disposal area if this one is closed. Because of this and a complete turnover in the SPA's governing board, there are no plans for any change in ownership. He said the SPA might let NER use it, but he advised against any substantial investment in the property. "The authority still owns it, and if it had a need for it could reacquire it," he said. If the SPA did sell the land (and the SPA has full legal authority to treat another state agency just like a private citizen) it might ask as much as $500,000 for the tract, the current value of the property, according to Ballou.

Disgusted over the entire affair, Brown said he has stopped all planning. "As far as I know, we're out of it."

CHAPTER VII: A LITTLE HELP FOR OUR FRATS

Many North Carolina taxpayers may never have seen a fraternity pin, but they have a vested interest in the recruiting talents of the boys at Pi Kappa Phi, a private social fraternity on the campus of the University of North Carolina at Chapel Hill. Each successful annual harvest of new bill-paying members is further assurance that Pi Kappa Phi----not the state of North Carolina----will pay off the mortgage on the fraternity's handsome house that is secured at the bank with 1.43 acres of state-owned land.

The state Constitution prohibits the state from giving exclusive emoluments or privileges to any person or groups except for public services rendered, but during the past 15 years private Chapel Hill organizations repeatedly have been loaned state-owned land which they then used as security to obtain more than $500,000 in building and construction loans. It is a neat arrangement between the organizations, which get their new buildings; the lending institutions, which have the necessary security for the loans; and the university, which regains title to the property as soon as the deal is closed.

LOAN SECURITY

There is only one hitch. In the event of a default on the loan the university basically has two choices: Pay off the loan or give up the land.

The executive committee of the university's board of trustees first approved this procedure in 1962 when the Alpha Pi Chapter of Zeta Beta Tau wanted to build a fraternity house on Finley Golf Course Road in Chapel Hill. Five years later, in 1967, a lot on the same street was given by the state to Kappa Council, Inc., for the same purpose----securing a mortgage to construct a house for Pi Kappa Phi fraternity.

In both cases the university charged a barely noticable rent of $5,000 for the 99-year leases after the land was deeded back to the state. In each case the fraternities' brief ownership of the property allowed them to borrow substantial sums, $120,000 in the case of Zeta Beta Tau and $110,000 in the case of Pi Kappa Phi, using the land and any buildings to be constructed as security. For Pi Kappa Phi, this entire procedure took place all in one day, Oct. 25, 1967. The other three fraternities which have benefited from this policy are Kappa Psi, Phi Delta Chi and Phi Sigma Kappa.

The lease does allow the university to take over the house at any time, paying off the loan and paying the fraternity for its equity. Conceivably the university could get the building at a bargain price. The fraternities must also abide by rules established by the university administration. In addition, the buildings, whatever their value, become the property of the state at the end of the 99 years.

More importantly, the loan agreements signed by the fraternities also give the lending institutions the right to take possession of the property if the fraternities fail to

meet their payments during the life of the loan, usually 20 years. This raises an interesting question: Even though the land belongs to the state of North Carolina, can the banks take it in case of a default on the loan? Or, can the banks force the state to pay the remaining debt?

The deeds giving the land back to the state include language that says the state is not obligated by the debts of the fraternities. But the banks still hold the deeds of trust that entitle them to take possession of the land and the buildings in the event of default. The Center discussed these conflicting legal circumstances with officials of North Carolina National Bank and Central Carolina Bank, which loaned money to several of these fraternities. Both officials said they did not believe the bank could collect the debt either from the university or the state. But they did believe that the bank would be entitled to take the land and the buildings in case of default. Buie Costen, assistant attorney general shares their view. He emphasized that these transactions in no way extend the faith and credit of the state to cover the fraternities' debts. Grace Wagoner, property officer for the university, believes that in the event of a default, the university could take over the property by paying the fair market price for the buildings and pay off the loan. She considered it unlikely that the university would allow the land to be taken over by a bank.

Each of these transactions was approved by the governor and Council of State. And the Center was unable to find evidence that any state official questioned whether the fraternities' use of the land was a violation of Article I, Section 32 of the state Constitution, which says: "No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." Interestingly enough, however, Council members did ask that question when a similar transaction involving the university and a faculty organization came before the Council.

Another "Loan" of Land

In 1968, on approval of the executive committee of the university board of trustees and the Council of State, the state deeded 28 acres to the UNC Faculty-Staff Recreation Association, Inc. which enabled this private club for university faculty, staff and trustees to get a short-term construction loan of $65,000 with which to build a clubhouse and other recreation facilities. The association then gave the land back to the state and was allowed to lease it for 99 years. Due to an oversight, long-term financing was not arranged at the time, and this was corrected in 1970 with another transfer and re-transfer of the land. This time, however, the debt had grown to $95,000. The transaction was again approved by the Council of State.

