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COASTAL MANAGEMENT LAW IN NORTH CAROLINA: 1974-1994

MILTON S. HEATH, JR.*
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After spirited debates extending over two legislative sessions, the 1974 North Carolina General Assembly enacted the North Carolina Coastal Area Management Act (CAMA).¹ CAMA laid down a blueprint for developing land use plans for the twenty-county coastal area, identifying critical areas in need of protection ("areas of environmental concern" (AECs)) and installing a permit system to guide land development within these critical areas. CAMA also held out promise of strengthening local land use planning, simplifying permits, and beginning an ongoing process of land use management that would be reviewed comprehensively at least once every five years. It is fair to say, from the perspective of 1994, that this blueprint has been faithfully executed and this promise has been substantially realized.² In recognition of the twentieth anniversary of CAMA, Governor James B. Hunt, Jr. has declared 1994 the "Year of the Coast" and has created a fifteen-member North Carolina Coastal Futures Committee to review and evaluate North Carolina's coastal management institutions and CAMA in particular.³

This Article traces, in three parts, the evolution of coastal management law in North Carolina for the two decades since CAMA's enact-

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1. Coastal Area Management Act of 1974, ch. 1284, 1974 N.C. Sess. Laws 463 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (1989 & Supp. 1993)). See generally Milton S. Heath, Jr., *A Legislative History of the North Carolina Coastal Area Management Act*, 53 N.C. L. REV. 345 (1974) (discussing the formulation of the Act).

2. Cf. Milton S. Heath, Jr. & Allen C. Moseley, *A Progress Report: The Coastal Area Management Act*, POPULAR GOV'T, Spring 1980, at 32, 32-37, 44.

3. Exec. Order No. 20, (July 15, 1993). Governor Hunt appointed former congressman L. Richardson Preyer as chair and Milton S. Heath, Jr. as executive secretary of the committee. *Id.* The committee is scheduled to report its policy recommendations to Governor Hunt in September 1994.

ment:⁴ Part I—legislative developments;⁵ Part II—litigation concerning CAMA,⁶ and Part III—CAMA's implementation through rule-making, contested case decisions, and otherwise.⁷

I. LEGISLATIVE DEVELOPMENTS

A. Introduction

Since 1974, coastal legislation has seen few drastic changes. Early attempts to repeal CAMA were unsuccessful.⁸ Efforts to expand the reach of regional land control met with a similar fate.⁹ Nevertheless, the General Assembly has amended CAMA in almost every legislative session since 1974. In particular, the years 1979, 1981, 1983 and 1989 brought surges of coastal legislation. In 1979, the General Assembly simplified permit processes by eliminating redundant measures,¹⁰ merging the administration of CAMA and the Dredge and Fill Law,¹¹ and simplifying the Easement to Fill Law.¹² The Coastal Resources Commission (CRC) also has simplified regulation by exempting from permit coverage various minor activities, issuing "general permits" for activities that require only brief on-site inspec-

4. This Article focuses on legal developments affecting CAMA. It deals only incidentally with changes in such related areas as marine fisheries law, ocean law, and coastal water quality law.

5. See *infra* notes 8-67 and accompanying text.

6. See *infra* notes 68-107 and accompanying text.

7. See *infra* notes 108-277 and accompanying text.

8. S. 339, 1975 N.C. Gen. Assembly, 1st Sess. (1975); H. 662, 1975 N.C. Gen. Assembly, 1st Sess. (1975).

9. Mountain-area management bills modeled after CAMA were introduced in 1974 and 1975, but died in committee both years. See S. 973, 1973 N.C. Gen. Assembly, 2d Sess. (1974); H. 1374, 1973 N.C. Gen. Assembly, 2d Sess. (1974); S. 467, 1975 N.C. Gen. Assembly, 1st Sess. (1975); H. 469, 1975 N.C. Gen. Assembly, 1st Sess. (1975); see also Milton S. Heath, Jr. & Christy Eve Reid, *Environmental Legislation*, in N.C. LEGISLATION 1975 at 107, 123 (Joan G. Brannon ed., 1975) (discussing the mountain-area management bills); Milton S. Heath, Jr., *Environmental Legislation*, in N.C. LEGISLATION 1974 at 89, 95 (Joan G. Brannon ed., 1974) (same). A state land policy act was enacted alongside CAMA in 1974, Land Policy Act of 1974, ch. 1306, 1974 N.C. Sess. Laws 597 (current version at N.C. GEN. STAT. §§ 113A-150 to -159 (1989 & Supp. 1993)), but was partially repealed in 1981, Act of July 8, 1981, ch. 881, sec. 3, 1981 N.C. Sess. Laws 1310.

10. E.g., Act of March 13, 1979, ch. 141, 1979 N.C. Sess. Laws 91 (repealing the Sand Dune Law, N.C. GEN. STAT. §§ 104B-3 to 16 (1979)).

11. Act of April 2, 1979, ch. 253, 1979 N.C. Sess. Laws 180 (amending N.C. GEN. STAT. § 113-229 (1979)).

12. Act of April 19, 1979, ch. 414, 1979 N.C. Sess. Laws 372 (amending N.C. GEN. STAT. § 146-6 (1979)); see also Milton S. Heath, Jr. & Sandi Postel, *Natural and Economic Resources and the Environment*, in N.C. LEGISLATION 1979 at 169, 172-173 (Joan G. Brannon & Ann L. Sawyer eds., 1979) (discussing the new regulations).

tions, and developing a single permit application form for several related permits.¹³

The 1981 and 1983 legislatures successfully steered CAMA through the sunset process,¹⁴ increased its budget to offset lost federal aid,¹⁵ and made a number of changes in CAMA that were recommended by study commissions.¹⁶ The main thrust of these changes was to strengthen enforcement machinery,¹⁷ simplify permit processes,¹⁸ modernize administrative machinery,¹⁹ and initiate an ocean and estuarine beach access program.²⁰ The 1989 legislation further strengthened CAMA enforcement,²¹ created a coastal reserve system,²² added new AECs for outstanding resource waters and primary nursery areas,²³ addressed conflict of interest

13. DIVISION OF COASTAL MANAGEMENT, DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., A GUIDE TO PROTECTING COASTAL RESOURCES THROUGH THE CAMA PERMIT PROGRAM 16-22 (1988); see also *infra* notes 159-64 and accompanying text.

14. See Act of July 10, 1981, ch. 932, §§ 2-2.1, 1981 N.C. Sess. Laws 1431 (expired 1983).

15. See Milton S. Heath, Jr., *Natural Resources and the Environment*, in N.C. LEGISLATION 1983 at 169, 173 (Ann L. Sawyer ed., 1983).

16. *Id.* at 169, 173-76.

17. See Act of June 10, 1983, ch. 485, 1983 N.C. Sess. Laws 408 (current version at N.C. GEN. STAT. § 113A-126 (1989 & Supp. 1993)).

18. See Act of April 13, 1983, ch. 172, 1983 N.C. Sess. Laws 121 (current version at N.C. GEN. STAT. § 113A-121 to -122 (1989 & Supp. 1993)); Act of May 2, 1983, ch. 258, 1983 N.C. Sess. Laws 186 (current version at N.C. GEN. STAT. § 113A-229 (1989 & Supp. 1993)); Act of April 13, 1983, ch. 171, 1983 N.C. Sess. Laws 121 (current version at N.C. GEN. STAT. § 113-118.1(a)-(b) (1989)); Act of June 6, 1983, ch. 442, 1983 N.C. Sess. Laws 371 (current version at N.C. GEN. STAT. § 113A-118.1(c)-(d) (1989)); Act of April 13, 1983, ch. 173, 1983 N.C. Sess. Laws 122 (current version at N.C. GEN. STAT. § 113A-118(f) (1989)); Act of May 27, 1983, ch. 399, 1983 N.C. Sess. Laws 304 (current version at N.C. GEN. STAT. § 113A-121.1(b) (1989)); Act of May 27, 1983, ch. 400, 1983 N.C. Sess. Laws 304 (current version at N.C. GEN. STAT. § 113A-121.1(c)-(d) (1989)); Act of May 16, 1983, ch. 307, 1983 N.C. Sess. Laws 230 (current version at N.C. GEN. STAT. § 113A-119 (1989 & Supp. 1993)).

19. See Act of June 13, 1983, ch. 518, 1983 N.C. Sess. Laws 439 (current version at N.C. GEN. STAT. § 113A-113 (1989)).

20. See Act of June 16, 1983, ch. 539, 1983 N.C. Sess. Laws 458 (current version at N.C. GEN. STAT. § 113A-134.10 (1989)); Act of July 10, 1981, ch. 925, 1981 N.C. Sess. Laws 1422 (current version at N.C. GEN. STAT. §§ 113A-134.1 to .3 (1989)); see also Milton S. Heath, Jr., *Natural Resources and the Environment*, in N.C. LEGISLATION 1983 at 169, 173-177 (Ann L. Sawyer ed., 1983) (discussing changes in all four categories); Milton S. Heath, Jr. and Christopher Mason, *Natural Resources and the Environment*, in N.C. LEGISLATION 1981 at 170, 178-180 (Ann L. Sawyer ed., 1981) (discussing permit acquisition and the beach access program).

21. See Act of Apr. 11, 1989, ch. 53, 1989 N.C. Sess. Laws 114 (current version at N.C. GEN. STAT. §§ 113A-54 to -54.1 (1989)); Act of Oct. 1, 1989, ch. 676, 1989 N.C. Sess. Laws 1867 (current version at N.C. GEN. STAT. §§ 113A-119(b) (Supp. 1993)).

22. See Act of June 19, 1989, ch. 344, 1989 N.C. Sess. Laws 779 (codified at N.C. GEN. STAT. §§ 113A-129.1-129.3 (1989)).

23. See Act of June 5, 1989, ch. 217, 1989 N.C. Sess. Laws 748 (current version at N.C. GEN. STAT. §§ 113A-113(b), -118.2 (1989)).

issues involving members of the Coastal Resources Commission (CRC),²⁴ increased the state's leverage to challenge noise levels from federal military overflights,²⁵ and sought to better protect North Carolina's beaches and off-shore waters from littering,²⁶ medical wastes,²⁷ and oil pollution.²⁸

B. A Comparison of CAMA 1974 and CAMA 1994

Comparing the original CAMA with the present CAMA can best be done by analyzing the act's parts.

1. "Part 1. Organization and Goals"²⁹

Part 1 of the original CAMA contained its preamble, its organizational structure, and its definitions.³⁰ The preamble, in particular the statement of purpose,³¹ was intended to facilitate future judicial interpretation.³² It has served this purpose well,³³ and remains a viable statement of legislative goals and findings.

CAMA's definitions section included considerable substantive content and played a key role in the CAMA legislative strategy of 1973-74. For example, its detailed definition of "development"³⁴ must be consulted closely to understand CAMA's permit process, and its definitions of the "coastal area" and "coastal sounds" delineated a politically and environ-

24. See Act of June 14, 1989, ch. 315, 1989 N.C. Sess. Laws 748 (current version at N.C. GEN. STAT. §§ 113A-104 (1989)); Act of June 29, 1989, ch. 505, 1989 N.C. Sess. Laws 1265 (current version at N.C. GEN. STAT. §§ 113A-104 (1989)).

25. See Act of June 14, 1989, ch. 313, 1989 N.C. Sess. Laws 747 (current version at N.C. GEN. STAT. §§ 113A-107(a) (1989)).

26. See Act of Aug. 9, 1989, ch. 742, 1989 N.C. Sess. Laws 2362 (codified at N.C. GEN. STAT. §§ 75A-10(d), -18, 76-40(a1), 130A-22(a), -290(a)(18), 143-214.2A, 143-215 (1989 & Supp. 1993); see also Milton S. Heath, Jr., *Natural Resources and the Environment*, in N.C. LEGISLATION 1989 at 138, 143-47 (Joseph S. Ferrell ed., 1989) (discussing the 1989 legislation).

27. See Act of Aug 9, 1989, ch. 742, 1989 N.C. Sess. Laws 2362 (codified at N.C. GEN. STAT. §§ 75A-10(d), -18, 76-40(a1), 130A-22(a), -290(a)(18), 143-214.2A, 143-215 (1989 & Supp. 1993)).

28. See Act of July 19, 1989, ch. 656, 1989 N.C. Sess. Laws 1815 (current version at N.C. GEN. STAT. §§ 143-215.77, .84, .86-87 (1993)).

29. N.C. GEN. STAT. §§ 113A-100 to -105 (1989 & Supp. 1993).

30. *Id.*

31. Coastal Area Management Act of 1974, ch. 1284, 1974 N.C. Sess. Laws 463, 463-64 (current version at N.C. GEN. STAT. § 113A-102 (1989)).

32. *Id.*

33. The preamble was extensively quoted and directly relied on by the North Carolina Supreme Court in the leading case upholding the constitutionality of CAMA. See *Adams v. N.C. Dep't of Natural and Economic Resources*, 295 N.C. 683, 249 S.E.2d 402, *passim* (1978). It also has been relied on in more recent decisions. See *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 84, 423 S.E.2d 759, 760, 766 (1992); *Ford S. Worthy v. Town of Bath*, 82 N.C. App. 32, 37, 345 S.E.2d 699, 702-03 (1986); *Pamlico Marine Co. v. N.C. Dep't of Natural Resources and Community Dev.*, 80 N.C. App. 201, 203, 341 S.E.2d 108, 110 (1986).

