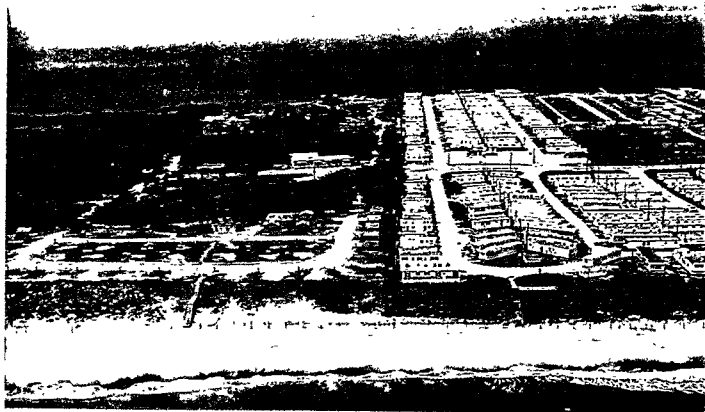


A Planning Beachhead in North Carolina



Coastal Management

by Bill Finger and Barry Jacobs

The unique, fragile, and irreplaceable nature of the coastal zone and its significance to the public welfare amply justify the reasonableness of special legislative treatment.

— N.C. Supreme Court Justice J. Frank Huskins
*Adams v. Dept. of NER (1978)*¹

Since it was first introduced in the General Assembly in 1973, the Coastal Area Management Act (CAMA) has been both a force for orderly change and a lightning rod for controversy. In 1974, after one of the longest and most heated legislative debates in North Carolina history, CAMA emerged as an experiment in land-use planning for 20 coastal counties.² Four years later, CAMA survived a major judicial test when the N.C. Supreme Court upheld the act's constitutionality against the claims of several coastal landowners.³ Then, in the October 1981 "budget" session of the General Assembly, the coastal act narrowly avoided extinction via a "special provisions" route, an amendment to the general appropriations bill.⁴

In attempting to balance "the often-conflicting needs," as the act's preamble states, "of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens," CAMA has stirred strong opposition every step of the way. After coastal legislators failed to defeat CAMA in the General Assembly and judicial efforts to block its implementation proved unsuccessful, Carteret County officials conspicuously resisted compliance with a 1976 deadline for developing a land-use plan. But six years later, even Carteret County — the bastion of local opposition to interference from Raleigh — is now completing an update to its land-use plan. And this time, Carteret County landowners and

officials — not state officials — are spearheading the planning process.

"I think that the hostility that was at first engendered is gone," says Mary Sue Noe, chairman of the Carteret County Commissioners and formerly a local realtor. "None of the paper dragons materialized." Noe, who was not a commissioner when CAMA was enacted, continues, "I don't believe that CAMA was arbitrarily born. I think its intent was to protect the land along the theory of highest and best use."

While local officials in the 20-county area have increasingly come to understand the various ways CAMA can assist them, some state officials continue to question the value of the law. Budgetary and political preparations for the 1983 session of the General Assembly indicate that CAMA once again may face two serious threats to its existence, one from a legislative review committee and another from federal budget reductions. The ability of CAMA proponents to explain clearly how the program works may determine to what extent CAMA survives this next round of challenges.

"CAMA is political in nature," says David Owens, assistant director of the Office of Coastal Management, the state agency that administers CAMA. "We can only go as far in management as there is political support. As people get more educated about the natural coastal systems, a broader consensus develops for an appropriate governmental role in managing those systems." But even as a base of support for CAMA expands, a fundamental philosophical question will persist: What is the appropriate role for governmental management of private land?

"CAMA functions on the principle that it is appropriate for government to operate in the best

Bill Finger is editor of N.C. Insight. Barry Jacobs is a free-lance writer. Photos courtesy of N.C. Office of Coastal Management.

interests of all people in the state by placing reasonable restrictions on coastal development," says Owens. "We're not prohibiting development; we're managing it. We operate from a long-term, public perspective in dealing with landowners who sometimes have a short-term, private perspective."

Some coastal residents disagree with Owens' assessment of how CAMA functions. "We're restrained [by CAMA] from using our minds," protests Alva Ward, Jr., builder of more than 600 houses in the Topsail Beach area since the 1940s. State Sen. Melvin Daniels (D-Pasquotank), a long-time CAMA opponent, puts it this way: "The poor people of eastern North Carolina are burdened with rules and regulations."

To determine whether these disagreements stem from fundamental philosophical differences, or from a lack of understanding of how CAMA functions, requires first a thorough sorting out of the structures and programs through which CAMA works. An analysis of CAMA's strengths and weaknesses and a forecast for its future can then follow.

The CAMA Structure

A 15-member Coastal Resources Commission (CRC) serves as the primary policymaking and regulatory body under CAMA. The CRC members are appointed to staggered, four-year terms by the governor and must by statute include representatives from various interest groups such as agriculture, marine biology, forestry, and commercial fishing; all but one of the 15 CRC members live in the 20-county area covered by CAMA (see box on page 10). The CRC meets every six weeks in a formal session. Commission members receive minimal compensation — travel, overnight expenses, and \$15 per diem (except for state employees and legislators) — during CRC activity. Dr. J. Parker Chesson, president of the College of Albemarle, a community college in Elizabeth City, has chaired the CRC since 1978.

A 47-person Coastal Resources Advisory Council (CRAC) advises the CRC. Composed mostly of coastal residents appointed by county commissioners and municipal officials in the 20-county area, the CRAC meets quarterly to make recommendations to the CRC. The 12 members of the CRAC Executive Board participate in a voting capacity in all CRC committee and task force meetings. The CRAC members serve at the will of the appointing person or group. William B. Gardner, former city manager of Edenton, has chaired the CRAC since 1979.