Recently the faculty association decided to add a second swimming pool and three lighted tennis courts to its facilities and needed a loan of $70,000. In February, 1976, the

university again asked the Council of State to approve a transfer, but this time members of the Council were concerned about a possible violation of the Constitution. The Council asked Nat Robb, the state property officer, to determine whether the association could get the loan by using its 99-year lease as security. The answer from the bank was no. Responding to the Council's constitutional question, Assistant Attorney General R. Andy Giles wrote that "a strong argument can be made" that there would be no violation. Giles noted that the N. C. Supreme Court had ruled in another case that the donation of city-owned property "to a corporation established for the purpose of providing recreational facilities to persons serving in our Armed Services" did not violate the Constitution. He also argued that "there can be no question that the faculty and staff at the University and the Hospital are performing vital and important public services." Although the constitutional question apparently had not been asked about the fraternity house transactions, Giles cited them as precedent and noted also that a similar arrangement had been used in the construction of faculty recreation facilities at N. C. State University. On April 6, 1976, the Council of State once again approved a transfer and re-transfer of the land for the faculty-staff association.

The association's facilities now include two swimming pools, a wading pool for small children, 15 tennis courts (three of which are lighted), a farm house that has been converted into a clubhouse and office, playgrounds, handball courts, a picnic area, volleyball and basketball courts, equipment for small children, an archery range and a softball field.

Allen S. Waters, property officer for the University of North Carolina Board of Governors, told the Center that to his knowledge no other branch of the university uses the quick land transfer as a means of helping fraternity houses get loans. The question of how fraternity and sorority houses can be financed admittedly has been a difficult one. N. C. State University in recent years has considered the houses as another form of student housing and has obtained authority from the legislature to build them on a self-liquidating basis, usually through revenue bonds. The bonds are paid off by charges made for the rooms.

This would seem preferable to the movement of state lands from the state to a fraternity and back again, just to provide security for a fraternity loan.

CHAPTER VIII: AN END RUN AT CHAPEL HILL

In the mid-sixties it was one political brush fire after another for the administrators of the University of North Carolina. Students were making demands, emerging institutions were accumulating political power and legislators were tightening their control on money for higher education with each ensuing battle. Indeed, it was not an ideal time for the university to be asking for state money to pay for a new $2.1 million medical research building on the Chapel Hill campus.

But, recalled George Watts Hill, an influential longtime friend and benefactor of the university, "The medical school was in dire need of space for various and sundry ancillary research programs." That's when Hill, a group of his friends and university administrators used a variation of the fraternity property transfer to get the building without specific legislative approval and despite the fact there was not enough money on hand to pay for it. As a result, the UNC Medical School's Swing Building in the heart of the Chapel Hill health-care complex belongs not to the state but to a non-profit corporation called Medical Research Properties Co. (MRP) which is directed by some of Chapel Hill's most prominent citizens. The university decided not to follow normal procedures for the financing and construction of state buildings but instead arranged for MRP to be given an acre of state land which the company used to secure a $2.1 million loan to build the building. Today, the medical school is merely a tenant, though barring any complications the state will eventually own the building after the loan is repaid.

DIRE NEED

The plan is indeed unique. But the Center found in its examination of this transaction, and two others which followed, that complications can arise; and these complications may increase obligations of the state that initially were never approved by the legislature.

The state could end up paying property taxes on property that, if owned by the state, would be tax exempt. If a ruling by the Orange County Board of County Commissioners is upheld, MRP will owe the city of Chapel Hill and Orange County more than $430,000 in back property taxes due on the Swing Building and two other buildings constructed under the same arrangement. If paid, the tax charge will be passed through to the medical school in higher rent, said MRP attorney Jack Walker of Durham.

The building is already an expensive proposition. When the Swing Building is returned to the state at the end of the mortgage period, the medical school will have paid more than $1.5 million in interest charges that are rolled into the annual rent of about $183,000. This figure does not include normal maintenance, utilities and operating expenses paid by the medical school.

The medical school, with the full knowledge of the university, picked this unusual method of construction and financing for several reasons, according to James R. Turner, who was an assistant dean at the time. The medical school needed a number of new buildings in 1965 and 1967 and had to choose carefully which ones to request from the legislature. The medical school went for projects that were larger than the Swing Building and which used most of the money, both state and federal, that was expected to be available for the school. This was also a time when new deans were arriving who wanted research facilities in a hurry. Then too, there was the willingness of insurance companies to lend money at 6 per cent, an alternative that seemed preferable to issuing revenue bonds in anticipation of federal research grants.

The medical school had also discovered, however, that the National Institutes of Health (NIH) would include rental funds in their grants if the rented building was owned by an organization not officially connected with the university. The Medical Foundation of North Carolina that raises funds for the medical school could not meet this test but a new corporation could. Enter the Medical Research Properties Co.

Many state officials believe that state agencies and institutions can construct buildings only with the approval of the legislature or the Advisory Budget Commission, which sits with the governor to authorize new projects or changes in approved projects. To them it may come as a shock to discover that neither the minutes of the Advisory Budget Commission nor the acts of the General Assembly show any such authorization of the Swing Building.