34. See N.C. GEN. STAT. § 113A-103(5) (1989 & Supp. 1993).

mentally viable region that reduced the risk of judicial invalidation of CAMA.³⁵ These definitions, like the preamble, have effectively served their intended purposes.³⁶

CAMA's administration was entrusted to the CRC, a fifteen-member governing body selected by the Governor mainly from a large pool of nominees presented by county and city governments.³⁷ The CRC is assisted by a large advisory body—the Coastal Resources Advisory Council (CRAC)—which also consists mainly of persons nominated by the area's local governments,³⁸ and by a staff drawn from the Department of Environment, Health and Natural Resources (DEHNR).³⁹ The strong local influence on the CRC and CRAC were essential to securing the passage of CAMA and to maintaining political support for the program, both on the coast and in the state capitol.⁴⁰

The overall organizational structure of CAMA has undergone little change since 1978, and still appears to provide a viable foundation for the CAMA program. Without altering that basic structure, the General Assembly twice has amended the statutory provisions concerning the CRC. In 1983, the legislature amended CAMA to increase diversity in CRC membership.⁴¹ Amendments in 1989 reflected a perception that some CRC members too often had been voting their personal financial interests on permit issues.⁴² It remains to be seen whether the anti-conflicts philosophy of the 1989 amendments will carry the day, or will prove to be simply an exercise in "'scotching' rather than eradicating the evil."⁴³

2. "Part 2. Planning Processes"⁴⁴

Part 2 of the original CAMA contained the Act's land use planning provisions. It mandated local land use plans for each coastal area county,

35. *Id.* § 113A-103(2)-(3).

36. In *Adams*, the court sustained the constitutionality of CAMA's intertwined definitions of the "coastal area" and "coastal sounds," and its pragmatic delineation of the western boundary of the coastal sounds. 295 N.C. at 693-96, 249 S.E.2d at 408-10.

37. N.C. GEN. STAT. § 113A-104 (1989).

38. *Id.* § 113A-105 (1989 & Supp. 1993).

39. *Id.* § 113A-124(b) (1989 & Supp. 1993).

40. Milton S. Heath, Jr., *A Legislative History of the North Carolina Coastal Area Management Act*, 53 N.C. L. Rev. 345-58 (1974).

41. Act of June 10, 1983, ch. 486, § 5, 1983 N.C. Sess. Laws 410 (current version at N.C. GEN. STAT. § 113-104 (1989)) (encouraging appointment to the CRC of women and minorities).

42. Act of June 29, 1989, ch. 505, 1989 N.C. Sess. Laws 1265 (current version at N.C. GEN. STAT. § 113-104 (1989)); see also *infra* note 283 and accompanying text. To some extent the Act has a built-in tendency toward conflicts-of-interest because of its requirement for selection of members experienced in a variety of coastal business activities. N.C. GEN. STAT. § 113A-104(b) (1989).

43. See *State v. Glidden Co.*, 228 N.C. 664, 666, 46 S.E.2d 860, 861 (1948).

44. See N.C. GEN. STAT. §§ 113A-106 to -112 (1989).

assisted by state grants.⁴⁵ Like Part 1, Part 2 has seen little change since 1974. Its only substantive amendment was the 1989 clarification of the CRC's state guideline powers to include overlying air space and underground areas.⁴⁶

3. "Part 3. Areas of Environmental Concern"⁴⁷

The original Part 3, the heart of CAMA's regulatory mechanism, directed the CRC to identify and designate AECs and to specify their boundaries by rule.⁴⁸ The list of potential AECs in § 113A-113 included coastal wetlands, estuarine waters, renewable resource areas, fragile or historic areas, public trust waters, and natural hazard areas.⁴⁹

The basic AEC mechanism of the original Part 3 remains intact in today's CAMA, but there have been some significant amendments. The interim AEC provisions of the former section 113A-114, which served their transitional purpose,⁵⁰ have been repealed.⁵¹ Two new AEC categories have been added: (1) "Outstanding Resource Waters" designated by the Environmental Management Commission, and (2) "Primary Nursery Areas" designated by the Marine Fisheries Commission.⁵²

4. "Part 4. Permit Letting and Enforcement"⁵³

Part 4 of the original CAMA laid out a blueprint for shared permit-letting and enforcement of the AEC provisions by state and local agencies. Its principal provisions included a protocol allowing local governments to choose whether to become permit-letting agencies for "minor develop-

45. If no local plan is adopted the state will prepare one, and did so in one case. *See infra* note 229 and accompanying text.

46. Act of June 14, 1989, ch. 313, 1989 N.C. Sess. Laws 747 (amending N.C. GEN. STAT. § 113A-107(a) (1989)). The detailed implementation of the planning program to date is described *infra* at notes 217-55 and accompanying text.

47. *See* N.C. GEN. STAT. §§ 113A-113 to -115 (1989).

48. N.C. GEN. STAT. § 113A-113(a) (1989). It was modeled closely after "critical area" provisions of other statutes that were part of a national movement to protect environmentally sensitive areas. *See, e.g.*, proposed Land Policy and Planning Assistance Act, S. 268, 93rd Cong., 2nd Sess. (1973).

49. N.C. GEN. STAT. § 113A-113(b) (1989). The AEC mechanism is intimately connected with Part 4's permit-letting and enforcement mechanism and with Part 1's definitions of "development" and the "coastal area." N.C. GEN. STAT. §§ 113A-118 to -120, -126 (1989 & Supp. 1993). One cannot undertake a "development" within an AEC in the "coastal area" without a permit secured pursuant to Part 4. N.C. GEN. STAT. § 113A-103(2) to (5) (1989 & Supp. 1993).

50. Coastal Area Management Act of 1974, ch. 1284, 1974 N.C. Sess. Laws 463, 476. The interim AECs were intended to function until the CRC designated permanent AECs.

51. Act of June 13, 1983, ch. 518, sec. 2, 1983 N.C. Sess. Laws 439.

52. *See* N.C. GEN. STAT. § 113A-113(b)(8)-(9) (1989). AECs now may include areas contiguous to designated coastal wetlands, outstanding resource waters, and primary nursery areas. *See id.* § 113A-113(b).

53. N.C. GEN. STAT. §§ 113A-116 to -128 (1989).

ments";⁵⁴ procedures governing permit processes;⁵⁵ judicial review processes governing appeals to the courts from CRC decisions, including an expedited procedure for appeals from CRC actions that are claimed to amount to a regulatory taking;⁵⁶ a set of civil and criminal remedies for violations of CAMA or CRC rules or permits;⁵⁷ and transitional provisions designed to bring about coordination and simplification of CAMA permits and other state regulatory permits in the coastal area.⁵⁸

The basic mechanism of Part 4 today is quite similar to that of the original Part 4, with some updating and some substantive changes. The principal changes include: (1) modernization of the administrative procedures concerning CAMA permits,⁵⁹ (2) incorporation of permit coordination and simplification reforms promised in CAMA,⁶⁰ (3) incorporation of ongoing regulatory reforms from other environmental statutes,⁶¹ (4) procedures for addressing new regulatory issues as they arise,⁶² and (5) proce-

54. N.C. GEN. STAT. §§ 113A-116 to -117, 121 (Supp. 1994). "Major developments" are those involving sites above 20 acres or structures over 60,000 square feet in ground area; those requiring other specified state permits; and those that require drilling or excavation of natural resources. N.C. GEN. STAT. § 113A-118(d)(i) (1989). All others are "minor developments." *Id.* § 113A-118(d)(2). The CRC has sole jurisdiction over permits for "major" developments. *Id.* § 113A-118(a) to (c).

55. N.C. GEN. STAT. §§ 113A-118 to -122 (1989 & Supp. 1993)

56. N.C. GEN. STAT. § 113A-123 (1989).

57. N.C. GEN. STAT. § 113A-126 (Supp. 1993).

58. N.C. GEN. STAT. § 113A-125 (1989).

59. *See* N.C. GEN. STAT. § 113A-122 (1989); Administrative Procedure Act, N.C. GEN. STAT. §§ 150B-1 to -64 (1989 & Supp. 1993).

60. This was accomplished by: (1) eliminating or merging overlapping permits, Act of April 2, 1979, ch. 253, 1979 N.C. Sess. Laws 180 (current version at N.C. GEN. STAT. § 113-229 (Supp. 1993)) (merging dredge/fill and CAMA permits); Act of March 15, 1979, ch. 141, 1979 N.C. Sess. Laws 91 (repealing N.C. GEN. STAT. § 104B-3 to -16) (eliminating overlapping sand dune permits); Act of April 5, 1979, ch. 299, 1979 N.C. Sess. Laws 230 (current version at N.C. GEN. STAT. § 113A-125(c) (1989)) (eliminating an extra layer of review of certain pesticide permits); (2) shortening permit review periods, *see* Act of April 13, 1983, ch. 172, 1983 N.C. Sess. Laws 122 (current version at N.C. GEN. STAT. §§ 113A-118(f) (1989)); Act of May 2, 1983, ch. 258, secs. 1-2, 1983 N.C. Sess. Laws 186 (current version at N.C. GEN. STAT. § 113-229(e)-(f) (Supp. 1993)); and (3) simplifying permit requirements for *de minimis* cases through issuance of blanket or general permits, *See* Act of April 13, 1983, ch. 171, N.C. Sess. Laws 121 (current version at N.C. GEN. STAT. § 113A-118.1(a)-(b) (1989)); Act of June 6, 1983, ch. 442, N.C. Sess. Laws 373 (current version at N.C. GEN. STAT. §§ 113A-118.1(c)-(d), 113-229(c2) (Supp. 1993)).

61. The reforms empowered the CRC to include operating conditions in CAMA permits, Act of June 13, 1983, ch. 518, sec. 5, 1983 N.C. Sess. Laws 439, 439 (current version at N.C. GEN. STAT. § 113A-120(b) (1989)), and to consider the performance history of permit applicants, Act of July 25, 1989, ch. 676, sec. 7, 1989 N.C. Sess. Laws 1867, 1874 (current version at N.C. GEN. STAT. § 113A-120(b1) (1989)).

62. *E.g.*, Act of July 2, 1992, ch. 839, sec. 1, 1992 N.C. Sess. Laws 342, 343 (codified at N.C. GEN. STAT. § 113A-103(5)(a) (Supp. 1993)) (requiring permits for both floating and fixed structures in AECs).

dures for strengthening and broadening remedies for violations of CAMA and CRC rules and permits.⁶³

5. Parts 5 and 6. Coastal Reserve and Beach Access

In the 1980s the General Assembly supplemented the CAMA regulatory programs for coastal reserves and beach access. The 1989 amendments authorized a coastal reserve system that provided for state acquisition of coastal lands for research and education.⁶⁴ Incidental hunting, fishing, navigation and recreation would be allowed, consistent with the primary research and educational purposes of the system.⁶⁵ The 1981 beach access program authorized the state, or local governments with state grants, to acquire land proximate to the ocean to improve pedestrian public access to the ocean beaches through parking areas and access ways.⁶⁶ In 1983 the General Assembly expanded the beach access program to cover estuarine lands.⁶⁷

63. Act of June 10, 1983, ch. 485, sec. 1, 1983 N.C. Sess. Laws 409 (current version at N.C. GEN. STAT. § 113A-126(d)(1) (Supp. 1993)) (making civil penalties applicable to minor permit violations and increasing maximum civil penalties for major permit violations); Act of July 2, 1992, ch. 839, sec. 3, 1992 N.C. Sess. Laws 342, 343-44 (codified at N.C. GEN. STAT. § 113A-126(a) (Supp. 1993)) (clarifying CAMA's injunctive provisions by directing the courts at a minimum to issue orders to prevent or abate violations). Section 113A-126(a) played a vital role in a 1992 decision interpreting CAMA. *See State ex rel. Cobey v. Simpson*, 333 N.C. 81, 87-91, 423 S.E.2d 759, 761-64 (1992). *See infra* notes 81-94 and accompanying text.

64. Act of June 19, 1989, ch. 344, 1989 N.C. Sess. Laws 780 (codified at N.C. GEN. STAT. §§ 113A-129.1 to -.3 (1989)).

65. *Id.* sec. 1 (codified at N.C. GEN. STAT. § 113-129.2(e)). These amendments essentially formalized a statutory authorization for a program that had been underway in North Carolina since 1982 under CAMA auspices, with the aid of federal grants made available pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1455a (1988 & Supp. IV 1992). The system is administered by the Department of Environment, Health and Natural Resources under departmental (rather than CRC) rules. Act of June 19, 1989, ch. 344, sec. 1 (codified at N.C. GEN. STAT. § 113-129.2(b)).

66. Act of July 10, 1981, ch. 925, 1981 N.C. Sess. Laws 1422 (current version at N.C. GEN. STAT. §§ 113A-134.1 to .3 (1989)); *see also* Milton S. Heath, Jr., *Natural Resources and the Environment*, in N.C. LEGISLATION 1981, at 170, 179 (Ann L. Sawyer ed., 1981). Priority goes to acquiring lands that are unsuitable for permanent structures because of adverse effects of storms, erosion, and other natural hazards. N.C. GEN. STAT. § 113A-134.3.