The Office of Coastal Management (OCM), a state agency within the Department of Natural Resources and Community Development (NRCD), administers CRC decisions and works with local

government officials and landowners on a day-to-day basis. Headed by Ken Stewart, OCM has a thirty-eight person staff, half headquartered in Raleigh and half based in four coastal offices (Elizabeth City, Morehead City, Washington, and Wilmington).

The extensive involvement of local officials in these structures "was viewed as a watering down of the act at the time it passed," says OCM Director Stewart. "But we view that as a real strength now. We have integrated the CRAC into the decision process far beyond what the law calls for."

Working together, these three structures — the CRC, CRAC, and OCM — implement six distinct, yet interrelated, programs: land-use plans; regulating "areas of environmental concern"; coordination and review of state permits; review of federal regulations; the federal Coastal Energy Impact Program; and beach access. The chart on page 5 provides a visual guide to this process. The sections of the article that follow explain how each program works.

Land-Use Plans

When CAMA passed in 1974, only four counties and seven municipalities in the 20-county area had land-use plans — that is, any systematized, documented process to guide a local government in dealing with housing density, water and sewerage patterns, and all other development issues. CRAC Executive Board member Rosetta Short, referring to her town of Long Beach where she served on the Planning Board from 1974-77, says, "We had no zoning ordinances or permit letting officers. We got our planning department from CAMA."

CAMA mandated all 20 counties — and allowed any municipality within their borders — to develop a land-use plan by 1976 through a public hearing process conducted within the county (or municipality) by local officials. All of the counties but

Secretary of Natural Resources and Community Development Joseph Grimsley addresses the Coastal Resources Commission.





Development along estuarine shorelines is now required to meet minimum standards, including leaving at least 70 percent of the immediate shoreline area open.

Carteret, as well as 32 municipalities, developed plans by the 1976 deadline. By 1981 all 20 counties and 48 municipalities had developed plans. CAMA regulations also require that these plans be updated by the local government unit and approved by the CRC every five years; the first round of this process is nearing conclusion now.

The CRC establishes guidelines defining how land-use plans must be developed.⁵ Each plan, for example, must include a data summary, some policy discussion, and a land classification map which divides land into at least five types: developed, transition, community, rural, or conservation (a plan may subdivide some of the classifications). OCM makes funds available to counties to hire planners and to undertake the planning process. About 80 percent of these funds are federal, about 20 percent state. In many cases, counties have now absorbed planning positions originally funded by CAMA into their ongoing budgets.

While the CRC has final approval over a local land-use plan, it only establishes guidelines and defines the issues which local governments must address in developing their own plans. At times, the local hearing process does not produce what some CRC members want, but if it satisfies CRC guidelines it must be approved. "You can't judge a plan on intent or morals," says Rosetta Short. "You have to judge it as a tool of implementation."

Brunswick County, for example, in its updated plan, reclassified an area west of Wilmington from "rural" to "developed/industrial" to accommodate the needs of a proposed oil refinery. "The purpose of the rural class is to provide for agriculture, forest management, mineral extraction, and other low intensity uses," explains the land-use guidelines. "The purpose of the developed class is to provide for continued intensive development and redevelopment of existing cities."⁶

The change from rural to developed, leaping over the transition and community classification categories entirely, upset some Brunswick County residents, including Rosetta Short. While Short disagreed with her home county's reclassification decision, she voted with the majority when the CRC approved the plan. "You have to go by the rules the legislature gave us," says Short. As it turned out, the oil refinery canceled its plans to build in Brunswick County. The county could amend the plan before the next five-year review if it wishes, but until it does, that area along Highway 17 west of Wilmington can legally be developed according to industrial/development guidelines, so long as all permit requirements are met (see following section).

Regulating Areas of Environmental Concern

CAMA provides that the CRC "shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof."⁷ After consultation with state agencies and local governments, the CRC identified four primary areas of environmental concern (AECs): estuarine systems, ocean hazard areas, public water supplies, and historically or culturally unique areas. To regulate development in these areas — which make up *only three percent of the land area* and most of the coastal waters within the 20-county area — the CRC implemented a permit system.

This system, which functions only in areas designated as AECs, began in March of 1978 and hence has just a four-year track record. Through a five-to-eight month process, the CRC develops standards which speak to the particular needs of an AEC. Most standards apply to ocean-front areas and to the estuarine system — the area between the barrier islands and the mainland — perhaps the two most environmentally sensitive areas in the entire state. These standards establish criteria for whether a particular type of development can be undertaken.