To The Council

However, because state land was involved, the project was at least presented to the Council of State. In December, 1965, the Council was asked to transfer four acres of state land to MRP as a site for the building that the company would construct. The structure was described to the Council as a three-story building that would cost $900,000, to be raised by the sale of revenue bonds to insurance companies in the state. The facility would be leased back to the medical school and when paid for, about 1990, would be turned over to the state. The Council of State approved the transfer of land, and shortly thereafter MRP was incorporated.

In December, 1968, the Swing Building appeared once more on the agenda of the Council of State---this time for approval of the lease of the facility to the medical school for 20 years at a rent of about $183,000 per year, to be paid from anticipated federal money. The building was described as containing 42,164 square feet of laboratory and office space, a canteen lunch facility and conference rooms.

The university acknowledges that it never attempted to get the authorization of the legislature for the project. However, James R. Turner, who was an assistant dean of the

medical school at the time, lays the failure to take the Swing Building proposal to the Advisory Budget Commission at the feet of the Department of Administration. In a letter dated Dec. 8, 1965, George Watts Hill wrote A. B. Branch, the university business manager, that he had been told in a telephone conversation with Ed Rankin, then director of administration, that it was not necessary for the university to take changes in the size of the project to the Council of State. In the same letter Hill also wrote that Frank Turner, then the state property officer, said it was not necessary to obtain Advisory Budget Commission approval for the Swing Building because MRP was a private corporation.

What the state ended up with, however, was neither the building described in the 1965 Council of State action nor the building that George Watts Hill had in mind when, as he put it, he "instigated" the entire process in 1965.

The Swing Building---so called by Hill because research operations were to "swing in and swing out" as needs demanded---is five stories tall and includes a total space of about 77,000 square feet, of which only about 42,000 is usable office and laboratory space. And it sits on an acre of land, not the four acres that the Council of State approved for the project.

Two More Buildings

Hill said the building was designed to accommodate expansion with additional wings to the building. Instead, however, the university has contracted with MRP on two more occasions to build additional research buildings known on the campus by the rather pedestrian names of "B" and "C" buildings.

In late 1970, the university asked the state to transfer two pieces of land, each slightly less than one half an acre, for the construction of two temporary structures. The B Building contains about 5,230 square feet, cost $196,000 and is currently being used for research in pharmacy and toxicology. The C Building contains about 8,976 square feet and cost $199,000. It is leased to the U. S. General Services Administration and is used by the Environmental Protection Agency for research in air pollution control.

MRP attorney Jack Walker said the company is merely a "trustee" for the university, "holding the land for their benefit." Because it has this relationship, Walker argued before the Orange County Board of Commissioners, the company should not be liable for taxes. He said the company has full title to the property because that is the only way it could qualify for the large loans from the mortgage holders.

It is hard to tell exactly whose pocket this entire project was paid out of. In March, 1967, Dean Isaac Taylor of the School of Medicine wrote to Oscar Ewing, president of MRP, that the school had more than enough money available to pay the rent. He reported that $240,000 in federal tax dollars was available from the National Institutes of Health.

He said $90,000 was available from certain fees charged patients at the university's Memorial Hospital, $35,000 from private contributions and a trust fund income, and about $40,000 was expected from unrestricted gifts and grants from industry.

This was enough to satisfy MRP, apparently, because the company arranged for $2.1 million in loans from nine insurance companies which accepted as security the land and the buildings. To get the companies to agree to the loan, however, the state dropped the usual phrase included in leases to protect the state in the event the state agency can't pay its rent due to unexpected cuts in funds. Any default will cost the state its land and building if the loan is not paid off by the state.

Regardless of the source of the money, it is the opinion of John Buchan, deputy state auditor, that most of the funds used are still "state funds" under the definition of the Executive Budget Act. That act, passed in 1925, was supposed to "vest in the Governor of the State a direct and effective supervision of all agencies, institutions, . . ." For years the governors' budget staffs and the state auditor's staff have been trying to make this "effective supervision" possible with respect to the University of North Carolina at Chapel Hill.

The Swing building is occupied today by the departments of pharmacology and toxicology and the Cancer Research Center of the medical school. The building was conceived, designed, constructed and used as an important addition to the university. But because of the "back door" method used to finance it, the university now has a building it doesn't own, but on which it must pay interest and may soon pay taxes---all at a cost much higher than if it had been built under normal procedures.

CHAPTER IX: PAVING THE WAY TO PROGRESS

By the standards prevailing in other cases in this report, state officials who took part in the 1970 sale of land by Broughton Hospital in Morganton performed in a satisfactory manner. They commendably chose to put the surplus land up for public bidding rather than sell or trade it in a privately negotiated deal. Moreover, they got a price for the land which was considerably higher than its appraised value. Yet this transaction is worth reporting for two reasons. First, the state declined to help a public service organization which renders a critical service to the people of Burke County and which badly needed a portion of the land which was sold. Although the state was under no obligation to help the Burke County Rescue Squad or any other such organization, cooperation would have been clearly in the public interest. Secondly, this case provides an interesting and complex illustration of how public officials with power and influence can affect land transactions without violating any law.