67. Act of July 14, 1983, ch. 757, sec. 13, 1983 N.C. Sess. Laws 781, 786 (amending N.C. GEN. STAT. § 113A-134.1 to .3 (1989)). North Carolina has not attempted to go the regulatory route of imposing access requirements on unwilling landowners as an incident of permitting. Thus, it has escaped the fate of adverse court rulings that have been visited on states that have tried that route. For example, the California Coastal Commission required the owners of a small beachfront lot to dedicate a pedestrian access easement across their lot as a condition of obtaining a permit to remodel and enlarge their cottage. *Nollan v. California Coastal Com.*, 483 U.S. 825, 827-28 (1987). The United States Supreme Court held that this amounted to an unconstitutional taking. *Id.* at 831-32.

II. CAMA LITIGATION⁶⁸

CAMA litigation, while not prolific, has been initiated in North Carolina's state courts by several groups: coastal residents raising constitutional challenges, enforcement agencies seeking remedies against violations, neighbors challenging developments, developers seeking judicial refuge for their plans and projects, and environmental groups. The overall record of judicial review is one of solid support for CAMA and the agencies that administer it.⁶⁹

A. North Carolina Supreme Court

1. *Adams v. North Carolina Dep't of Natural & Economic Resources*⁷⁰

CAMA-watchers in the mid-1970s awaited expectantly the first constitutional challenge to CAMA.⁷¹ *Adams* arose in 1977, when a group of Carteret County landowners, weary of waiting out specific CRC actions such as permit denials, mounted a pre-regulatory challenge to CAMA.⁷² The trial judge rejected all of the plaintiffs' claims,⁷³ and the supreme court allowed a motion to bypass the court of appeals to facilitate early resolution of the issues.⁷⁴

The plaintiffs' first claim was that CAMA is a local act, prohibited by Article II, section 24 of the North Carolina Constitution, because it arbitrarily distinguishes between the coast and the remainder of the state.⁷⁵ The court found that CAMA does not constitute unconstitutional local legislation, because it is reasonably adapted to the special needs of the coastal region and does not exclude from its coverage areas that clearly should be

68. This Article addresses the CAMA litigation that has resulted in written opinions of the North Carolina Supreme Court or Court of Appeals. It does not address trial court decisions.

69. The North Carolina Supreme Court has decided three cases involving constitutional or statutory challenges to the implementation of CAMA; in each case the state agency's position was sustained. See *Adams v. N.C. Dep't of Natural & Economic Resources*, 295 N.C. 683, 693-95, 249 S.E.2d 402, 408-09 (1978); *State ex rel. Rhodes v. Simpson*, 325 N.C. 514, 515, 521, 385 S.E.2d 329, 330, 334 (1989); *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 92-94, 423 S.E.2d 759, 765-66 (1992); see also *infra* notes 71-94 and accompanying text. The North Carolina Court of Appeals has decided an additional eleven cases. See *infra* notes 95-107 and accompanying text. The State of North Carolina or a state official or agency was a party in each of these eleven cases, and prevailed in eight of them. See *infra* notes 95-96.

70. 295 N.C. 683, 249 S.E.2d 402 (1978).

71. Constitutional issues had been debated during the legislative consideration of CAMA. *Heath, supra* note 40, at 395-97.

72. *Adams*, 295 N.C. at 685, 249 S.E.2d at 404.

73. *Id.* at 706, 249 S.E.2d at 415.

74. *Id.* at 689, 249 S.E.2d at 406.

75. *Id.* at 690-91, 249 S.E.2d at 406-07.

covered.⁷⁶ The court next rejected the plaintiffs' argument that CAMA delegates legislative authority to the CRC to adopt guidelines for the coastal area without providing sufficient guidance to govern the exercise of that authority.⁷⁷ It held that the goals, policies, and criteria outlined in the statute provide CRC with adequate legislative parameters.⁷⁸ Furthermore, it noted that the authority vested in the agency is subject to procedural safeguards, including the requirement that administrative guidelines be reviewed by the public, the legislature, the Attorney General, and the Administrative Rules Committee.⁷⁹ Finally, the Court rejected as premature, and therefore nonjusticiable, the plaintiffs' claims that CAMA authorizes unconstitutional warrantless searches and regulatory takings.⁸⁰

2. The Simpson Cases

In 1984 Ms. Vivian A. Simpson, owner of a small tract of Carteret County salt marsh, began building a bulkhead and retaining wall and filling about 5,000 square feet of the marsh.⁸¹ The marsh contained marshgrass species protected by CAMA and the Dredge and Fill Act.⁸² When Simpson refused the demand of the DEHNR that she restore the marsh to its original condition, the DEHNR served notice of violation.⁸³ When Simpson continued to refuse to cease operations and restore the area, the state filed for an injunction to compel her to do so.⁸⁴

76. *Id.* at 693-695, 249 S.E.2d at 408-409. The Court also rejected the argument that the legislature's failure to address similar problems of other areas (such as the mountains) was *constitutionally* objectionable. *Id.* at 693, 249 S.E.2d at 408.

77. *Id.* at 696, 698, 249 S.E.2d at 410-11.

78. *Id.* at 701, 249 S.E.2d at 412.

79. *Id.* at 701-02, 249 S.E.2d at 412-13. The court also rejected plaintiffs' contention that the state planning guidelines adopted by the CRC exceeded the authority granted by the act. *Id.* at 705-06, 249 S.E.2d at 415.

80. *Id.* at 705, 249 S.E.2d at 415. If the court was tempted to dispose of the equal protection/local act or standards issues as premature, the opinion does not reflect it. *See id., passim.*

The court also pointed out that CAMA does provide that an applicant who is appealing a denial of a development permit may also litigate the question whether denial of the permit constituted a taking without just compensation. *Id.* at 704, 249 S.E.2d at 415 (citing N.C. GEN. STAT. § 113A-123(b) (1989)). The description of *Adams* is adapted from Milton S. Heath, Jr. & Allen Moseley, *A Progress Report: The Coastal Area Management Act*, POPULAR GOV'T, Spring 1980, at 32, 35.

The supreme court briefly revisited the standards issue in a 1980 challenge to the Estuarine Dredge and Fill Act. *See In re Broad & Gales Creek Community Ass'n*, 300 N.C. 267, 266 S.E.2d 645 (1980) (construing N.C. GEN. STAT. § 113-129 (Supp. 1993)). It rejected that challenge straightforwardly, citing *Adams*. *Id.* at 273-74, 266 S.E.2d at 650-51.

81. *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 85-86, 423 S.E.2d 759, 761 (1992).

82. *Id.*

83. *Id.* at 86-87, 423 S.E.2d at 761.

84. *Id.* at 86-87, 423 S.E.2d at 761-62.

The trial court ordered a partial removal of the retaining wall and partial excavation of the fill.⁸⁵ The court of appeals affirmed, finding the order justified by the language of CAMA's injunction provision authorizing injunctive relief and "such . . . further relief . . . as said court shall deem proper."⁸⁶ The court reached this conclusion despite a CAMA provision that a violation "must be corrected by restoration . . . to pre-development conditions."⁸⁷ It stated that the legislature had "created an ecological watchdog without the teeth necessary to protect its charge."⁸⁸

After the court of appeals decision in January 1992, the injunction statute was amended by replacing the discretionary language with a provision requiring that "the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation."⁸⁹ The title of the amending act stated that it was an act "to clarify" the provisions of CAMA.⁹⁰ Relying directly on the title of the amending act,⁹¹ the supreme court construed the amendment only to clarify—not change—the prior legislation.⁹² It held, therefore, that even before the amendment, the amended act and the CAMA guidelines required full restoration of the site once a violation had been proved, leaving no discretion in the trial court to order lesser relief.⁹³

Cobey strengthened state power by limiting the discretion of the trial court to order less than the complete relief indicated by CAMA guidelines.⁹⁴ The court's sympathetic reading of the statute and the rules, and its supportive use of statutory interpretation concepts, should send a strong message to the lower courts about the enforcement of CAMA.

B. North Carolina Court of Appeals

Of eleven cases in which the court of appeals has had the last word, four were CAMA enforcement actions and seven were reviews of CRC permit decisions. The state agency prevailed in all four of the enforcement

85. *State ex rel. Cobey v. Simpson*, 105 N.C. App. 95, 96, 411 S.E.2d 616, 617 (1992).

86. *Id.* at 97, 411 S.E.2d at 618 (quoting N.C. GEN. STAT. § 113A-126(a) (1983)).

87. *Id.*

88. *Id.*

89. Act of July 2, 1992, ch. 839, sec. 3, 1992 N.C. Sess. Laws 342, 344 (codified at N.C. GEN. STAT. § 113A-126(a) (Supp. 1993)).

90. Act of July 2, 1992, ch. 839, 1992 N.C. Sess. Laws 342, quoted in *Cobey*, 333 N.C. 81, 89, 423 S.E.2d 759, 763 (1992).

91. *Id.* The court supported its reliance on the title with another rule of construction: a recent legislative enactment may facilitate interpretation of a statute. *Id.* at 88, 423 S.E.2d at 763.

92. *Id.* at 90, 423 S.E.2d at 764.

93. *See id.* at 92-94, 423 S.E.2d at 765-66.

94. The case actually went to the North Carolina Supreme Court twice. In *State ex rel. Rhodes v. Simpson*, 325 N.C. 514, 385 S.E.2d 329 (1989), the court held that Ms. Simpson was not entitled to a jury trial. *Id.* at 521, 385 S.E.2d at 334.

actions against private landowners.⁹⁵ The appeals of CRC permit decisions have yielded mixed results.⁹⁶ Several recent CRC appeals have been influenced by the participation of environmental groups.⁹⁷

Many of these court of appeals decisions turned on traditional administrative law issues, such as: Were agency decisions supported by substantial evidence?⁹⁸ Were the decisions arbitrary and capricious?⁹⁹ Was the "whole record" test satisfied?¹⁰⁰ Was there an error of law?¹⁰¹ Should the court defer to the agency's interpretation of its own statute or of a statute administered by another agency?¹⁰²

The court of appeals has lent a sympathetic ear to the concerns of neighbors whose positions have been supported by a state agency,¹⁰³ by an environmental group,¹⁰⁴ or by a determined local lawyer-landowner.¹⁰⁵ In one case of regulatory taking, it sustained the state's position that denial of a CAMA pier permit would not deprive the owner of all practical use of the

95. *Gaskill v. State ex rel. Cobey*, 109 N.C. App. 656, 660, 428 S.E.2d 474, 476 (1993); *State ex rel. Rhodes v. Givens*, 101 N.C. App. 695, 698, 400 S.E.2d 745, 747 (1991); *In re Coastal Resources Comm'n*, 96 N.C. App. 468, 474, 386 S.E.2d 92, 95 (1989); *Pamlico Marine Co. v. N.C. Dep't of Natural Resources & Community Dev.*, 80 N.C. App. 201, 202, 207, 341 S.E.2d 108, 110, 113 (1986).

96. *See, e.g., King v. N.C. Env'tl. Management Comm'n*, 112 N.C. App. 813, 814-15, 818, 436 S.E.2d 865, 867, 869 (1993) (sustaining the denial by the Division of Environmental Management of a water quality certification for construction of a bulkhead); *Walker v. North Carolina Dep't of Env't, Health, & Natural Resources*, 111 N.C. App. 851, 856, 433 S.E.2d 767, 770 (overturning the grant of a marina permit for failure to obtain an easement for the use of public trust waters), *disc. rev. denied*, 335 N.C. 243, 439 S.E.2d 164 (1993); *Webb v. North Carolina Dep't of Environment, Health, & Natural Resources*, 102 N.C. App. 767, 771, 404 S.E.2d 29, 32 (1991) (rejecting argument of adjacent landowner that findings necessary for issuance of bulkhead permit were "[u]nsupported by substantial evidence" (quoting N.C. GEN. STAT. § 150B-51(b)(5) (1991))); *Weeks v. North Carolina Dep't of Natural Resources & Community Dev.*, 97 N.C. App. 215, 226, 388 S.E.2d 228, 235 (1990) (sustaining denial by CRC of Bogue Sound pier permit); *Pamlico-Tar River Found. v. Coastal Resources Comm'n*, 103 N.C. App. 24, 25, 31, 404 S.E.2d 167, 168, 172 (1990) (remanding for determination of whether new evidence justified a contested case hearing regarding a permit for a marina on Chocowinity Bay).

97. *See, e.g., Ballance v. N.C. Coastal Resources Comm'n*, 108 N.C. App. 288, 289, 423 S.E.2d 815, 816 (1992), *disc. rev. denied*, 333 N.C. 536, 429 S.E.2d 553 (1993); *Conservation Council of N.C. v. Haste*, 102 N.C. App. 411, 402 S.E.2d 447 (1991); *Pamlico-Tar River Found.*, 103 N.C. 24, 404 S.E.2d 167.

98. *See, e.g., Webb*, 102 N.C. App. at 771, 404 S.E.2d at 32; *Pamlico-Tar River Found.*, 103 N.C. App. at 25, 31, 404 S.E.2d at 168, 172; *Walker*, 111 N.C. App. at 856, 433 S.E.2d at 770.

99. *See, e.g., King*, 112 N.C. App. at 815, 436 S.E.2d at 868.

100. *See, e.g., Pamlico-Tar River Found.*, 103 N.C. App. at 28, 404 S.E.2d at 170.

101. *See, e.g., Walker* 111 N.C. App. at 855, 433 S.E.2d at 769.