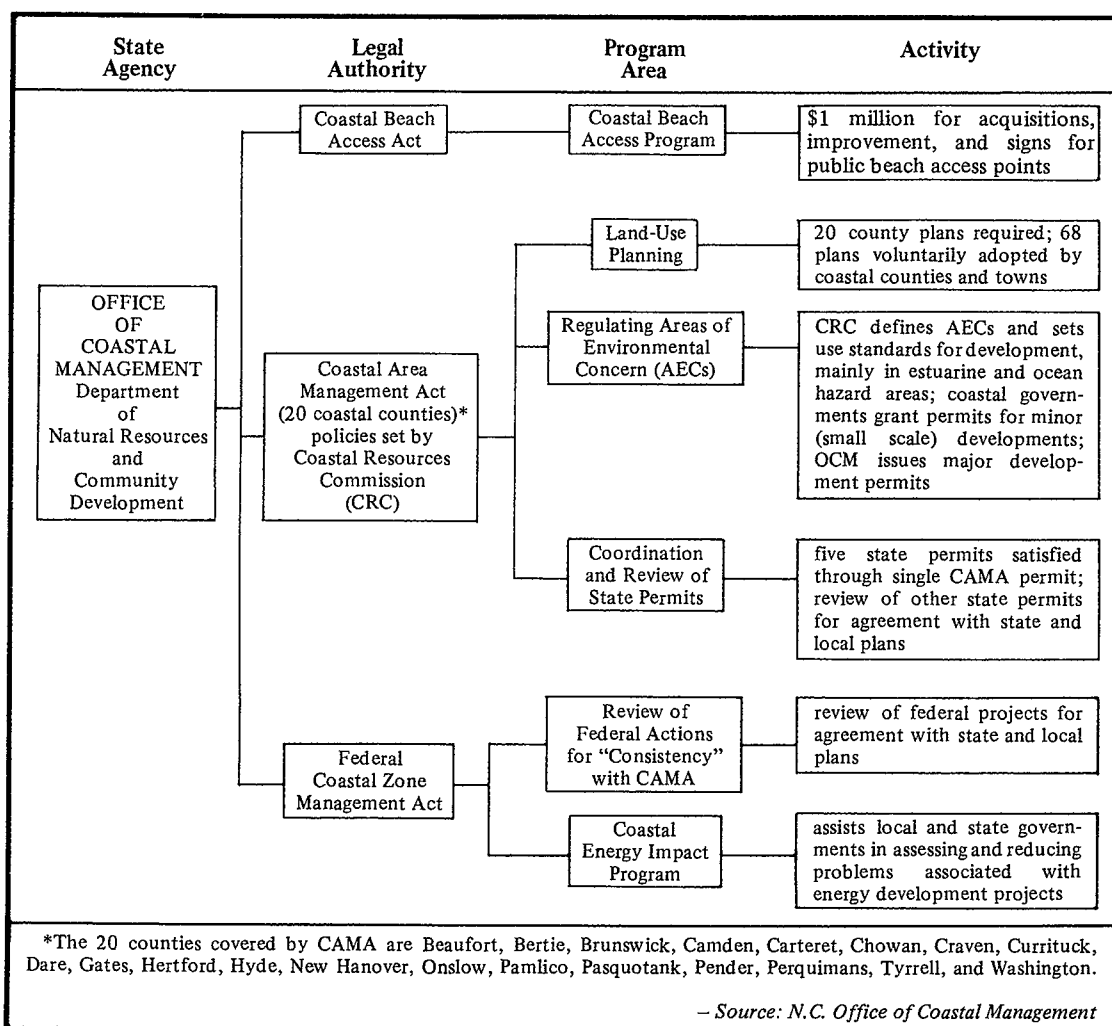
According to geologists, the barrier islands along North Carolina's 320-mile coast are moving inexorably inland: On the ocean side they are losing sand, and along the sounds and marshes they are gaining it. Even developers like Alva Ward speak of the beach coming and going "like an accordion," as the sea dictates. Consequently, the islands have to remain to some extent flexible parts of the shifting coastal environment. To that end, and to minimize the risk of injury and property lost during storms, the CRC imposes various limits on oceanside construction. Basing their regulations on a study of historical records and statisti-

cal probabilities, the commission, for example, required any new beach construction to be built at a minimum "setback" from the ocean. The actual setback distance is determined by a group of technical measurements, including past erosion rates, sand dune formation, and a minimum of 60 feet from the "vegetation line," which generally lies on the seaward side of the sand dune closest to the ocean.⁸ The CRC also required that beach buildings be constructed to withstand a "once-in-a-100-years storm" like Hurricane Hazel, which flattened virtually every beach house from Calabash to Southport on the state's southern coast and did extensive damage elsewhere in 1954.

The North Carolina estuarine system, second largest among the lower 48 states behind that of Louisiana, is composed of some 4,500 square

miles of shallow sounds, bays, tidal creeks, and salt marshes between the barrier islands and the mainland. Salt and fresh water mix in this area, providing a fertile ecological system for plant and sea life. Altering the natural patterns of this system can create severe problems. Uncontrolled dredging and water discharge, for example, can spoil rich spawning and fishing grounds for crabs, shrimp, shad, striped bass, and other types of fish. The unique North Carolina estuarine system has produced a variety of wetlands — shallow marsh areas which historically have played an invaluable role in the ecological system. Now these marshy areas are also being mined for peat, drained for farms, and filled for residential and commercial development. The CRC has developed a number of standards to regulate development in the estuarine

North Carolina's Coastal Management Plan





Bulkheads can be designed in ways that will preserve natural features, such as these cypress trees, and still effectively control erosion.

AEC, particularly relating to erosion control, marina construction, and water discharge.

CAMA provides that development in the AECs be regulated through a "major" and "minor" permit system. Major permits are required when a development in an AEC covers more than 20 acres of land or water, over 60,000 square feet of ground area, or requires another type of state permit.⁹ Condominium developments and boat marinas usually require major permits. OCM staff perform the on-site review for major permits, coordinate the process of getting other necessary state or federal permits (see the next section of the article), and issue a decision from Raleigh in 60-65 days. The OCM staff prides itself on working with permit applicants *before* the actual permit is filed, modifying any construction plans which might otherwise fail to receive approval. This approach to the permit system has meant that most permits get approved. From July 1980 through December 1981, the OCM staff processed 335 major permit requests and approved all but 13. In 12 of these denials, at least four different state agencies objected to the permit request; the CRC did not overturn any of these 12 on appeal. In the 13th case, OCM denial resulted from the objections of adjacent landowners; the CRC overturned this denial and issued a modified permit.