PUBLIC BIDDING

A Place For The Ambulances

In 1969 the Burke County Rescue Squad was cramped for space in ill-suited quarters that required the volunteers to race out of their downtown Morganton station and through the traffic to answer emergency calls all over the county. That's why a small piece of state-owned land near Broughton Hospital on the city's south side---the squad's busiest area---looked like an ideal spot for a new station.

The property was centrally located, but out of the dangerous, tangling traffic. It was also close to Interstate 40 and other major roads in the county. Chief Ervin Hennessee and his men also thought the property might be free, a gift or at least a low-cost lease from the state, which would protect the volunteers' meager treasury.

Things looked good when Hennessee got approval of the proposition from Gov. Robert W. Scott himself, according to a memorandum forwarded to the state property office by Scott aide Wiley Earp. "This has been checked with the governor, and he approved it," Earp wrote the state's real property attorney, Parks Icenhour, on January 23, just a couple of weeks after Scott had assumed office. "You may correspond with Mr. Hennessee and see if this can be worked out," Earp wrote.

"I didn't see any reason in the world why the state couldn't have given us the land," Hennessee said recently. Indeed, the state has frequently worked out low-cost or no-cost arrangements with volunteer and public service organizations. This policy has even been extended to cover private college fraternities. In this case, however, Hennessee and the rescue squad had their eye on the same piece of property that a group of influential

Morganton businessmen and political supporters of Gov. Scott also wanted.

Things were not worked out. Today the site is still vacant, except for a large "for sale" sign, and the property belongs to a group of Morganton businessmen, including former state highway commissioner Jack L. Kirksey and his brothers. Kirksey's close friend and next door neighbor, Harry L. Wilson Jr., bought the property in September, 1969, at about the same time Kirksey launched a drive within the highway department for a $2 million five-laning of the busy U. S. 64-70 bypass that runs in front of the property. The street had been shown as a major street in a 1961 thoroughfare plan but the number of lanes had not been specified.

Kirksey denied any connection between the land sale and the upgrading of the road. He also told the Center he was "not in on buying the land." State records, show, however, that state officials decided to dispose of the property in February, 1969, after Kirksey made an offer for it. He was also supplied with a survey map of the property in June when it was advertised for sale. And the same day----September 3----that Wilson learned he was the high bidder, state highway administrator Billy Rose notified chief planner William Caddell that "Commissioner Jack Kirksey has requested that we give him a cost estimate for the five-laning of the U. S. 64-70 bypass . . ."

On November 21 Kirksey & Co., a Morganton business owned by Jack Kirksey and his brothers Robert and L. H. Jr., acquired an interest in the property purchased by Wilson. This occurred about three weeks before the internal planning committee of the highway department approved preliminary plans for the upgrading of the bypass. Today, the property that cost Wilson about $15,000 an acre in 1969 is advertised for sale for about $56,000 an acre.

The Decision To Sell

This 5.69 acres was part of the Broughton Hospital's sprawling grounds just south of the Morganton business district. It had been cut off from the main grounds when the two-lane U. S. 64-70 bypass, known locally as Fleming Drive, was built in 1955. The hospital had leased the property from time to time but had no plans for it in the institution's development. Townspeople, concerned about the city's future, had complained frequently to the hospital administrators that continued state ownership was stifling the city's growth as Morganton expanded toward Interstate 40 just a couple of miles further south.

Chief Hennessee said when he approached the head of the hospital about allowing the rescue squad to have about two of the hospital's five plus acres he was told the hospital "was getting bombarded with requests to sell." But, Hennessee said, another rescue squad member was told the state might be interested in giving them some of the land. In early January, Hennessee forwarded his request and a map of the property the rescue squad wanted to Gov. Scott.

At about this same time, however, Jack Kirksey, who was also a key figure in Scott's election campaign and a political power in Burke County, had approached mental health department officials about the property. They reported to the Board of Mental Health on February 12 that Kirksey had offered to trade property he owned farther back from the road for the hospital land that fronted on Fleming Drive. The board voted to declare the 5.69 acres surplus to hospital needs.

Kirksey's offer was not unlike one made just three years earlier by his friend and neighbor Harry Wilson Jr. Wilson and a partner, H. L. Riddle, had traded 28 acres across I-40 for about 11 acres of Fleming Drive property in a deal with the N. C. School for the Deaf (See Chapter IV). This property also had been cut off from the institution's main grounds by the construction of the road.

There is no way to tell----Hennessee doesn't know and hospital authorities can't recall----but the rescue squad's request may have stymied Kirksey's offer for a trade. Whatever the reason, C. K. Avery, the hospital business manager, chose to ignore both requests. After the property was surveyed he formally asked the property office on April 25 to sell the 5.69 acres either as one piece or three separate tracts.