102. *Pamlico Marine Co.*, 80 N.C. App. at 206, 341 S.E.2d at 112.

103. *E.g., Weeks v. North Carolina Dep't of Natural Resources & Community Dev.*, 97 N.C. App. 215, 388 S.E.2d 228 (1990).

104. *E.g., Ballance v. North Carolina Coastal Resources Comm'n*, 108 N.C. App. 288, 423 S.E.2d 815 (1992), *disc. rev. denied*, 333 N.C. 536, 429 S.E.2d 553 (1993).

105. *E.g., Walker*, 111 N.C. App. at 852, 433 S.E.2d at 767.

property or render the property of no reasonable value.¹⁰⁶ It also sustained a finding by the North Carolina Environmental Management Commission (EMC) that a coastal bulkhead project, by eliminating the existing use of a soundside tract as a sediment and nutrient filter, would violate the EMC antidegradation policy.¹⁰⁷

III. CAMA IMPLEMENTATION: 1974-1993

A. *Managing Development in Critical Areas*

Of the various programs carried out under CAMA, the regulatory program generates the greatest amount of public debate and occupies a greater proportion of the time and energy of the CRC and its staff than any other aspect of the program.¹⁰⁸ Over the past twenty years, the CAMA program has delineated those geographic areas on the coast that warrant regulatory protection,¹⁰⁹ created and implemented standards for development in those areas,¹¹⁰ attempted to coordinate related state and federal regulatory programs,¹¹¹ and has systematized and tracked permit decisions,¹¹² enforcement of regulations,¹¹³ and quasi-judicial administrative review of contested regulatory matters.¹¹⁴

1. Designating "Areas of Environmental Concern" (AECs)

One of the CRC's first tasks was to define the scope of the CAMA regulatory program. The original statute listed seven types of AECs that could be designated by the CRC as the program's area of permit jurisdiction.¹¹⁵ It expressly forbade the designation as AECs of any other categories of land or water.¹¹⁶ In 1977, after almost three years of committee

106. *Weeks*, 97 N.C. App. at 226, 388 S.E.2d at 235.

107. *King v. N.C. Env'tl. Management Comm'n*, 112 N.C. App. 813, 814-15, 818, 436 S.E.2d 865, 867, 869 (1993) (sustaining the denial by the Division of Environmental Management of a water quality certification for construction of a bulkhead).

108. From 1974 to 1993, the CRC made 189 formal quasi-legislative or rule-making decisions. DAVID W. OWENS, A COMPILATION AND ANALYSIS OF THE DECISIONS OF THE NORTH CAROLINA COASTAL RESOURCES COMMISSION, 1974-93 3 (1994). ONE HUNDRED FIFTY-SIX OF THESE, SOME 83%, DEALT DIRECTLY WITH THE CAMA REGULATORY PROGRAM. *Id.* By comparison, 10 decisions dealt with general policy matters, eight with land use planning, and 15 with internal CRC procedures. *Id.*

109. *See infra* notes 115-36 and accompanying text.

110. *See infra* notes 137-55 and accompanying text.

111. *See infra* notes 156-85 and accompanying text.

112. *See infra* notes 186-92 and accompanying text.

113. *See supra* notes 193-95 and accompanying text.

114. *See supra* notes 196-216 and accompanying text.

115. Coastal Area Management Act of 1974, ch. 1284, 1974 N.C. Sess. Laws 463, 474 (current version at N.C. GEN. STAT. § 113A-113(b)(1)-(7) (1989)).

116. *Id.* at 476 (current version at N.C. GEN. STAT. § 113A-113(d) (1989)).

work, hearings,¹¹⁷ and consultation with local governments, the CRC designated AECs.¹¹⁸ These areas included coastal wetlands, estuarine waters, small-surface water-supply areas, public water-supply well fields, public-trust waters, sand dunes along the Outer Banks, ocean beaches, inlet hazard areas, ocean erodible areas, and estuarine erodible areas.¹¹⁹ The CRC also authorized the designation of complex natural areas, areas that sustain remnant species, and areas containing unique geologic formations.¹²⁰

The two items of greatest debate were (1) the size of the areas to be regulated along estuarine shorelines¹²¹ and (2) the definition of a "frontal dune" along the ocean.¹²² These AEC designations included most of the water area, regularly and irregularly flooded marshes of the coastal area (excluding fresh-water wetlands such as wooded swamps), and approximately three percent of the land area of the twenty coastal counties.¹²³

In subsequent years the CRC has considered proposals to amend the AEC designations. Two types of proposals—nominations of individual sites as AECs and expansion of the area regulated along estuarine shorelines—led to additional AEC designations.¹²⁴ From 1977 to 1993, seven individual nominations were formally presented to the CRC.¹²⁵ The CRC

117. *Id.* (current version at N.C. GEN. STAT. § 113A-114 (1989)). CAMA required hearings in six coastal cities on potential interim areas of environmental concern to be held within 75 days of July 1, 1974. *Id.* This emphasis on encouraging active participation by coastal residents and on a strict timetable for action was typical of CAMA.

118. Minutes, North Carolina Coastal Resources Comm'n, June 22, 1977, at 13 [hereinafter CRC Minutes].

119. *Id.*

120. *Id.* Proposals to designate the entirety of barrier islands, interior dune lands on the islands, off-shore fisheries areas, and state-owned historic sites were considered and rejected. *See, e.g.*, CRC Minutes, Mar. 9, 1976, at 6 (listing potential AECs); CRC Minutes, Apr. 9 1976, at 3 (refusing to designate the entire Outer Banks area).

121. *See, e.g.*, CRC Minutes, July 30, 1975, at 8 (creating committee to develop AEC designation recommendations); CRC Minutes, June 22, 1977, at 13 (designating AECs). The CRC settled on a compromise figure of seventy-five feet from the shoreline. CRC Minutes, June 22, 1977, at 13 (codified at N.C. ADMIN. CODE tit. 15A, r. 7H.0209(b) (October 1993)).

122. *See* CRC Minutes, June 22, 1977, at 13. The CRC settled on a simple textual definition, *id.* (current version at N.C. ADMIN. CODE tit. 15A, r. 7H.0305 (December 1993)), and agreed to continue work on that definition. *Id.*

123. These designations are codified at N.C. ADMIN. CODE tit. 15A, rr. 7H.0205-.0207, .0209, .0304, .0404-.0406 (Dec. 1993). *See also* David W. Owens, *Coastal Management in North Carolina: Building a Regional Consensus*, 51 J. AM. PLANNING ASS'N 322, 323 (1985).

124. Two other types of proposals—creation of a new AEC category to manage peat mining and coverage of maritime forest areas—failed to pass. *See infra* notes 130-36 and accompanying text.

125. Additional nominations of a number of maritime forest areas were also made. *See infra* notes 130-36 and accompanying text. These were considered by the CRC as part of an examination of regulation of maritime forests collectively, *id.*, and are thus discussed as such. Also, a 6,000 acre area in Pender County was nominated for designation in 1991, but the CRC concurred with a staff recommendation not to proceed with a detailed review of that nomination. CRC Minutes, Dec. 13, 1991, at 23-24.

rejected five nominated areas,¹²⁶ and designated two as AECs.¹²⁷ The expansion of estuarine regulation resulted from efforts to improve management of the storm-water runoff that contributes nutrients, sediment, bacteria, and other pollutants to coastal waters. After several years of heated debate, coordination with the Environmental Management Commission, and legislative intervention to encourage additional CRC action,¹²⁸ the CRC in 1989 voted to create a new AEC extending 575 feet landward of waters classified by the EMC as "Outstanding Resource Waters."¹²⁹

Of the AEC designations not adopted, the first arose in 1978 when First Colony Farms applied for a mining permit for an experimental 200-acre peat mine in Washington County.¹³⁰ This application sparked considerable concern; should a viable market for the peat be established, some 540,000 acres of low-lying peat lands—virtually all such lands in the coastal area—would be subject to surface mining that could substantially affect natural resources in the area.¹³¹ After a year of discussion, the CRC opted not to proceed with the AEC designation but rather to work with the

126. In four of the five areas rejected for regulatory coverage, the CRC endorsed land acquisition efforts as a more appropriate resource protection strategy; acquisition projects were subsequently implemented at all four of these sites. The four nominations tabled were Masonboro Island, CRC Minutes, June 12, 1981, at 6, 13; Carrot Island, CRC Minutes, Feb. 5, 1982, at 10; Alligator River, CRC Minutes, May 6, 1983, at 9, and Buxton Woods, CRC Minutes, Mar. 24, 1988, at 3-5. See *infra* notes 256-77 and accompanying text for a discussion of the land acquisition at these and other sites. The fifth rejected site was the Lake Phelps shoreline. See CRC Minutes, April 16, 1980. The CRC concluded that the principal management issue there—regulation of on-site septic tanks—could best be regulated by other agencies. See *id.*

127. Permuda Island, a small island in Stump Sound, was designated as a significant archaeological site in 1984. CRC Minutes, November 16, 1984, at 7 (codified at N.C. ADMIN. CODE tit. 15A, r. 7H.0509(e) (November 1991)). After several unsuccessful development proposals by the owner, this island was ultimately sold to the state in 1987. DIVISION OF COASTAL MANAGEMENT, DEP'T OF ENV'T, HEALTH, & NATURAL RESOURCES, MANAGEMENT PLAN FOR THE PERMUDA ISLAND COMPONENT OF THE N.C. COASTAL RESERVE. Jockey's Ridge sand dune was designated as an AEC in 1987. CRC Minutes, December 4, 1987, at 4-5 (1993).

128. For a detailed discussion of the policy debates on coastal storm-water regulation in North Carolina in the late 1980s, see Bill Holman, *The Politics of Planning: Where is North Carolina Heading?*, 16 CAROLINA PLANNING 40 (Spring 1990) and Mary Joan Manley Pugh, *Planners as Leaders*, 16 CAROLINA PLANNING 48 (Spring 1990). The General Assembly amended CAMA in 1989 to authorize designation as AECs of "Outstanding Resource Waters" (ORWs). Act of June 5, 1989, ch. 217, 1989 N.C. Sess. Laws 467, 469 (codified at N.C. GEN. STAT. § 113A-113(b)(8) (1989)).

129. CRC Minutes, March 31, 1989, at 27. The CRC adopted general policy statements on coastal water quality in 1985. CRC Minutes, Sept. 6, 1985 (codified at N.C. ADMIN. CODE tit. 15A, r. 7M.0802 (Dec. 1989)).

130. See N.C. DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., PEAT MINING AND NATURAL RESOURCES 3 (1983).

131. *Id.* at 9.

state Mining Commission to address more effectively the potential environmental impacts under that statute.¹³²

The final areas seriously considered but rejected by the CRC for additional permit jurisdiction were the state's maritime forests.¹³³ Citizen concern about the loss of maritime forest areas led to studies in the mid-1980s regarding the location of and developmental threats to remaining maritime forests.¹³⁴ After referring the matter to a working group for a year's study and debate,¹³⁵ in 1990 the CRC decided not to pursue designation of all remaining maritime forests as AECs, concluding that land acquisition and local regulation were the preferable route for management, with individual site AEC designation remaining as a residual management option.¹³⁶

2. Standards for Development in AECs

The CRC employed an open, collaborative process, involving the active participation of many parties, to establish standards for development in the AECs.¹³⁷ The CRC's decision-making process involved not only a detailed consideration of the technical and legal aspects of management decisions, but also a recognition that resolving conflicts between competing legitimate uses of coastal resources inherently involves critical value

132. See CRC Minutes, May 28-29, 1980, at 4-5. The CRC did conclude that the site *could* be designated a "key facility" AEC pursuant to N.C. GEN. STAT. § 113A-113(b)(7) (1989). *Id.* at 11-12.

133. In 1979 the CAMA staff commissioned a report on potential development standards in a potential maritime forest AEC. See TODD L. MILLER ET AL., OFFICE OF COASTAL MANAGEMENT, PROPOSED STANDARDS FOR DEVELOPMENT IN MARITIME FOREST AREAS OF ENVIRONMENTAL CONCERN (1980). Clearing of land as an adjunct of construction is "development" subject to regulation. N.C. GEN. STAT. § 113A-103(4)(a) (Supp. 1993). Land clearing for harvesting trees or other nonconstruction purposes is not subject to CAMA regulation. See *id.*

134. E.g., MICHAEL J. LOPAZANSKI ET AL., N.C. DEP'T OF ENV'T, HEALTH, AND NATURAL RESOURCES, AN ASSESSMENT OF MARITIME FOREST RESOURCES ON THE NORTH CAROLINA COAST (1988).

135. N.C. COASTAL RESOURCES COMM'N, FINAL REPORT OF THE MARITIME FOREST WORKING GROUP (May 1990).

136. CRC Minutes, May 25, 1990, at 8-10. In response, environmental groups submitted a petition for rule-making for a maritime forest AEC, which the CRC denied in July 1990. CRC Minutes, July 26-27, 1990, at 3-4, 8-10. The agency instead considered nine individual maritime forest areas as nomination AECs. *Id.* The CRC subsequently determined that these areas were adequately protected by public or conservation group ownership, local regulations, and restrictive covenants. CRC Minutes, Sept. 27-28, 1990, at 4-6; CRC Minutes, Dec. 6-7, 1991, at 11-12, 17-18; CRC Minutes, Jan. 31-Feb. 1, 1992, at 5.