Minor permits are required for all development in AECs which do not require a major permit. Along with granting building, electrical, septic tank, and zoning permits, local government officials routinely administer the CAMA minor permit

system. Single-family, ocean-front houses usually require a minor permit. The Office of Coastal Management reimburses the counties on a permit-by-permit basis for having local inspectors administer the minor permit system. Requests do not go through Raleigh (except for Gates County and the towns of Kitty Hawk and Beaufort).¹⁰ From July 1980 through November 1981, 1227 minor permits were processed and only 24 were denied; processing time averaged 18 days. Three-fourths of all permits processed during this 17-month period were minor; one-fourth were major.

Permit applicants, adjacent property owners, or the state may appeal a permit denial or permit conditions to the Coastal Resources Commission. A CRC decision may then be appealed into the North Carolina Superior Court system. Due to efforts of OCM field staff and local permit officials to help modify projects to meet AEC standards, landowners have not used the appeal process extensively. And, unlike other states with far-reaching coastal management plans such as California, the judicial system has not been required to settle disagreements. Thus far, no permit denial in North Carolina has ever had to be adjudicated. (Two denials have been appealed to the court system; one plaintiff dropped his appeal and the other appeal was settled prior to its reaching the judge for trial.)

Coordination and Review of State and Federal Permits

Under CAMA, the CRC is required to study and attempt to provide a more simplified, coordinated system of permits for the coastal area. The CRC and OCM have attempted to accomplish this

through the AEC regulatory program. The CAMA permit required for development in the AECs now functions as a single application form for five separate state and federal reviews: 1) the CAMA AEC permit; 2) the Division of Environmental Management (within NRCD) "401" water quality certification; 3) an easement required by the Department of Administration for placing fill material on state-owned, water-bottom land; 4) a dredge-and-fill and coastal wetlands permit formerly required by the Marine Fisheries Commission (within NRCD); and 5) the U.S. Army Corps of Engineers general "404" permit required by the federal Clean Water Act pertaining to discharge of dredge-and-fill material. A CAMA "major" permit now satisfies all the above review requirements.

Incorporating the Army Corps of Engineers 404 permit into the CAMA application process is a particularly noteworthy achievement. "This is the only general permit of its type in the nation," explains Charles Hollis, chief of the Army Corps Regulatory Functions Branch in North Carolina. "We knew when we started that no one had ever tried it. Now we are sending it out as far away as Alaska." In April of this year, Army Corps regulatory officials from California visited North Carolina. "After seeing our procedures in the coastal area," says Hollis, "they hope to reorganize their procedures and pattern them after what we have in North Carolina."

While permit coordination efforts under CAMA have simplified the process for undertaking major development projects in the 20-county area, some still require other state permits or state agency review. "It's a pipe dream to put all environmental permits under one program," says OCM Director Stewart. "It's simply too complex." Major developments require approval by the Division of Environmental Management, Division of Health Services (within the Department of Human Resources), and other state agencies.

The OCM staff, working out of the four field offices, provide the on-site assistance to enable applicants to complete all necessary state permits. The OCM staff in Raleigh then coordinate the review process with appropriate state agencies to insure that any major project is consistent with state environmental requirements. While an applicant may have to complete more than one permit, most landowners only have to work with one agency, the Office of Coastal Management. Consequently, CAMA is the most visible target for developers' complaints about any limitations that the state may impose on their project. "We've coordinated the permit process so well that we're more visible than other agencies," Short told the Coastal Resources Commission at its April meeting,

during a discussion on public relations. "I would like to see all the agencies' names posted on the permit signs, not just CAMA."

Review of Federal Actions for "Consistency" with CAMA

This aspect of the CAMA program, similar to the review process described above for state permits, stems from the federal Coastal Zone Management Act (CZMA) passed by Congress in 1972.¹¹ The CZMA provides funds to states as an incentive to establish their own coastal program. North Carolina was the first southern state to meet the CZMA requirements for developing a plan, and hence, beginning in 1974, federal funds for developing the CAMA programs described above began flowing into North Carolina.

A central feature of the CZMA is what has become known as "federal consistency." The law requires that federal actions in coastal areas be consonant with state standards if a state's coastal plan has federal approval. After the North Carolina coastal management program had met federal implementation standards in 1978, the state's Office of Coastal Management acquired the power to review any federal action in the 20-county coastal area to insure that the action did not violate state and local coastal plans and regulations. OCM reviews actions of 13 federal agencies — from the Farmers Home Administration (housing subdivisions) to the National Park Service (National Seashore), from the Federal Highway Administration to the Environmental Protection Agency. If the OCM prohibits a certain kind of activity, a federal agency cannot proceed without demonstrating an overriding national interest.

Controversy over the national interest question surfaced in 1981 regarding oil exploration on the outer continental shelf. The U.S. Department of

Prior to CAMA and the Dredge and Fill law, many landowners undertook environmentally unsound means of trying to control erosion.



Interior opened competitive bidding on leases for over 100 offshore tracts, including six in an environmentally-sensitive area just 13 miles east of Cape Lookout, near Morehead City. When the Interior Department refused to remove the six sites from the bidding process, North Carolina filed suit to block drilling in all the tracts. Secretary of the Interior James Watt and N.C. Governor James B. Hunt, Jr. appeared to have reached a compromise last year when no one bid on leases in the six sensitive sites. But the controversy resurfaced in early 1982 when the Interior Department initiated a new plan for auctioning leases for the tracts. This issue appeared to be heading for the courts when Sec. Watt in March 1982 withdrew the new lease plan, thus making the federal-state confrontation a moot point, for the time being at least. The sequence of events over the offshore leases shows the power North Carolina has in relationship to the federal government as a result of the federal consistency dimension of its coastal management program.