Before the property office could sell the property a formal real estate appraisal was necessary to establish a minimum bid figure. J. Alex Mull, a Morganton Realtor, filed his appraisal on May 16. The one-page appraisal included his description of the property---- "located on the north side of Fleming Drive, between College Street and Morganton A.B.C. Store in Morganton, N. C."

Mull based his appraisal on the U. S. 64-70 road frontage for the three pieces of the 5.69 acres (see map on next page). For the first tract (No. 1) he set a price of $13,860; for the second, (No. 2) $19,488; and for the third, (No. 3) the piece still on the market by Wilson, the Kirkseys and their partners, $21,344. For the entire piece, Mull said a fair market value was $50,000.

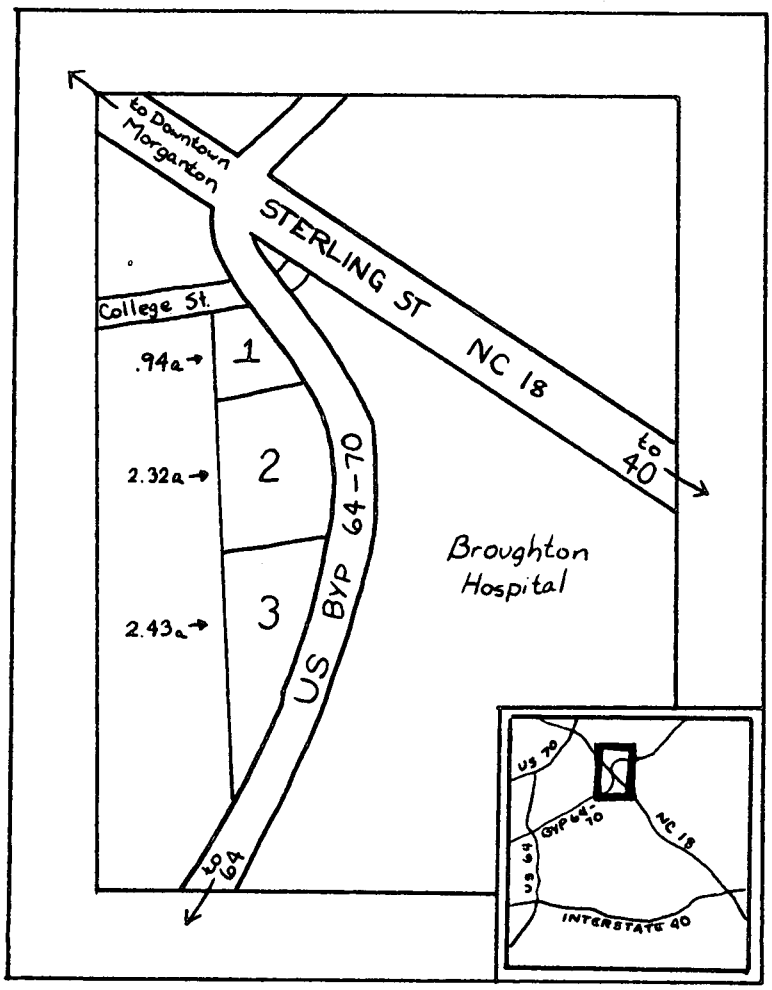
The state did not require that the appraisal have any supporting material, any further description of the property, photographs, maps or even an assessment of the land's highest and best use. More importantly, the state did not require that the appraisal report on the potential of the area, such as the possibility of the widening of the highway.

This information was spelled out in the preliminary study of widening the road prepared for highway officials at Kirksey's request in September. Jimmie Beckam, the project engineer, wrote in his December report: "The area served by Fleming Drive is considered to have excellent potential for future commercial and industrial development because of its relative location to both the central business district and I-40 and is expected to develop rapidly."

Despite the lack of any detailed information, the state advertised the property for sale in the Morganton newspaper, stating that bidding would begin at $50,000. The first bid received was from Harry L. Wilson Jr., who bid $67,550 for the full 5.69 acres.

L. H. Kirksey Jr., president of Kirksey & Co., followed with a bid on the third tract. This piece adjoined property owned by his company----and earlier offered in the trade---- and he offered $23,850 for it. H. L. Riddle Jr., Wilson's business partner in other transactions, bid $21,000 for the first tract, and Richard O. Avery, a Morganton real estate man, offered $19,588 for the second tract.

The bidding continued through June, July and August. The winning competitor turned out to be Wilson, who finally topped high bids from Avery and Bernard B. Mull, a Morganton oil distributor. On August 28, Wilson filed his high bid of $87,700, nearly $38,000 higher than Alex Mull's appraised price. The proposed sale was forwarded to the Council of State and approved on September 30. The deed was drawn and the property turned over to Wilson on November 2.