137. See OWENS, *supra* note 123, at 325-27. For a summary from the perspective of the chair of the CRC, see J. Parker Chesson, Jr., *Succeeding at Coastal Management*, in NORTH CAROLINA DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., STRIKING A BALANCE: REFLECTIONS ON TEN YEARS OF MANAGING THE NORTH CAROLINA COAST 25 (1985). Factors cited by Chesson as keys to success were the dedication and hard work of members of the CRC and CRAC, intensive public involvement, capable staff, and the open, informal, deliberative style of CRC decision-making. *Id.*

choices. Setting development standards was also a process of constant evaluation, refinement, and improvement.

The CRC's original permit rules¹³⁸ organized the development standards into four groupings of related AECs: (1) the estuarine system, which included wetlands, water areas, and the estuarine shoreline; (2) the ocean hazard system, which included ocean erodible areas, flood hazard areas, and inlet hazard areas; (3) public water supply areas, which included surface water supply areas and well fields; and (4) natural and cultural resource areas, which included no initial AECs but established a framework for development of standards for areas that could be nominated and subsequently designated.¹³⁹ For each category, the rules established an overall management objective, a set of general use standards, and specific use standards for the most common types of regulated development.¹⁴⁰

In 1978, the CRC embarked on a year-long process of assessment and rewriting of its development standards, to correct initial errors and add specific use standards.¹⁴¹ This review resulted in the adoption of a comprehensive update of the development standards.¹⁴² For the estuarine system the revised standards include detailed use standards for dredging, marina siting and design, drainage ditches, piers, bulkheads, and septic tank location.¹⁴³ For the ocean hazard system they include an erosion-rate-based oceanfront setback, limits on erosion control devices to protect new structures, and construction standards for buildings in hazard areas.¹⁴⁴ The revisions also added archaeological and architectural sites to the AEC nomination categories.¹⁴⁵ Since the comprehensive revision in 1979, the basic organizational and substantive thrusts of the development standards have remained un-

138. CRC Minutes, June 22, 1977, at 13 (codified at N.C. ADMIN. CODE tit. 15, r. 7H.0100-.00602 (Dec. 1993)).

139. *Id.*

140. *Id.*

141. CRC Minutes, Aug. 11, 1978, at 7-8.

142. CRC Minutes, April 27, 1979, at 4.

143. N. C. ADMIN. CODE tit. 15A, r. 7H.0208(b) (October 1993). The standards prohibit all but minor alterations of coastal wetlands. *Id.* While it is estimated that almost 15,000 acres of North Carolina's coastal marshlands were destroyed between 1954 and 1968, this dropped to less than 3,000 acres altered between 1970 and 1984, with nearly 70% of that reduced loss taking place in the early 1970s prior to implementation of these restrictions. Margie B. Stockton & Curtis J. Richardson, *Wetland Development Trends in Coastal North Carolina, USA, from 1970 to 1984*, 11 ENVTL. MGMT. 649, 649-55 (1987). Total coastal wetland loss in North Carolina has averaged less than 100 acres per year since CAMA regulations took effect. *Id.* at 653. This reduction in resource impact is all the more remarkable given the increase in development pressures in the coastal area. From 1980 to 1985, five coastal counties had a greater than 20% increase in their numbers of households. OFFICE OF STATE BUDGET AND MANAGEMENT, STATISTICAL ABSTRACT OF NORTH CAROLINA COUNTIES A-35 (1991).

144. N. C. ADMIN. CODE tit. 15A, r. 7H.0304-.0308 (December 1993).

145. N. C. ADMIN. CODE tit. 15A, r. 7H.0304-.0510 (November 1991).

changed.¹⁴⁶ Instead, the CRC has focused on the refinement of standards in individual areas.¹⁴⁷ Three topics have generated the most attention in rule refinement—the oceanfront setback,¹⁴⁸ pier design and location,¹⁴⁹ and erosion control.¹⁵⁰

The emphasis on continued review and refinement creates the possibility that the CAMA development standards may be too dynamic. Regulatory instability could preclude both rational development planning on the part of landowners and certainty of resource protection on the part of environmental advocates. In fact, actual changes in the CAMA development standards have been modest. In twenty years, the CRC has made sixty-five decisions on CAMA development standards, including original adoptions, amendments, and repeals.¹⁵¹ Only thirty-three of these involved substantial changes.¹⁵² Nevertheless, the CRC repeatedly debates such topics as marina siting and design,¹⁵³ stormwater runoff standards,¹⁵⁴ and erosion control structures.¹⁵⁵ The possibility that standards could change requires all interested parties to remain vigilant and engaged.

146. See *id.* r. 7H.0208(b), .0304-.0510, history notes.

147. The standards for each of these subjects were refined 11 times between April 1979 and December 1993. No other topic was subject to more than three revisions. OWENS, *supra* note 104, at 5-17.

148. See CRC Minutes, Oct. 15-16, at 4-5, 11-13, 1980; CRC Minutes, Jan. 23, 1981, at 7, 14-17; CRC Minutes, Sept. 23, 1983, at 10; CRC Minutes, Dec. 1, 1989, at 6, 28; CRC Minutes, Sept. 28, 1990, at 4, 12. The oceanfront setback revisions have included major changes such as doubling the minimum setback for large structures, CRC Minutes, Sept. 23, 1983, at 10, standards for relocation of structures, CRC Minutes, Oct. 16, 1980, at 6, defining how to measure the square footage of a structure, CRC Minutes, Dec. 1, 1989, at 6, 28, and standards on temporary structures, *id.*

149. See CRC Minutes, Dec. 3, 1982, at 2; CRC Minutes, April 3, 1986, at 5; CRC Minutes, Jan. 23, 1987, at 4; CRC Minutes, Mar. 27, 1987, at 18; CRC Minutes, May 26-27, 1988, at 5; CRC Minutes, July 28, 1989, at 19-20, 32-33. Pier revisions have included standards on minimum separation between piers and property lines, CRC Minutes, Dec. 3, 1982, at 2, refining measurements for maximum lengths of piers, CRC Minutes, July 28, 1989, at 19, and standards for maximum use of piers outside of marinas, CRC Minutes, Jan. 23, 1987, at 4.

150. CRC Minutes, Jan. 15-16, 1980, at 22, Mar. 17-18, 1983, at 4, January 18, 1985, at 4-5, Sept. 25, 1987, at 9, Sept. 29, 1989, at 4-7, and Dec. 14, 1992, at 1-4. This includes both estuarine and ocean erosion control devices. CRC Minutes, Sept. 25, 1987, at 9, Jan. 17-18, 1985, at 4-5. Revisions have addressed topics ranging from prohibition of ocean shoreline hardening structures, CRC Minutes, Jan. 15-16, 1980, at 22, to allowing protection of historic sites and key facilities, to bulkhead locations within artificial canals and basins, CRC Minutes, Mar. 17-18, 1983, at 4.

151. OWENS, *supra* note 108, at 3.

152. *Id.* at 5-17. This constitutes an annual average of 1.65 amendments to the development standards.

153. See, e.g., CRC Minutes, Apr. 4, 1986, at 5; CRC Minutes, Nov. 30, 1989, at 13; CRC Minutes, May 29, 1992, at 26.

154. See, e.g., CRC Minutes, Sept. 5, 1985, at 9; CRC Minutes, July 25, 1986, at 10; CRC Minutes, July 24, 1987, at 12; CRC Minutes, Jan. 31, 1991, at 6..

155. See, e.g., CRC Minutes, Nov. 16, 1984, at 5; CRC Minutes, July 25, 1991, at 8-10; CRC Minutes, Jan. 27, 1994, at 17.

3. Regulatory Coordination

From the outset, a goal of CAMA has been the creation of a simplified, better coordinated regulatory program both within the CAMA program itself and in state government overall.¹⁵⁶ The CRC has undertaken regulatory coordination efforts in three areas: simplification of CAMA permits, coordination with other state and federal regulatory programs, and coordination on broader policy issues. The initial step taken by the CRC to simplify the CAMA regulatory program was to exempt from permit coverage those minor activities that have insubstantial environmental impact.¹⁵⁷ A further step in regulatory simplification was the issuance of general permits for those activities that could be permitted with a brief on-site inspection but without individual public notice or review by other agencies.¹⁵⁸

CAMA regulations have also been coordinated with other state and federal programs. CAMA did not create an omnibus coastal permit that replaced all others, but it did mandate the coordination of the state's coastal regulatory programs.¹⁵⁹ The coastal program has had a mixed record in these efforts. An early success was the development of a single permit application form for four state permits and one federal permit—the state permits for CAMA, dredge and fill, easement to fill, and water quality certification, and the federal wetland fill permit.¹⁶⁰ The CAMA and state dredge-and-fill permit reviews were administratively consolidated in 1978,¹⁶¹ and the rule-making authority for dredge and fill was transferred to the CRC in 1979.¹⁶² The procedural and substantive rules for these two statutes were subsequently merged into one set of rules.¹⁶³ Another success was the issuance of a federal general permit by the Army Corps of Engi-

156. See Coastal Area Management Act, ch. 1284, 1974 N.C. Sess. Laws 463, 487 (current version at N.C. GEN. STAT. § 113A-125(d) (1989)) (mandating CRC consultation with other agencies on permit coordination, a public hearing on the issue, and a formal report to the general assembly). The CRC reported to the General Assembly, as required by CAMA, in 1977: See COASTAL RESOURCES COMM'N, REPORT TO THE 1977 N. C. GENERAL ASSEMBLY ON DEVELOPING A BETTER COORDINATED AND MORE UNIFIED SYSTEM OF ENVIRONMENTAL AND LAND USE PERMITS IN THE COASTAL AREA (1977).

157. Exemptions are set forth in N.C. ADMIN. CODE tit. 15A, r. 7K.0202-0211 (April 1993). The rules also exempt federal agencies from CAMA permit requirements, but subject them to a consistency review that applies the same development standards. N.C. ADMIN. CODE tit. 15A, r. 7K.0401-.0402 (December 1989).

158. General permits are set forth at N.C. ADMIN. CODE tit. 15A, r. 7H.1101-2005 (January 1994).

159. N.C. GEN. STAT. § 113A-125(b) (1989).

160. The consolidated application form and information on the application process is set forth in DIVISION OF COASTAL MANAGEMENT, DEP'T OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT, A GUIDE TO PROTECTING COASTAL RESOURCES THROUGH THE CAMA PERMIT PROGRAM 16-22 (1988).

161. CRC Minutes, Oct. 19, 1978, at 1.

162. Act of April 2, 1979, ch. 253, 1979 N.C. Sess. Laws 180.

163. CRC Minutes, March 31, 1989, at 11.

neers in 1981 for most of the wetland fill projects that were subject to concurrent state and federal permit review.¹⁶⁴

Substantive policy coordination efforts have been less successful. For example, the CRC made one attempt to enhance the standards for septic tank construction, but the rule was repealed after considerable objection from local health directors and the regulated community.¹⁶⁵ There also have been perennial unsuccessful attempts to require easements or leases for commercial use of the state's waters.¹⁶⁶ Recent judicial invalidation of a permit issued for a marina without such a lease¹⁶⁷ has prompted renewed state attention to this issue.¹⁶⁸

The state has established a detailed procedure to coordinate individual state and federal agency decisions with the state coastal management program.¹⁶⁹ A requirement in the federal coastal zone management statute¹⁷⁰ that federal actions be consistent with approved state coastal management programs¹⁷¹ has been, for many states, a major incentive for participation in the national coastal management program.¹⁷² In 1978, the North Carolina coastal program was deemed to meet the minimum requirements of the fed-

164. CRC Minutes, Jan. 22, 1981, at 1.

165. CRC Minutes, February 5, 1982, at 6.

166. See, e.g., CRC Minutes, Sept. 20, 1984, at 14-15; CRC Minutes, Nov. 30, 1989, at 13.

167. Walker v. N.C. Dep't of Env't, Health, and Natural Resources, 111 N.C. App. 851, 855, 433 S.E. 2d 767, 769-70, *disc. rev. denied*, 335 N.C. 243, 439 S.E.2d 164 (1993).

168. A major state-federal study recommended that the state consider developing by 1996 a system to provide public compensation for private use of public trust resources. N. C. DEP'T OF ENV'T, HEALTH, AND NATURAL RESOURCES, TECHNICAL SUPPORT DOCUMENT FOR THE ALBEMARLE-PAMLICO ESTUARINE STUDY COMPREHENSIVE CONSERVATION MANAGEMENT PLAN 97 (1993). The State Property Office has recommended a legislative study committee to develop a comprehensive policy on easements for submerged lands. Interview with Joseph H. Henderson, Deputy Director, State Property Office, N.C. Dep't of Admin., June 30, 1994. The Property Office submitted an interim leasing program to the Council of State in August 1994. Interview with Joseph H. Henderson, Deputy Director, State Property Office, N.C. Dep't of Admin., Aug. 9, 1994.

169. The mechanics of the state review system are described in JAMES E. WUENSCHER, NORTH CAROLINA DEP'T OF ENV'T, HEALTH, AND NATURAL RESOURCES, FEDERAL AND STATE CONSISTENCY PROCEDURES MANUAL (Sept. 1990).