Federal Coastal Energy Impact Program

In 1976, Congress passed a number of amendments to the Coastal Zone Management Act, many of which were in response to the "energy crisis" of that time.¹² One amendment created the Coastal Energy Impact Program, which has provided about \$1.5 million to North Carolina in the last five years for planning and research activities related to energy development. The OCM, which has access to these funds because CAMA is a nationally-approved coastal management plan, has used them to study how major energy-related development projects — such as oil refinery locations, peat mining, coal shipment facilities, and outer continental shelf drilling — will affect the coastal area.

Beach Access

In 1981, the General Assembly appropriated \$1 million for a "beach access" program to be administered by the OCM. While this is not a program prescribed by CAMA, it did result from controversies over the CAMA regulatory program.

Because of ocean-front AEC standards and other state and local ordinances, about 500 ocean lots, mostly in the Kitty Hawk-Kill Devil Hills area and at West Onslow Beach and Long Beach, cannot be built upon. These lots may still be used for camping, parking, launching boats, and for other purposes not involving permanent structures. "It's not true that regulations stop people from doing things," notes Dr. Arthur Cooper, a CRC member and former assistant secretary of the Department

of Natural and Economic Resources (NRCD's predecessor). "They stop people from doing things the way they want to do them." And that, says Glenn Dunn, former chief of regulatory coordination and enforcement for OCM, is precisely what CAMA is designed to do — rein in "unfettered development," as Dunn puts it, while remaining "not at all totally prohibitive."

But other officials, such as state Sen. Daniels, say the state must do more for landowners prevented from building by CAMA. In 1981, Daniels sponsored a bill appropriating \$1 million for this purpose called the Coastal Lands Acquisition Fund (S 232). Meanwhile, Rep. Charles Evans (D-Dare), generally a CAMA supporter, introduced a bill to improve beach access for the public through state purchase of lands (including, but not limited to, areas adversely affected by CAMA). The Evans bill (H 1173) was substituted for the Daniels bill. After being amended in the Senate by Daniels, the Evans bill was enacted.¹³

The beach access program is designed to identify, acquire, improve, and maintain public access to the ocean beaches. In recent years, increased development has tended to reduce easy public access to beaches. OCM has the responsibility for coordinating this program with local governments in accordance with a county's land-use plan and the AEC standards for ocean-front development. OCM staff are working now to identify suitable lots for purchase, determine if local governments are willing to maintain a new public facility (such as a parking lot), and oversee the purchase process through the Advisory Budget Commission and the state property office within the Department of Administration. OCM is giving priority to lots suitable for permanent beach access.

What CAMA Has Accomplished

As the above discussion makes clear, CAMA programs work in a complex, interrelated fashion. Spelling out the various details leads to six conclusions about the impact CAMA has had in the first eight years of its life.

1. **CAMA affects a small part of North Carolina.** Only 20 counties are covered by the act, an area which contains about 10 percent of the state's population, and the permit system affects only three percent of the land within this area. CAMA has become a highly-visible law throughout the state primarily because many people *who live outside these 20 counties* own beach-front property or use the beaches on a regular basis.

2. **CAMA has fostered a major effort in land-use planning.** Through this process local areas *are determining their own future* in a thoughtful, deliberative, and public process. Before CAMA, only four

counties and seven municipalities in the 20-county area had land-use plans. By 1981, all 20 coastal counties and 48 municipalities had state-approved land-use plans. While the initial plans engendered opposition from local government officials and citizens, and were more the product of planners' efforts than of broad-based community input, subsequent planning has stimulated extensive public debates over the kind of future development local citizens desire. New Hanover County, for example, has just completed a hotly-contested, two-year effort to revise its plan. "It's been a long struggle, turning the rest of my hair gray," CRC member Karen Gottovi, a New Hanover County

Commissioner, reported with a bittersweet smile to the full commission in April. "Lawyers were hired, fingers pointed, you name it," she continued. "But we worked out a compromise that we can all live with."

The New Hanover debate focused on housing density levels and water and sewerage service for lands bordering the undeveloped marshlands south of Wrightsville Beach. A group of residents formed the "Quality of Life Alliance" while developers worked through a "Coalition for Orderly Development."

In a pro-and-con newspaper feature, "Should zoning ordinances be revised to encourage multi-

How CAMA Was Born

by Barry Jacobs

As early as 1969, the General Assembly initiated legislative studies on reconciling the demands of development with the desire to protect the North Carolina coast's natural resources. Political prompting by members of the state's scientific community and "the rising tide of environmentalism at that time" spurred the effort, according to Dr. Arthur Cooper, a strong advocate of resource management during the Scott (1969-73) and Holshouser (1973-77) administrations.

In 1971, the legislature charged a 25-member "Comprehensive Estuarine Plan Blue Ribbon Committee," under the auspices of the Commissioner of Commercial and Sports Fisheries, to develop a coastal management proposal. Out of its deliberations came the outlines for the Coastal Area Management Act (CAMA), proposing far-reaching state intervention in coastal management. "I don't think it would be fair to say legislators were asking for CAMA, but that's what they got," Cooper commented.

In 1973, a joint House-Senate committee, headed by then Rep. Willis Whichard (D-Durham) and then Sen. William Staton (D-Lee) held a series of public hearings throughout the coastal area in which local residents called for more local control in planning and implementing coastal management, concerns subsequently incorporated into the act. Particularly significant in placating some critics was the establishment of a 47-member Coastal Resources Advisory Council with representatives from each of the affected coastal counties, plus coastal cities and councils of government, the marine science community, and state agencies having coastal responsibilities.