The Burke County Rescue Squad had asked Gov. Scott for use of all of tract number 3 and a part of tract number 2 in the above illustration. This still would have left the school with about half of the property, which could have been sold to satisfy local interest in opening the property to development. The only piece of the entire tract, sold for $87,700, that is developed is number 2. (The sketch is not drawn to exact scale.)

Bernard B. Mull, who competed with Wilson until the end, said he finally dropped out because the price got too high. On February 12, 1970, however, Bernard Mull, Avery and their partner D. Holman Sigmon of Morganton got 2.82 acres from Wilson. This was all of the middle tract plus about half an acre from tract 3. The deed has no tax stamps attached to it, though Wilson said he was paid $40,000 for this property.

Bernard Mull and his partners subsequently formed a corporation, borrowed $380,000 and built a grocery store on the property. It is now leased to Winn-Dixie, according to records at the Burke County Register of Deeds office.

The first tract, the smallest of the three, was sold by Wilson even earlier than the middle tract. About three weeks after he got the property from the state, Wilson sold this piece, surveyed to include .94 acres, to Quality Oil Transport, Inc., a Winston-Salem firm, for about $21,500. Kirksey said he may have told Bert Bennett of Quality Oil about the availability of the property and pointed it out as a possible site for one of his company's service stations. Bennett and Kirksey have been close political allies over the years. Quality Oil Transport later sold this piece to Bernard Mull in 1975 for about $27,500. Today it is still vacant.

The last of the three parcels was transferred on November 21 to Robert L. Kirksey, Kirksey & Co. and Lazarus, Inc., a corporation in which Wilson had an interest. A year later, this tract, reduced to just less than two acres after some of it was sold to Bernard Mull, was increased to 4.19 acres when other Kirksey & Co. property behind it was added to the tract. This is the property that today is being offered for sale at $225,000. Part of it is the same property that Chief Ervin Hennessee wanted for his rescue squad and townspeople said was needed for future development.

The rescue squad finally found another site, though it is less desirable than the former state-owned land. It is located on the north side of the city, and rescue vehicles must still negotiate downtown traffic on emergency runs to accidents on I-40 or other calls in the southern end of the county. Hennessee said the rescue squad found help from Duke Power Co.----which offered a $190-a-year lease----when their efforts to get state help went unrewarded.

CHAPTER X: CONCLUSIONS

North Carolina state government has been in the real estate business ever since it took over from the king the job of issuing land grants to private citizens. Despite this long history, however, it has only been within the past nine years that governors, through their top administrators, have moved to establish even the beginnings of a professionally-trained and adequately staffed property management operation. During the late 'fifties and through most of the next decade, the state's land transactions were basically handled by only two men----Frank Turner, the state property and construction officer under the Department of Administration; and Parks Icenhour, the real property attorney assigned to the office from the attorney general's staff. Most state agencies and institutions held land in their own names and would send all-but-completed land transactions to Turner and Icenhour for little more than perfunctory handling before presentation to the Council of State, which must approve all transactions except purchases of land for highway construction.

TWO MEN

Carroll L. Mann Jr., an engineering professor at N. C. State University, made the first significant changes in the office after he became head of the state property and construction office during the first year of the Gov. Robert W. Scott's administration. Mann brought in trained professionals to the office. He upgraded requirements for property appraisals and took the first steps toward a thorough land inventory. When Nat Robb succeeded Mann in the middle of Gov. James Holshouser's administration, additional changes were made. The responsibilities of the office were divided between property management and construction. During Robb's tenure, the office undertook and largely completed the first usable land inventory that is now installed in an accessible computer file. It was during Robb's tenure also that the procedures followed in property transactions were clearly established in the state's administrative procedures. These are rules under which state government functions and must be followed under penalty of law. They can only be changed after public hearings.

Early in 1977, J. K. Sherron, a real estate broker like Robb, assumed control of the state property office. In his short tenure Sherron has carried out some additional improvements, although they are not required by law or by the administrative procedures. It is now the firm policy of the office, for example, to require that surveys be made in all real property transactions and to require surveyors to meet certain minimum standards. Sherron also said he avoids privately negotiated land deals. In almost all cases, he said, "properties are advertised for sale and are not sold by private negotiation." The exceptions are when public charities are involved, he said.

The 1977 General Assembly also gave the Department of Administration more

authority in property matters. The new law gives the department the power to initiate proceedings for all sales, leases and rentals of land under the control of any state agency. Sherron said this law would enable the department to settle disputes between agencies which may differ over the use of a certain piece of property. Sherron said the property officer can take the matter to the Council of State for a decision rather than wait for department heads to settle their differences.

Despite these improvements, there has never been a thorough examination of the needs of the state property office, which is a keystone in the protection of the public's interest in property transactions. Even some of these improvements may be transitory, since they are not embedded in law or even in the administrative procedures. There is no assurance that they will continue to be the state's policy in the years to come. Moreover, important safeguards which might have prevented many of the mistakes made in the transactions detailed in this report simply do not exist in law, written procedures or unofficial policy.