170. Coastal Zone Management Act, 16 U.S.C. §§ 1451-64 (1988 & Supp. II 1990 & Supp. IV 1992).

171. 16 U.S.C. § 1456(c)(1)(A) (Supp. II 1990). Implementing regulations are at 15 C.F.R. § 930 (1993). See generally Tim Eichenberg & Jack Archer, *The Federal Consistency Doctrine: Coastal Zone Management and "New Federalism,"* 14 *ECOLOGY L.Q.* 9 (1987) (reviewing consistency requirement and its application).

172. Federal financial assistance for program implementation is the other major incentive for state action provided by the federal act. 16 U.S.C. §§ 1455 to 1455(b) (1988 & Supp. IV 1992). In fiscal year 1992-93, \$1.8 million of North Carolina's \$3 million budget for implementation of the coastal program was provided by a federal grant. DIVISION OF COASTAL MANAGEMENT, NORTH CAROLINA DEP'T OF ENV'T, HEALTH, AND NATURAL RESOURCES, REPORT ON THE NORTH CAROLINA COASTAL MANAGEMENT PROGRAM 1 (1992).

eral act.¹⁷³ Federal consistency review generally has been a routine matter in North Carolina.¹⁷⁴ Nevertheless, several individual consistency reviews have generated considerable public attention. Most notable is the proposed federal approval of an interbasin water transfer to supply additional water to Virginia Beach, Virginia.¹⁷⁵ That issue raises the question of the interstate applicability of the consistency requirement.¹⁷⁶

The third area of action has been policy coordination with other agencies. In several areas the coastal program has played a central role in developing a coordinated state policy approach to a complex coastal issue.¹⁷⁷ The leading example is the effort to manage development in hazard areas. This effort resulted not only in development of CAMA regulations and at-

173. See U. S. DEP'T OF COMMERCE, FINAL ENVIRONMENTAL IMPACT STATEMENT, PROPOSED COASTAL MANAGEMENT PROGRAM FOR THE STATE OF NORTH CAROLINA (n.d.) (formally describing the scope of the new program). For a review of the development of the federal program, see David R. Godschalk, *Implementing Coastal Zone Management: 1972-1990*, 20 COASTAL MANAGEMENT 93 (1992). Some commentators have argued that this investment justifies a greater federal role in setting resource management policies. Linda A. Malone, *The Coastal Zone Management Act and the Takings Clause in the 1990s: Making the Case for Federal Land use to Preserve Coastal Areas*, 62 U. COLO. L. REV. 711, 771-73 (1991) (recommending substantive minimum federal standards for coastal zone protection).

174. From 1988 through 1993, 1,172 proposed federal decisions were submitted to the state for review. Telephone Interview with Stephen Benton, Federal Consistency Coordinator, Division of Coastal Management, North Carolina Dep't of Env't, Health, and Natural Resources (Jan. 6, 1994). The state took a consistency position on 688 of these and found only 43 to be inconsistent with the state coastal management program. This high degree of concurrence is typical nationally. In 1983, states concurred with 99% of all federal consistency applications; they concurred with 97% in 1987. Kem Lowry et al., *Federal-State Coordination in Coastal Management: An Assessment of the Federal Consistency Provision of the Coastal Zone Management Act*, 19 OCEAN & COASTAL MANAGEMENT 97, 107 (1993). See generally Scott C. Whitney, et al., *State Implementation of the Coastal Zone Management Consistency Provisions—Ultra Vires or Unconstitutional?*, 12 Harv. Envtl. L. Rev. 67, 78-89 (1988) (contending that state reviews unfairly burden federal agencies); Jack Archer & Joan Bondareff, *Implementation of the Federal Consistency Doctrine—Lawful and Constitutional: A Response to Whitney, Johnson, & Perles*, 12 Harv. Envtl. L. Rev. 115 (1988) (responding to Whitney, et al.).

175. North Carolina review of proposed state agency decisions has resulted in even fewer objections. During the period from 1988 through 1993, 219 proposed state agency decisions were submitted for review; positions were taken on 60 of these; only one was determined to be inconsistent. Telephone Interview with Steve Benton, Federal Consistency Coordinator, Division of Coastal Management (Jan. 6, 1994).

176. *Id.* A second highly visible consistency matter in North Carolina has been the state's finding that drilling Outer Continental Shelf oil and gas exploration wells without more detailed environmental studies is inconsistent with the coastal management program. Letter from Roger N. Schechter, Director, Division of Coastal Management, to Bruce C. Weetman, Regional Director, Mineral Management Service, U.S. Dep't of the Interior (Nov. 19, 1990) (on file with authors).

177. In many respects the federal Coastal Zone Management Act is an effort to encourage such integrated coastal resource management programs in both an intergovernmental and an intragovernmental sense. See generally Ronald J. Rychlak, *Coastal Zone Management and the Search for Integration*, 40 DEPAUL L. REV. 981, 1001-07 (1991) (proposing increased intergovernmental integration of resource protection and planning programs).

tention to the issue in CAMA-mandated local land use plans, but it also led to broader changes in state and federal policies.¹⁷⁸

The coastal program's efforts to secure coordinated policies on coastal water quality issues have been less successful. Despite creation of intercommission task forces on coastal water quality,¹⁷⁹ efforts to build consensus among local governments and interest groups on a course of action to address those issues,¹⁸⁰ adoption by the CRC of a general policy statement on coastal water quality,¹⁸¹ and the intent of government leaders that the CRC take a leading role in coordinating the activities of state, federal, and local agencies in these efforts,¹⁸² the CRC eventually deferred to the

178. These include adoption of enhanced state building-code provisions that originally had been adopted by the CRC as AEC standards, e.g. NORTH CAROLINA STATE BUILDING CODE 303 to 304.8 (1993), a new state income tax credit for donation of hazardous property, Act of July 18, 1983, ch. 793, 1983 N.C. Sess. Laws 988 (current version at N.C. GEN. STAT. §§ 105-130.34 to -151.12 (1992)), and reform of the federal flood insurance program to encourage loss reductions through structural relocation, Upton-Jones Act, Pub. L. 100-242, § 544, 101 Stat. 1940 (codified as amended at 42 U.S.C. § 4013(c) (1988 & Supp. I 1989 & Supp. II 1990)); cf. Leland v. Fed. Ins. Adm'r, 934 F.2d 524, 529 (4th Cir. 1991) (stating that relocation was not reimbursable prior to the Upton-Jones Act); Burch v. Director, Fed. Ins. Admin., 797 F.Supp. 482, 485-86 (E.D.N.C. 1992) (holding that summary judgment on a disputed erosion rate was inappropriate, because a federal agency is not bound by a state determination of an erosion rate). The CRC requested the relocation reform. CRC Minutes, Mar. 18, 1983, at 9. As of February 7, 1994, 257 claims for demolition or relocation had been approved in North Carolina at a total cost of \$11.7 million. Telephone interview with Evan Brunston, Program Supervisor, N.C. Division of Coastal Management (May 5, 1994). This represents 53% of the claims approved nationally. *Id.* There are some indications that this program will not be reauthorized beyond 1995. See H.R. 3191, 103rd Cong., 2nd Sess. § 402 (1994); see also generally NATIONAL RESEARCH COUNCIL, MANAGING COASTAL EROSION (1990) (proposing further reform of federal flood insurance program to address erosion hazards). For recommendations of additional policy changes see COASTAL RESOURCE COMM'N, OUTER BANKS EROSION TASK FORCE REPORT 25 (1984) (recommending bonding, deed restrictions, and strict liability for erosion control devices), and NORTH CAROLINA MARINE SCIENCE COUNCIL, COASTAL STUDY 71-72 (1981) (recommending hazard disclosure to oceanfront property purchasers).

Another successful example was the development of a policy on military airspace use in the coastal area. See N.C. ADMIN. CODE tit. 15A, r. 7M.0901-.0902 (February 1992) (preserving unrestricted air-access corridors for general aviation and natural resource enforcement aircraft); N.C. ADMIN. CODE tit. 15A, r. 7H.0603-.0604 (December 1991) (establishing minimum altitudes and noise limitations). Though adopted by the state in 1989, CRC Minutes, Dec. 1, 1989, at 12, in early 1994 these policies still had not been approved officially by the federal Office of Ocean and Coastal Resources Management for incorporation into the state's coastal management program, so federal consistency does not yet apply to these policies.

179. CRC Minutes, July 28, 1983, at 11; CRC Minutes, May 2, 1985, at 3-4; CRC Minutes, February 6, 1986, at 6.

180. DIVISION OF COASTAL MANAGEMENT, COASTAL RESOURCES ADVISORY COUNCIL COASTAL ROUNDTABLE SERIES REPORT (January 1985).

181. CRC Minutes, Sept. 6, 1985, at 8-9 (codified at N.C. ADMIN. CODE tit. 15A, r. 7M.0801-.0802 (Dec. 1989) (calling for protection of traditional uses of coastal waters, reduction of discharges, increased basin-wide management, and elimination of harmful runoff).

182. The CRC prepared a guide on the subject for local governments. See DIVISION OF COASTAL MANAGEMENT, PROTECTING COASTAL WATERS THROUGH LOCAL PLANNING (1986).

EMC on coastal water quality issues.¹⁸³ State attention to the issue has continued under EMC leadership. The EMC reclassified key waters to a more protected category soon after it took control, and the CRC adopted a new AEC category for lands adjacent to these outstanding resource waters.¹⁸⁴ Amendments in 1990 to the federal Coastal Zone Management Act¹⁸⁵ encouraged the joint production of a coastal nonpoint source control program by the states' coastal management and water quality agencies, and has generated on-going coordination of action in this area.

4. Regulatory Implementation: Permits and Enforcement

While the development standards and appeals process are constant, there are three distinctly different procedures for obtaining a CAMA permit. Large projects and those that require any other state or federal permit are termed "major development" permits and are processed by state staff in the Division of Coastal Management (DCM).¹⁸⁶ All other development is termed "minor development."¹⁸⁷ Permit processing for minor development is handled by local government permit officers.¹⁸⁸ The third category is "general permits," which are individually adopted as rules by the CRC.¹⁸⁹ Development in one of these categories can be approved after an on-site inspection by a state permit officer and does not require public notice or circulation to other agencies for review and comment.¹⁹⁰ Ten general permits have been adopted.¹⁹¹

183. CRC Minutes, Jan. 23, 1987, at 12..

184. See generally Mary Joan Manley Pugh, *Planners as Leaders*, 16 CAROLINA PLANNING 48 (1990) (describing the latter stages of this activity); LEGISLATIVE RESEARCH COMM., COASTAL WATER QUALITY REPORT TO THE 1987 GENERAL ASSEMBLY 13-14 (1986) (summarizing proposals of 1985-86).

185. Pub. L. No. 101-508, Title VI, § 6217, 104 Stat. 1388-314 (codified at 16 U.S.C. § 1455b (1988 & Supp. IV 1992)). For a summary of the North Carolina response, see CRC Minutes, Jan 27, 1994, at 10-12.

186. N.C. GEN. STAT. § 113A-118(d) (1989).

187. *Id.*

188. *Id.*

189. Authority to issue general permits was added to CAMA in 1983. Act of Apr. 13, 1983, ch. 171, 1983 N.C. Sess. Laws ch. 121 (current version at N.C. GEN. STAT. § 113A-118.1(a)-(b) (1989)); Act of June 6, 1983, ch. 442, 1983 N. C. Sess. Laws 371 (current version at N.C. GEN. STAT. §§ 113A-118.1(c)-(d) (1989), 113-229(c1) (Supp. 1993)). CAMA also allows issuance of "emergency permits," N.C. GEN. STAT. § 113A-118(f) (1989), but since 1984 these have been processed under the general permit authorization, Telephone Interview with Stephanie Briggs, Major Permits Specialist, N.C. Division of Coastal Management (Jan. 13, 1994).

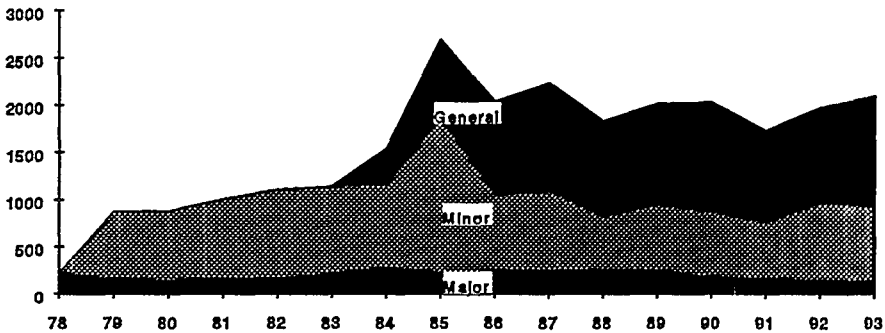
190. N.C. GEN. STAT. § 113A-118.1 (b) (1989).

191. N.C. ADMIN. CODE tit. 15A, r. 7H.1100-.0200 (January 1994). Permits for short estuarine bulkheads and riprap account for about half of all general permits. DAVID J. BROWER & LAURIE G. BALLENGER, CENTER FOR URBAN AND REGIONAL STUDIES, PERMIT COMPLIANCE ASSESSMENT STUDY 20 (1991).