Yet even after the CAMA bill was rewritten, most coastal legislators remained against it. But here incentives from the federal level came to the supporters' aid. In 1972, the Coastal Zone Management Act became federal law, providing both a challenge and an inducement for what a 1981 position paper by the Coastal States Organization called "the development and implementation of programs aimed at the more rational management of coastal resources" in 36 states and American territories. North Carolina was of course included.

Simultaneously Gov. Holshouser, a Boone native, decided to champion statewide land-use planning. CAMA was to be but the first step in that direction; Holshouser had Cooper draw up a Mountain Area Management Act (MAMA) which was also placed before the 1974 session of the legislature. Holshouser hoped to gain land-use planning legislation first for the coast, then for the mountains, and finally state-wide.

Before winning passage through an alliance of Piedmont Democrats and Holshouser Republicans, the CAMA bill became one of the most amended in state history. (Twelve of 19 proposed amendments were adopted by the Senate, 22 of 51 by the House.) But because the controversy dominated legislative activity, time ran out on attempts to extend regional resource management to other parts of the state.* □

*For more detail on this history, see "A Legislative History of the North Carolina Coastal Area Management Act" by Milton Heath, 53 N.C.L. Rev. 345 (1974) and "So You Want a Land-Use Bill" by Joyce Lamm, *Southern Exposure*, Vol. II, No. 2-3 (fall, 1974).

family housing?," the *Wilmington Morning Star* asked developers and sound residents for their positions. "This development is a poison," said Quality of Life Alliance spokesman Algernon L. Butler, Jr. "The slightest introduction will kill the sound-side lifestyle." But Wilmington real estate agent James Grice saw the issue differently. "The public is going to demand multi-family development," said Grice. "It's the wave of the future, unfortunately." The two-page *Morning Star* spread included a color-coded county map highlighting

the different CAMA land classification areas.

The New Hanover debate dramatized the strength of the CAMA land-use planning process. Both sides had reasonable positions, based on complex housing and ecological trends. By providing that a public decision-making process take place, CAMA causes the county officials to hear and respond to citizen concerns. A court battle over the plan was avoided when the county devised a compromise classification for the disputed area — a procedure allowed by the CRC land-use guide-

N.C. COASTAL RESOURCES COMMISSION¹

<u>Name</u>	<u>Hometown</u>	<u>Represents</u>	<u>Term²</u>
1. Dr. J. Parker Chesson Chairperson	Elizabeth City	Marine Ecology	1978-82
2. Charles Wells Vice Chairperson	Hampstead	Financing	1980-84
3. Dr. Arthur W. Cooper	Raleigh	At-Large	1980-84
4. Dewitt Darden	New Bern	Forestry	1978-82
5. Mayme W. Davenport	Creswell	Local Government	1978-82
6. Frank Furlough, Jr.	Columbia	Commercial Fishing	1978-82
7. William Gibbs	Oriental	At-Large	1978-82
8. Karen Gottovi	Wilmington	Local Government	1980-84
9. Jerry Hardesty	Currituck	Agriculture	1980-84
10. T. Erie Haste, Jr.	Hertford	Marine Related Business	1980-84
11. Dr. Gene R. Huntsman	Beaufort	State or National	1978-82
12. James E. Sykes	Morehead City	Wildlife or Sports Fishing	1978-82
13. W. Randolph Thomas	Jacksonville	Local Government	1980-84
14. Eugene B. Tomlinson	Southport	Engineering	1980-84

N.C. COASTAL RESOURCES ADVISORY COUNCIL³

Executive Committee

<u>Name</u>	<u>Hometown</u>	<u>Represents</u>	<u>Term⁴</u>
1. William B. Gardner Chairperson	Edenton	Coastal Cities	1976-
2. Cecil Sewell Vice Chairperson	Morehead City	Coastal Cities	1976-
3. Albert H. Calloway	Raleigh	State Agency	1976-
4. Webb Fuller	Currituck	Currituck County	1976-
5. Paul S. Denison	Wilmington	Marine Technologist	1978-
6. Don Eggert	New Bern	Neuse River Council of Governments	1981-
7. Jack Cahoon	Manteo	Dare County	1981-
8. Doug Powell	Wilmington	Coastal Cities	1981-
9. Riley S. Monds, Jr.	Hertford	Perquimans County	1974-
10. Bradford Rice	Arapahoe	Pamlico County	1978-
11. Rosetta Short	Long Beach	Coastal Cities	1976-
12. Wanda Stahel	Currituck	Coastal Cities	1978-

¹ All appointed by the governor. There is currently one vacancy.

² All terms expire on June 30 of the year listed.

³ CRAC appointments made by the county commissioners in the 20-county area, by coastal towns and councils of government, the marine sciences community, and state agencies having coastal responsibilities.

⁴ Terms run indefinitely, at the will of the appointing group.

lines — keeping the marshland area classified at rural-density levels but permitting water and sewerage service, a step normally allowed only under the “developed” classification. “The New Hanover experience illustrates one of the best things CAMA has done,” says CRC member Art Cooper. “It’s a vehicle that allows people in a local area the opportunity to talk things out.”

3. The CAMA permit system has prohibited very little development. The CAMA regulatory program applies only to the Areas of Environmental Concern. Within the AECs, only large projects (over 20 acres, 60,000 sq. ft. of ground area, or requiring another state permit) must have a CAMA major permit, which is processed through Raleigh. Local officials, usually building inspectors, process minor permits. From the middle of 1980 to the end of 1981, more than 97 percent of all permits were approved, 322 of 335 major permit requests and 1203 of 1227 minor permit requests.