The Council of State

The elected officials who comprise the Council of State----and who have final authority over all land transactions except land purchased for highway construction----are generally satisfied with the system as it exists today. Without exception they believe that approving land transactions is a proper role for the Council. Most of them feel that they, as independently elected officials, serve as a check against the abuse of power by other state officials and against political influence and conflicts of interest.

Harlan Boyles, the state treasurer, reflected the feeling of his colleagues on the Council when he said, "On balance I would say that the system we have has more advantages than disadvantages. The main advantage is that it is handled by elected officials."

Yet most members of the Council expressed some concern about defects in the system and were receptive to the possibility of making constructive changes.

Gov. Hunt, in an interview with the Center, said he felt that the Council has to deal with many complex issues and that "not enough time may be given to each matter." Dr. A. Craig Phillips, superintendent of public instruction, said "It frustrates me to make an appropriate judgment" on land transactions. "I've considered pushing for an early involvement [of the Council] but up to this point, with only a few exceptions, I've been fairly confident in the people who bring these matters before us." As to the competence of those people, Dr. Phillips said, "I've seen what appeared to be very efficient, well-done jobs and what appeared to be very poor jobs." Henry Bridges, state auditor, also felt that the Council "should be more involved in preliminaries" of major transactions. John Brooks, commissioner of labor, felt that "the system is pretty sound" and that the Council "is amazingly attentive to the concept of fairness and to the public

interest." But he said he is "not always satisfied that the bargaining in behalf of the state has been as strong as I would have done it." James A. Graham, commissioner of agriculture, also defends the system strongly---but concedes that it is not perfect. "It seems like when we buy, we always pay more than we get when we sell," he said. Graham also felt that the Council did not always get enough information from property officers in the past "but we're getting it now."

Recommendations

The decisions of the Council of State are only going to be as good as the information provided Council members by the Department of Administration's property office. From this information, and usually this information alone, the Council members are to decide what is in the "best interest of the state." This phrase closes each memorandum provided Council members on each individual transaction recommended to it by the secretary of the Department of Administration. This stock closing has often had little meaning because the information that preceded it was sometimes incorrect, inadequate or downright misleading. For example, when the Council voted in December, 1968, to lease back 683 acres of marshland sold in 1961, Council members were not told they were approving a lease for only 310 acres though they were told the lease was "in the best interest of the state." Three years later, when a prime piece of waterfront real estate was sold for a fraction of its appraised value, Council members were told the same thing. Each of the transactions examined by the Center was presented to the Council in exactly this same fashion.

In an examination of property management operations in Virginia, Georgia, Alabama and Florida, the Center found no major safeguards to assure that officials making the final decisions got adequate information. Perhaps Florida is more careful than the others in this respect. Agencies which wish to buy or sell land in Florida must first obtain approval of the Cabinet before they can begin to put together a deal, and then they must come back to the Cabinet for final approval.

There are ways to improve the information flow to the N. C. Council of State, however. Some of the following recommendations merely reinforce the unofficial procedures now being used in the property office. Some others, however, will require changes in both the law and the administrative procedures filed with the attorney general.

LAND REVIEW PANEL---The Center recommends that the Council of State establish a land review panel or screening committee that would serve in an advisory role to the property officer and the Council. This panel should be composed of members with specialities in various areas of real estate---appraisals, surveys, engineering, architecture, law, agriculture, geology and state fiscal procedures. All of these skills are available

within state government or at state universities in or near Raleigh. The members of this panel, serving staggered terms, could meet in Raleigh as often as needed to review proposed transactions with the property officer. In the event of differing opinions, the committee's dissent would be made known to the Council of State. To make the most of the panel members' time, the panel should be limited to reviewing sales and purchases of $50,000 or more, those in which land of particular ecological, historic or sociological significance is involved or privately negotiated transactions.

Most members of the Council of State, including the governor, were receptive to the idea of such a land review panel. Gov. Hunt said such a panel could give an independent, objective review and "might have some real merit." Thad Eure, secretary of state, said it would be a "great help" and a "fine thing for the Council of State." Dr. A. Craig Phillips, state superintendent of public instruction, felt strongly that such a panel must be appointed by the Council. "If it is strictly a governor's appointment, you've only reaffirmed his power. It would be just one more voice to affirm what his staff has done. It could be nothing but a rubber stamp." Commissioner of Agriculture James A. Graham said he liked the idea and, in fact, has been using a similar real estate review committee within his department. This committee reviews each transaction involving the nine research farms before it is sent to the state property office. Only two members, Lt. Gov. James C. Green and John Ingram, commissioner of insurance, disagreed with the idea. Lt. Gov. Green felt that establishment of a review committee would be "wasted effort and would create more bureaucracy." He said, "When you have an automobile that is running well, you don't take it to the garage." Ingram said that transactions coming before the Council should be "the responsibility of the property officer, and if he needs a review committee he should set it up himself."