While overall permit volume has increased since 1978, the use of general permits and exemptions has limited the volume of major development permits processed under CAMA. Major development permit decisions, which receive the most intensive and lengthy reviews, have actually declined since 1988 even though overall permit volume has increased.¹⁹²

Enforcement of CAMA permit requirements involves an on-site visit during or immediately following construction of permitted projects, quarterly aerial surveillance of the entire coastal area, and response to citizen complaints.¹⁹³ If a violation is discovered, restoration is required for any portion of the work that would not have been permitted.¹⁹⁴ Following com-

192. Telephone Interview with Stephanie Briggs, Major Permit Specialist, N.C. Division of Coastal Management (January 13, 1994); Telephone interview with Shelia Johnson, Grants Administrator, N.C. Division of Coastal Management (March 11, 1994). The following chart tracks CAMA permit volume from 1978-1993:



There were a total of 25,194 permit decisions during this period, including 2,968 major permits (11.8%), 12,498 minor permits (49.6%), and 9,728 general permits (38.6%). Compare *id.* with NORTH CAROLINA DIV. OF COASTAL MANAGEMENT, ANNUAL REPORT, 1986 (n.d.) (providing pre-1986 minor permit data). The major permit category includes 21 emergency permits issued prior to 1984. Telephone Interview with Stephanie Briggs, Major Permits Specialist, N.C. Division of Coastal Management (January 13, 1994). The minor permit data is based on fiscal rather than calendar years. NORTH CAROLINA DIV. OF COASTAL MANAGEMENT, ANNUAL REPORT, 1986; Telephone interview with Shelia Johnson, Grants Administrator, N.C. Division of Coastal Management (March 11, 1994). 1978 minor permit data is not available. The unusually high number of minor development permits in 1985 came when the CRC held public hearings on a proposed rule to establish an estuarine shoreline setback and impervious surface limit to address urban runoff issues. Large landowners in several communities secured minor development permits for many platted but undeveloped lots as a hedge against a rule that might render small canal front lots unbuildable. The rule was not adopted and most of the permits expired without development on the lots.

193. Preston P. Pate, Summary of Enforcement Activities for 1991 & 1992 (Document No. I&S-317, CRC, May 4, 1993). In 1991 and 1992, 269 major development violations and 68 minor development violations were processed. *Id.* Three hundred thirty-seven civil penalties were collected, the majority of which (261) were in the \$100 to \$499 range. *Id.*

194. *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 92, 423 S.E.2d 759, 764-65 (1992). The CAMA rules require full restoration of a site; a trial judge may not allow only partial restoration. *Id.*

pletion of any required restoration, a civil penalty is assessed based on a detailed penalty schedule adopted by the CRC.¹⁹⁵

5. Contested Cases

The CRC serves as a quasi-judicial body to decide contested-case appeals relating to the CAMA regulatory program. Four types of contested cases may be presented to the CRC for decision: permit appeals, enforcement appeals, variance petitions, and petitions for declaratory rulings.¹⁹⁶ Appeals of permit decisions involve a formal evidentiary hearing before a hearing officer, presentation of the hearing record and recommended decision to the full CRC, oral arguments before the full CRC, and a final decision by majority vote of the full CRC.¹⁹⁷ Petitioners seeking variances or appealing enforcement decisions can request an expedited decision based on stipulated facts or can go through the hearing process if there are disputed facts.¹⁹⁸ Declaratory rulings are made only on stipulated facts, without an evidentiary hearing.¹⁹⁹ The frequency of evidentiary hearings has remained relatively constant over this period at about five per year.²⁰⁰ The total number of contested-case decisions presented to the CRC has declined,

195. N.C. ADMIN. CODE tit. 15A, r. 7J.0409 (December 1991). A penalty of \$24,000 was upheld in *In re North Topsail Water and Sewer, Inc.*, 96 N.C. App. 468, 473-74, 386 S.E.2d 92, 95 (1989); cf. *Gaskill v. State ex rel. Cobey*, 109 N.C. App. 656, 660, 428 S.E.2d 474, 476 (1993) (holding that the petitioner was not entitled to a contested case challenging a civil penalty assessment where petitioner's appeal to the Office of Administrative Hearings was unverified and was not filed in a timely manner).

196. N.C. GEN. STAT. §§ 113A-120.1 to -121.1 (1989), 150B-4 (1991). The CRC made 236 contested-case rulings in the 1974-93 period: 59 permit appeals, 135 variance petitions, 17 declaratory rulings, and 25 enforcement appeals. OWENS, *supra* note 108, at 18. There were 232 separate cases; four of the permit appeals also included a variance petition. *Id.* This is a relatively modest number of rulings considering that there have been over 25,000 permit decisions. See *supra* note 191 (describing permit volumes).

197. N.C. ADMIN. CODE tit. 15A, r. 7J.0300-.0312 (March 1992), .0408-.0410 (December 1991)).

198. N.C. ADMIN. CODE tit. 15A, r. 7J.0701-.0703 (November 1991). Of the 135 variance decisions, 128 were conducted based on stipulated facts. See CRC Minutes, Nov. 30, 1978-Nov. 19, 1993. Of the seven variances that were based on a hearing rather than stipulated facts, four also involved a concurrent permit appeal for which a hearing is required. *Id.* Only two percent (three of 123) of the cases that were solely variance petitions required an evidentiary hearing. *Id.*

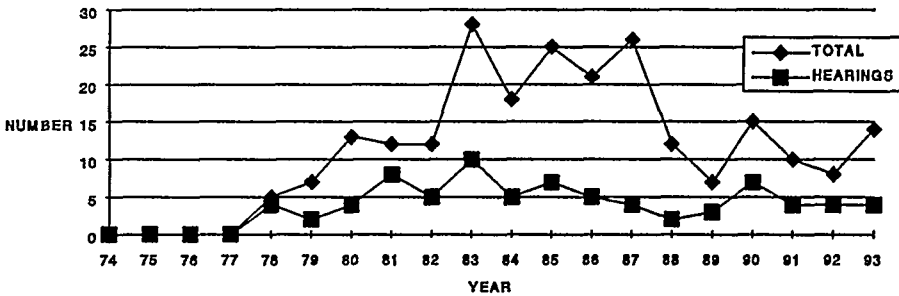
199. N.C. ADMIN. CODE tit. 15A, r. 7J.0603 (December 1992). The declaratory ruling is a formal, binding decision on the interpretation of a rule or its application. N.C. GEN. STAT. § 150B-4 (1991). The CRC has made 17 such rulings, but only two in the last five years of this period. OWENS, *supra* note 108, at 52-53.

200. OWENS, *supra* note 108, at 21-22. The number of CRC contested case decisions, over time, is illustrated by the following chart:

however, largely because of a decline in the number of variance petitions.²⁰¹ Only ten contested cases proceeded to judicial review.²⁰²

CAMA permit appeals can be brought by the applicant or by a directly affected third party.²⁰³ The majority of appeals have been brought by applicants contesting a permit denial or a permit condition they considered inappropriate.²⁰⁴ CAMA was amended in 1981 to add a review provision to screen out frivolous appeals.²⁰⁵ The amendment provides that third-party appeals will be allowed only when the petitioner alleges that a decision is contrary to a statute or rule, the petitioner is directly affected by the decision, and the petitioner "has a substantial likelihood of prevailing."²⁰⁶

CAMA Quasi-Judicial Decisions



Id.

201. OWENS, *supra* note 108, at 18.

202. *Id.*

203. N.C. GEN. STAT. § 113A-121.1 (1989). Other major state environmental provisions, including water- and air-quality permits, do not have a comparable provision for third-party appeals for administrative hearings. Citizens for Clean Indus., Inc. v. Lofton, 109 N.C. App. 229, 234, 427 S.E.2d 120, 122-23 (1993). Affected parties in such matters must appeal directly to superior court following a final staff decision. Empire Power Co. v. N.C. Dep't of Env't, Health, and Natural Resources, 112 N.C. App. 566, 570, 436 S.E.2d 594, 597 (1993) (construing N.C. GEN. STAT. § 150B-43 (1991)), *rev. granted*, 335 N.C. 769, 442 S.E.2d 514 (1994).

204. Sixty-four percent of CAMA permit appeals were made by applicants; 36% were made by third parties. OWENS, *supra* note 108, at 22.

205. Act of July 10, 1981, ch. 913, 1981 N.C. Sess. Laws 376 (current version at N.C. GEN. STAT. § 113A-121.1 (1989)).

206. *Id.* Of the 55 third-party appeal requests made from 1990 through 1993, only three were granted. Telephone Interview with Roger N. Schecter, Director, Division of Coastal Management (Jan. 6, 1994). The refusal to grant a contested case hearing before the CRC has been one of the most frequently litigated aspects of CAMA. *E.g.*, Pamlico-Tar River Found. v. Coastal Resources Comm'n, 103 N.C. App. 24, 25, 31, 404 S.E.2d 167, 168, 172 (1990).

When third-party appeals are heard, the third party is less likely to be successful than an applicant who appeals. Of the 21 third-party appeals decided by the CRC in the 1974-93 period, the original permit decision was fully affirmed 71% of the time, as opposed to full affirmation 59% of the time when the applicant appealed. OWENS, *supra* note 108, at 23. In three of the four third-party appeal cases where the original staff decision was reversed, the appeal had been brought by an affected local government rather than a disaffected neighbor. *Id.* at 27-29.

The percentage of cases reversed is not significantly different (19% of third-party appeals, 23% of applicant appeals). *Id.* at 23. There is, however, a significant difference in the number of

Most permit appeals have involved major permit decisions.²⁰⁷ Sixty-three percent have involved permits issued in the estuarine system AECs, twenty-seven percent have addressed ocean hazard and inlet AECs, three percent have dealt with other AECs, and seven percent have involved procedural matters applicable to all AECs.²⁰⁸ The individual topics of regulation that have prompted more than five appeals are marinas (twelve), ocean and dune setbacks (ten), dredging (nine), and wetland fill (five).²⁰⁹ In a majority of the permit appeals (sixty-three percent), the CRC has upheld the original staff decision.²¹⁰ The original staff decision has been modified in fifteen percent of the cases and reversed in twenty-two percent.²¹¹

The most frequent subject of contested cases has been variance petitions.²¹² CAMA authorizes the CRC to issue variances when it finds that: (1) practical difficulties or unnecessary hardships would result from strict application of the regulations; (2) the hardship is peculiar to the property involved; (3) such conditions could not have been reasonably anticipated when the regulation was adopted; and (4) the variance is consistent with the spirit, purpose, and intent of the regulation, would secure the public health, safety, and welfare, and would preserve substantial justice.²¹³ Unlike permit appeals, most variance petitions involve application of the ocean hazard AEC regulations.²¹⁴ Overall, the CRC has granted fifty-nine percent of the variance requests.²¹⁵ There has been, however, considerable variation in the approval rate depending on the subject involved. While the CRC granted only thirteen percent (three of twenty-three) of the variance requests

partial victories for the appellant. The CRC upheld but modified 18% of the original staff decisions appealed by applicants, but only 9% of those appealed by third-parties. *Id.*

207. OWENS, *supra* note 108, at 23 (68%).

208. *Id.* at 24.

209. *Id.* at 25.

210. *Id.* at 23.

211. *Id.*

212. The CRC decided 135 variances in the 1974-93 period. *Id.* at 36.

213. N.C. GEN. STAT. § 113A-120.1 (1989).

214. OWENS, *supra* note 108, at 36-38 (64%). The oceanfront setback regulation alone accounted for 54 variance requests. *Id.* Other individual topics of regulation accounting for more than five variance requests were, in order of frequency, ocean erosion control (20), piers and dock construction (15), estuarine erosion control (nine), estuarine shoreline impervious surface coverage (six), and basin and canal excavation (six). *Id.*

215. *Id.* at 36. The staff recommended granting variances in 42% of the cases. *Id.* The staff recommendation was adopted in 80% of the variance cases. *Id.* Of the 27 instances of nonconurrence, the CRC granted a variance 25 times when the staff recommended denial and denied two variances where the staff recommended issuance. This pattern of strong citizen board concurrence when the staff recommends approval but less agreement when the staff recommends denial is not uncommon. For a review of similar experiences with the California Coastal Commission, see Judy B. Rosener, *Making Bureaucrats Responsive: A Study of the Impact of Citizen Participation and Staff Recommendations on Regulatory Decision Making*, 42 PUB. ADMIN. REV. 339, 341-42 (1982).

for cottages to be located inconsistently with the setback regulation, eighty percent (twelve of fifteen) of the variances for piers and docks were granted.²¹⁶

B. *Planning for the Future of the Coast*

Prior to the adoption of CAMA, the vast majority of local governments in North Carolina's predominately rural coastal area had no local land use plans or implementing ordinances.²¹⁷ In part based on a strong local political demand for an expanded role in CAMA and in part based on an evolving recognition that comprehensive planning was a necessary component of an effective resource management program, a local land use planning program was incorporated into CAMA prior to its adoption.²¹⁸

The planning program established by CAMA envisioned a joint state-local partnership.²¹⁹ This mandate for active intergovernmental coordination was an important CAMA innovation. The CRC was charged with preparing guidelines that would have to be followed in preparing, reviewing, and approving plans.²²⁰ Responsibility for actually preparing and adopting plans was assigned to the coastal local governments.²²¹

The CRC approved the initial land use planning guidelines in January 1976.²²² The guidelines set out the general framework of the plans, specified the data to be collected, mandated active public participation in plan

216. OWENS, *supra* note 108, at 36-38.

217. Bill Finger & Barry Jacobs, *Coastal Management: A Planning Beachhead in North Carolina*, 5 N.C. INSIGHT 2, 3 (May 1982)..