Those who feel CAMA is overly restrictive contend that some landowners, aware of certain CAMA prohibitions, do not pursue the permit appeal process, thus inflating the permit approval percentage. Those critics who feel CAMA is not restrictive enough point out that this act rarely limits development outside the AECs and that pursuits such as agriculture and forestry are explicitly omitted from the CAMA regulatory processes.

The Office of Coastal Management comes down in the middle. “We try to do everything we can to help a person undertake a project without it doing environmental damage,” says OCM Director Stewart. But Stewart says OCM also addresses controversial areas, like agriculture. “If a farmer’s drainage project goes into the estuarine waters, agriculture is not exempt.”

Analyzing the financial impact of the permit system is a complicated enterprise that depends upon one’s research assumptions. To date, the only independent, major analysis of this subject on a permit-by-permit basis was undertaken by Charles D. Liner at the Institute of Government at the University of North Carolina at Chapel Hill. His 111-page study reviewed all CAMA regulations and the restrictive effect of the permit process. “The analysis of permit decisions in the areas selected for study suggests,” Liner concluded, “that, although they may have altered construction standards and methods of development, in general, regulations under CAMA and the Dredge and Fill Law [now part of the CAMA permit] have not substantially restricted the ability of landowners to use their land.”¹⁴

4. The CAMA permit coordination and review process streamlines the permit procedure for developers. The permit system for developing property on the coast is complex, but CAMA simplifies that process rather than complicating it.

Through CAMA, five permits have been consolidated into one CAMA form, and OCM coordinates the review process for other required state permits. North Carolina has the only coastal permit system in the country which incorporates the U.S. Army Corps dredge-and-fill permit. CAMA is the most visible — and vulnerable — law to a skeptical public, but without CAMA, coastal development would have a far more complex, multi-faceted permit process with which to deal. “North Carolina is ahead of the other coastal programs in this area,” says John Phillips, regional manager for the South Atlantic Region of the Federal Office of Coastal Zone Management. “Other states have attempted to do what North Carolina has done but not as successfully.”

5. CAMA has brought \$5.6 million in federal funds to North Carolina. Since CAMA is a federally-approved coastal management plan, federal funds appropriated for administering the federal Coastal Zone Management Act have come to North Carolina. (Other federal funds, through such programs as Energy Impact Program and the Estuarine Sanctuary Program, are also available to the state.) The state Office of Coastal Management has channeled some \$2.5 million — almost one-half of the federal total — to local governments, which have used the money in many cases to begin county and municipal planning departments.

6. The CAMA permit coordination and review process safeguards the state and 20 counties against undesired federal actions. CAMA is a federally-approved coastal management plan. Consequently, the state can monitor all federal actions affecting coastal areas for “consistency” with CAMA land-use plans and regulations. For example, without CAMA the federal oil leases on the outer continen-

Coastal Resources Commission member Karen Gottovi.



tal shelf could have gone through with no mechanism for state objection.

Philosophical Issues Remain

Conclusions about how CAMA functions bring into focus two important philosophical issues inherent in the CAMA program: restricting uses of private land for the greater public good and balancing the value of large economic development against protections of a fragile ecological system.

CAMA opponents claim the setback policy and associated ocean-front regulations amount to taking away people's land, or "condemning without remuneration" in Sen. Daniel's words.¹⁵ CAMA does not take land from anyone but does limit property uses where the public welfare is affected, as in places where buildings will be washed away by the sea, a principle supported by years of legal precedent. Sen. Daniels made one effort to compensate coastal landowners who cannot build what they wish by introducing legislation to have the state purchase land deemed unsuitable for new buildings. A far more comprehensive approach to this question would be a mandatory tax reassessment system based on the acceptable uses of the land. Under current law, a local government must reassess land every eight years. The CRC could explore methods of requiring a county to reassess any property after a permit procedure for that property has been followed. David Owens, the OCM assistant director, explains that "we're working on that issue now."

Even if CAMA can somehow require a county to reassess the value of a plot of land, a fundamental issue of public policy remains. Can a government restrict how a person uses his or her land? "Individual choices versus the collective good is a valid public debate," says OCM Director Stewart. "If we can debate CAMA on this issue, the people will make a good decision."

CAMA raises a second, equally profound philosophical question: how can policymakers weigh the value of economic development against that of maintaining a fragile ecological system? Some economic development benefits, such as jobs at an oil refinery, are more visible than others, such as the portion of the state's commercial shrimp population sustained by the tidal patterns in the estuarine system.

In its infancy, CAMA played a limited role in regulating major economic developments. In 1979, for example, the Currituck County Commissioners, with OCM's help, commissioned a fiscal impact assessment of development on the outer banks area in that county. This effort, says Currituck County Manager Webb Fuller, a member of the CRAC executive board, helped resolve severe

differences among county residents regarding the potential value and problems of future development.

The CRC and OCM are becoming increasingly involved in major development projects. When Alla-Ohio Valley Coals, Inc., which operates a small coal-shipping facility in Morehead City, proposed building a much larger terminal across the harbor on Radio Island, local residents and officials became concerned about potential environmental problems. Under the auspices of the county's land-use plan, OCM has been coordinating a diverse set of interests — the port developers, Department of Transportation officials, landowners, local officials, and others — through a series of "Radio Island" meetings. This group is evaluating, for example, alternative rail lines for shipping the coal through Carteret County. Through this Radio Island effort, CAMA has gained a wider respect for its capacity to bring diverse perspectives together as well as to guide development in a way that damages the environment the least.

Despite such efforts as those concerning Radio Island and Currituck County, environmental critics contend that CAMA's weak regulatory authority, combined with a reluctance of the CRC to take politically inexpedient stands, have hamstrung effective review of superfarms, clear-cut forestry practices, refineries, and such proposed projects as a \$250 million peat mining-to-methanol production operation. CRC's jurisdiction "is not clear cut in dealing with the large scale development," says Art Cooper. "And there are a lot of politics."