PUBLIC ADVERTISEMENT OF SALES---The public should be notified of every piece of real estate that the state decides to dispose of. Public advertisement of dispositions is now optional within the administrative procedures. The Center recommends that the property office should be required to advertise every piece of property regardless of whether the office is considering a swap or trade with another property owner or not. This would provide additional information on the value of the property in the open market. The Council of State is not now bound to accept the high bid in a public auction of state land, and this option should continue. This would leave state property officials the opportunity to present several options to the Council: either an outright sale or an exchange, whichever is most desirable.

PROPERTY APPRAISALS---The Center recommends that the administrative procedures be amended to clearly establish the minimum standards for real estate appraisals used by the state property office. These standards, many of which are the present policy

of the office, should be no less than those found in any competent real estate text. The property office should also include in its administrative procedures a requirement that at least two appraisals be obtained when the land involved is worth $100,000 or more, or when the property has unique qualities on which even qualified appraisers may disagree. The property officer should also be responsible for insuring that appraisers are selected on their qualifications, as established in the administrative procedures, and not because of any political favoritism.

TITLE INSURANCE---The Center recommends that the state require title insurance whenever the purchase price of the property involved is more than $100,000, and in other instances when the Council of State decides it is necessary. This requirement will protect the public's investment as in Florida where the Division of Parks and Recreation requires title insurance in nearly all of its purchases. According to Charles I. Holliday of the North Carolina property office, title insurance is only secured if it is recommended by the attorney general's office. With insurance against defects in the reported ownership of the property, the state can recover any money paid for property the sellers had not the right to dispose of, such as in the case of the North River Game Lands.

TITLE SEARCHES---The Center recommends that local attorneys hired to research titles to property involved in state land transactions be chosen for their ability and not their political allegiance to the governor or attorney general. The present patronage system in which the attorney general chooses lawyers from a list prepared by the governor should be scrapped in favor or a more equitable procedure that provides all attorneys interested in doing state work an opportunity to be hired.

SURVEYS---The Center recommends that before the state acquires any property it be surveyed by a competent registered surveyor whose work must meet minimum standards established by the state property office. Like the standards for appraisals, these standards for surveys should be incorporated into the office's administrative procedures and filed with the attorney general. In addition, the state property office should begin immediately to have all state lands surveyed and these surveys placed on file in Raleigh and in the county register of deeds offices where the property is located. These surveys should also meet the standards established by the state property office.

OPEN MEETINGS---The Center recommends that the Council of State conduct the public's business in public and maintain a complete account of its business. If meetings had been open to the public and the press, it is at least possible that questions would have been raised about the wisdom of the fraternity building, Swing Building and Triple Ess transactions and perhaps others. The Council of State is presently exempted

from the state's public meetings law. This blanket exemption should be removed, and the Council should hold open meetings except when a majority of the members vote to hold closed sessions because they believe it is essential to protect the public interest. The reasons for holding closed sessions should be determined in advance by the Council and published in its administrative procedures. The Center found in its research that an accurate study of past land transactions is hampered by a lack of substantive information from previous Council meetings. Only the barest details are recorded. The Council should produce a more complete report of its meetings. Most Council of State members said they believed their meetings should not be opened to the public. Harlan Boyles, state treasurer, expressed the majority sentiment when he said, "any time you're dealing with land, you've got to be in a position to ask the hard questions. This is what you would not get if you had a public meeting." Boyles said the odds of collusion among the various independent elected officials was unlikely.

In the state of Florida, where all meetings are open to the public, Edward Cedarholm, administrator of the state's land management office, said the open meetings law "has not necessarily affected the price" of land the state wanted to buy, though it has resulted in the "harassment" of state officials by organizations such as the Audubon Society "who don't think the state should sell land for any reason."

Gov. Hunt and State School Superintendent Craig Phillips said they approved of opening meetings if the Council had the option to close them when a majority believes it necessary.

Summary

North Carolina has neither the best nor the worst system of acquiring and disposing of public lands. Perhaps the least satisfactory system studied by the Center is that of Alabama, where "each [agency] has their own little kingdom," as one Alabama official commented, and where procedures for land transactions are scattered through many sections of the law. Virginia also lacks a centralized system, though it has an admirable law requiring that all state sales of land must be through sealed bids or public auction. Georgia also has a number of safeguards and a reasonably centralized system, although the state puts all land transactions into politics by requiring legislative approval of them. Clearly Florida has made the greatest effort to protect its citizens' interest in public lands by requiring title insurance, open meetings and public sales---but public officials said it has resulted in some penalty to the state.

It seems clear that North Carolina's rather centralized system and the requirement that transactions be reviewed by a group of independent, elected officials are fundamental to the protection of its people's interest in these matters. Yet it is also clear that the system has broken down grievously in the past and that it will break down again unless reasonable efforts are made to improve the system so it does work "in the best interest of the state."