Another Political Juncture: An Endangered Species?

Since the CAMA debate began in the early 1970s, coastal management officials have walked a tightrope between developer interests and environmentalists (see box on legislative history on page 9). The political debate around CAMA resurfaced in 1981, a debate that will reach a crossroads when the 1983 session of the General Assembly convenes. Last year, the General Assembly authorized two reviews of CAMA, one through the Legislative Committee on Agency Review and another through the Legislative Research Commission (LRC), the legislature's research arm.

The Committee on Agency Review is authorized to review over 60 different programs about which it "may develop legislative recommendations" before it disbands on June 30, 1983.¹⁶ The committee has made a tentative decision to recommend to the full General Assembly some small, procedural changes in CAMA which Secretary of

Natural Resources and Community Development (NRCD) Joseph Grimsley proposed to the panel.

In addition to the Committee on Agency Review, the General Assembly at the request of Sen. Daniels authorized the Legislative Research Commission (LRC) to "study rules and regulations pertaining to CAMA" and to file an interim report in the June 1982 session or a final report to the 1983 session, or to do both. The Speaker of the House and President Pro Tempore of the Senate (the LRC co-chairmen) established a 12-person study commission co-chaired by Sen. Daniels and Rep. Evans. The study commission, which includes powerful legislators like Sen. Kenneth Royall (D-Durham) and Rep. Al Adams (D-Wake), held its first meeting January 12, 1982, and has postponed subsequent sessions until it can schedule three field hearings on the coast. Such hearings require additional funding, which could be forthcoming either from unallocated funds in the LRC budget or from the full General Assembly when it meets in June.

While the technical charge to the commission is "to study rules and regulations," coastal field hearings would allow a far-wider public debate on CAMA. The course of this study commission might well be decided by its co-chairmen. Sen. Daniels, an Elizabeth City resident, said recently, "I think, as one coastal senator told me a few days ago, CAMA wouldn't be in the trouble it's in if it had more reasonable people making its regulations." Rep. Evans of Nags Head, who has been a member of the CRC, has quite a different perspective: "The commission has strived to be reasonable in its approach. I think that the CRC has bent over backwards to work for the public interest and to accommodate concerns that have arisen over the implementation of the act." In late April, Sen. Daniels said that the commission was including in its review the permit process, the appeal process, and tax concessions or other assistance in AEC areas.

As this legislative oversight process was getting underway, the Reagan administration launched its drive to reduce federal spending. Two of the federal programs scheduled for the Reagan ax in 1983 are the Coastal Zone Management Act's implementation funding and the Coastal Energy Impact Program which together supplied \$5.6 of the \$7.4 million spent through the state's coastal management program from July 1974 through June 1981.

The state legislative reviews and the federal funding cutbacks have prompted a spate of paper and presentations between NRCD and legislative officials. NRCD Sec. Grimsley addressed the LRC study commission in February and underscored the firm support of Gov. James B. Hunt, Jr. for CAMA. Gov. Hunt himself, in a review of NRCD

priorities with Grimsley and other NRCD officials, stressed the importance of the proposed study commission hearings. And legislative leaders have requested and obtained from Grimsley extensive documentation and explanations on CAMA.

The outcome of this latest challenge to coastal management in North Carolina depends first upon a clear explanation of how CAMA works. If philosophical differences remain, then government leaders — incorporating the wishes of coastal residents — will have to judge how great a role government will play in regulating coastal development. But throughout any complex legislative and administrative debates, policymakers and land-owners must keep before them an image of what the coastal area will become. Are the development patterns now firmly implanted in New Jersey, Delaware, Maryland, and Florida going to become a part of North Carolina? NRCD Sec. Grimsley answers that question simply: "I view CAMA as being responsible for seeing that the coast survives." □

FOOTNOTES

¹295 N.C. 693 (1978).

²N.C.G.S. 113A-100 through 113A-128.

³*Adams v. Dept. of NER*, 295 N.C. 683, 279 S.E. 2d 402 (1978).

⁴See "The Coming of Age of the N.C. General Assembly" in *N.C. Insight* Vol. 4, No. 4, December 1981, pp. 15-16.

⁵15 N.C.A.C. Chapter 7B.

⁶15 N.C.A.C. 7B .0200.

⁷N.C.G.S. 113A-113.

⁸15 N.C.A.C. 7H .0306(a).

⁹N.C.G.S. 113A-118(d).

¹⁰Gates County has so few minor permits that "it was not practical to train local permit officers there," says OCM Assistant Director David Owens. Kitty Hawk, a recently incorporated town, has not yet developed the permitting capability and requested OCM to perform this function. The town of Beaufort is the single area that has not agreed to administer the CAMA minor permit itself and thus by law has that function performed by the CRC.

¹¹P.L. 92-583, 16 U.S.C. 1451 *et seq.*

¹²P.L. 94-370 (1976).

¹³Chapter 925 of the 1981 Session Laws (HB 1173), N.C.G.S. 113A-134.2.

¹⁴*The Impact of State Regulation of Coastal Land in North Carolina* by Charles D. Liner, Institute of Government, the University of North Carolina at Chapel Hill, May 1980, p. 108. In a review of this article prior to publication, Liner adds: "My statement was based on a finding that many of the ocean-front lots could not be developed even in the absence of CAMA because of local ordinances or other state and federal regulations."

¹⁵Based on Article I, Section 19 of the N.C. Constitution.

¹⁶N.C.G.S. 143-34.26.