218. Milton S. Heath, Jr., *A Legislative History of the Coastal Area Management Act*, 53 N.C. L. REV. 345, 347-48 (1974). Commentators increasingly agree that a regulatory program alone will not effectively address long term coastal management concerns. See, e.g., Oliver A. Houck, *Ending the War: A Strategy to Save America's Coastal Zone*, 47 MD. L. REV. 358, 365-66 (1988) (proposing land use management and public investment policies in addition to a regulatory approach to coastal management).

219. See N.C. GEN. STAT. § 113A-101 (1989). The statutory requirements for planning guidelines and plan production are at N.C. GEN. STAT. § 113A-106 to -112 (1989 & Supp. 1993). An early evaluation noted the critical importance of this feature of the act: "Perhaps the most important reason that implementation has gone as well as it has is the uniquely cooperative nature of the program. . . . In a real sense, the coastal management program represents one of the first genuinely cooperative state-local programs in North Carolina." Arthur W. Cooper, *North Carolina: The Importance of the Local Role*, ENVTL. COMMENT, Nov. 1976, at 15, 16.

220. CAMA, ch. 1284, 1974 N.C. Sess. Laws 463, 470 (current version at N.C. GEN. STAT. § 113A-107 (1989)).

221. The plans are mandated for all 20 coastal counties; municipalities have the option of preparing their own individual plan or being covered by a county plan. N.C. GEN. STAT. § 113A-110(c) (1989). If a county refused to adopt a plan by the date specified, the CRC was authorized to adopt a plan for that county. N.C. GEN. STAT. § 113A-109 (1989).

222. The planning guidelines are N.C. ADMIN. CODE tit. 15A, r. 7B.0101-.0506 (December 1989 & November 1991).

preparation,²²³ and required production of an executive summary of the plan for widespread public distribution.²²⁴ Although the substance of the plans was left to the discretion of local elected officials,²²⁵ those plans had to be consistent with the CRC's permit standards.²²⁶

Within two years after the effective date of CAMA, nineteen of the twenty counties and nearly thirty municipalities adopted land use plans.²²⁷ Following a detailed review procedure that involved numerous state and federal agencies, the CRC approved all of the adopted plans by the end of

223. The CRC actively encouraged public participation in plan preparation; it even prepared a handbook to assist local governments in this effort. See N. C. COASTAL RESOURCES COMM'N, HANDBOOK FOR ELECTED OFFICIALS ON PUBLIC PARTICIPATION IN THE DEVELOPMENT OF LAND USE PLANS IN THE COASTAL AREA OF NORTH CAROLINA (1975). This topic is discussed in detail in David W. Owens, Comment, *Public Participation in Local Land-Use Planning: Concepts, Mechanisms, State Guidelines and the Coastal Area Management Act*, 53 N.C. L. REV. 975, 994-99 (1975). The leader of the effort by the CRC to expand public participation requirements was dissatisfied with the results of the initial participation efforts: "Looking back over the first decade under CAMA I feel a sense of frustration and disappointment that the effort to have local officials and local citizens prepare their own land use plans—with the assistance of professionals—was so often thwarted by planners accustomed to doing the whole job themselves." David Stick, *Protection, Preservation, and Orderly Development*, in NORTH CAROLINA DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., STRIKING A BALANCE: REFLECTIONS ON TEN YEARS OF MANAGING THE NORTH CAROLINA COAST 8 (1985). For the perspective of a later member of the CRC, see Karen E. Gottovi, *Laying the Groundwork*, in NORTH CAROLINA DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., STRIKING A BALANCE: REFLECTIONS ON TEN YEARS OF MANAGING THE NORTH CAROLINA COAST 11-13 (1985). The active public participation mandate is now codified at N.C. ADMIN. CODE tit. 15A, r. 7B.0207 (Nov. 1991).

224. N.C. ADMIN. CODE tit. 15A, r. 7B.0101-.0506 (Dec. 1989-Nov. 1991).

225. *Id.* r. 7B.0201 (Nov. 1991). This contrasts with the requirement in Oregon that local plans be consistent with 19 substantive goals adopted by the state. OR. REV. STAT. § 197.175 (1991). Florida and Rhode Island also require some degree of consistency between state and local plans. See FLA. STAT. ch. 187, §§ 163.3161-.2115 (West Supp. 1993); R.I. GEN. LAWS § 45-22.2 (Supp. 1993); see also JOHN M. DEGROVE, LAND, GROWTH & POLITICS 99-176, 235-90 (1984) (describing the Florida and Oregon programs); Dennis E. Gale, *Eight State-Sponsored Growth Management Programs: A Comparative Analysis*, 58 J. AM. PLANNING ASS'N 425, 429-31 (1992) (comparing state mandates for comprehensive planning); Thomas G. Pelham, *Adequate Public Facilities Requirements: Reflections on Florida's Concurrency System for Managing Growth*, 19 FLA. ST. U. L. REV. 973, 1000-05 (1992) (reviewing state-local plan relationship in Florida).

226. N.C. ADMIN. CODE tit. 15A, r. 7B.0101 (Dec. 1989). Substantial technical assistance, as well as grant funds, was extended to local governments to assist in plan preparation. CRC Minutes, February 18-19, 1976, at 4. In its first 18 months of existence, some 63% of the \$1.66 million spent on CAMA implementation went to local governments for plan preparation. *Id.* Grants for land use plan updates are the highest priority for planning grants. N.C. ADMIN. CODE tit. 15A, r. 7L.0202-.0203 (Sept. 1991). Other states place a similarly high priority on funding local participation. California mandates that no less than 50% of its federal grant funds for coastal management be used for local coastal programs. CAL. PUB. RESOURCES CODE § 30340.5 (West 1986); accord Gilbert L. Finnell, Jr., *Intergovernmental Relations in Coastal Land Management*, 25 NAT. RESOURCES J. 31, 42-45 (1985); Michael L. Fischer, *California's Coastal Program: Larger-than-Local Interests Built into Local Plans*, 51 J. AM. PLANNING ASS'N 312, 316-18 (1985) (describing the California program).

227. OWENS, *supra* note 108, at 55-60.

1976.²²⁸ Only Carteret County refused to adopt a locally prepared plan; the CRC adopted a plan for that county in 1978.²²⁹ In subsequent years, additional municipalities adopted their own plans and secured CRC approval. By the end of 1993, the CRC had approved eighty-seven separate local land use plans.²³⁰

In 1979 the CRC undertook a comprehensive revision of its planning guidelines.²³¹ The resulting amendments retained the basic framework of the plans but placed increased emphasis on the policy decisions to be made by local governments. The revised guidelines list the substantive issues that must be addressed by each plan, and set out an analytical process that the local governments must follow.²³² For each of the specified issues,²³³ the local plan must define the issue for the particular community, discuss possible policy alternatives for addressing that issue, choose a specific policy, and describe the means for implementing that policy choice.²³⁴ Furthermore, all land use plans must undergo a comprehensive update every five years.²³⁵ Subsequent amendments to the guidelines have strengthened pro-

228. Eighteen county and 27 municipal plans were approved in June 1976. CRC Minutes, June 26, 1976, at 6-7. Several of the county plans had separate sections for municipalities that had been jointly adopted by the municipal governments. *Id.* The Onslow County plan was approved December 15, 1976, CRC Minutes, Dec. 15, 1976, at 5, and the final county plan—Carteret County—was approved February 24, 1978. CRC Minutes, Feb. 24, 1978, at 3.

229. CRC Minutes, Feb. 24, 1978, at 3. Several years later a major land use question arose in the county—the future use of Radio Island, a key area in the Morehead City port. CRC Minutes, Apr. 30, 1981, at 11. Since the county had not adopted its plan, the decision on whether to amend the land use plan to allow this or other intensive development of the island fell to the CRC. CRC Minutes, June 11, 1981, at 3-5. This fact convinced the county that it should adopt the plan and control future amendments. CRC Minutes, Apr. 1, 1982, at 11. An updated plan was adopted by the county and approved by the CRC. CRC Minutes, July 2, 1982, at 6.

230. Of the 67 municipalities with their own approved land use plans, only eight have populations over 5,000. OWENS, *supra* note 108, at 56-60. However, of the 59 with populations under 5,000, 20 are barrier island communities with significant additional seasonal populations. See NEIL A. ARMIGEON, N.C. DEP'T OF NATURAL RESOURCES & COMM. DEV., AN ANALYSIS OF COASTAL GROWTH AND DEVELOPMENT IN NORTH CAROLINA 28-29 (1989).

231. N.C. GEN. STAT. § 113A-107(f) (1989) requires the CRC to review the state guidelines every five years. The rules establishing the land use planning guidelines, as well as the rules on AEC designation, permit standards, and general policy statements, have been adopted by the CRC as "state guidelines" pursuant to this statute. CRC Minutes, Feb. 27, 1975, at 6; CRC Minutes, June 22, 1977, at 13; CRC Minutes, Feb. 15, 1979, at 2.

232. N.C. ADMIN. CODE tit. 15A, r. 7B.0101-.0210 (Dec. 1989 & Nov. 1991).

233. The issues include waterfront redevelopment, local services to support development, and wetland protection. N.C. ADMIN. CODE tit. 15A, r. 7B.0203(a) (Nov. 1991).

234. N.C. ADMIN. CODE tit. 15A, r. 7B.0203(b) (Nov. 1991).

235. N.C. ADMIN. CODE tit. 15A, r. 7B.0501 (Dec. 1989). At the local government's discretion, the plans may be updated more frequently, because individual land use plan amendments can be initiated by the local government at any time. *Id.*

visions for planning with regard to storm hazard areas,²³⁶ beach access,²³⁷ coastal water quality,²³⁸ and off-shore oil and gas development.²³⁹

The land use plans are mandatory standards for CAMA regulatory decisions.²⁴⁰ They are also used as a required standard for state and federal consistency reviews.²⁴¹ There is no mandatory land use planning in North Carolina outside of the CAMA area, however, and the courts have not required rigorous consistency of local land use regulatory decisions with those plans that do exist.²⁴² Consequently, this active and mandatory use of the plans sometimes surprises both local governments and applicants.²⁴³ As a result, local officials must consider the plan and its contents more seri-

236. CRC Minutes, May 18, 1984, at 7 (codified at N.C. ADMIN. CODE tit. 15A, r. 7B.0203(a)(6) (Nov. 1991)). The coastal program commissioned a study on this issue that formed the basis for these amendments in the planning guidelines. CENTER FOR URBAN AND REGIONAL STUDIES, UNIV. OF N.C., *BEFORE THE STORM: MANAGING DEVELOPMENT TO REDUCE HURRICANE DAMAGES* (1982).

237. CRC Minutes, Jan. 18, 1985, at 10 (codified at N.C. ADMIN. CODE tit. 15A, r. 7B.0203(a)(3) (Nov. 1991)). The coastal program published a guidebook to assist local governments with the beach access planning requirements. DIV. OF COASTAL MANAGEMENT, N.C. DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., *A BEACH ACCESS HANDBOOK FOR LOCAL GOVERNMENTS* (1985).

238. CRC Minutes, May 18, 1984, at 7 (codified at N.C. ADMIN. CODE tit. 15A, r. 7B.0203(a)(1) (Nov. 1991)); CRC Minutes, Sept. 6, 1985, at 9 (codified at N.C. ADMIN. CODE tit. 15A, r. 7M.0802 (Dec. 1989)). The coastal program prepared a guidebook to assist local governments with this aspect of the planning requirements. DIV. OF COASTAL MANAGEMENT, N.C. DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., *A GUIDE TO PROTECTING COASTAL WATERS THROUGH LOCAL PLANNING* (1986).

239. CRC Minutes, July 28, 1989, at 17 (codified at N.C. ADMIN. CODE tit. 15A, r. 7B.0203(a)(3)(B)(vii) (Nov. 1991)).

240. N.C. GEN. STAT. § 113A-120(a)(8) (1989).

241. WUENSHER, *supra* note 169, at 21-23. The impact of the plan on state agency decisions outside of AECs is limited. CAMA itself does not mandate consistency with plans other than CAMA permit decisions. Exec. Order No. 15, Oct. 27, 1977 (reprinted in 1977 N.C. Sess. Laws 247-49 (2d Sess. 1978)), does direct state agency consistency, but that does not expand or alter explicit statutory authority for other agencies.

242. *See, e.g.,* A-S-P Assoc. v. City of Raleigh, 298 N.C. 207, 229-30, 258 S.E.2d 444, 458 (1979) (holding that a separate comprehensive plan is not required as long as ordinances and studies are adequate and rational); Allred v. City of Raleigh, 277 N.C. 530, 544, 178 S.E.2d 432, 439-40 (1971) (ruling that (1) zoning must apply to the entire jurisdiction, and (2) all allowed uses must be considered in rezonings); Piney Mountain Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 250-51, 304 S.E.2d 251, 255 (1983) (stating that a comprehensive plan has only an advisory effect); *see also* DAVID W. OWENS, *LEGISLATIVE ZONING DECISIONS: LEGAL ASPECTS* 57-62 (1993) (discussing the relationship between zoning and comprehensive plans); Kenneth G. Silliman, *A Practical Interpretation of North Carolina's Comprehensive Plan Requirement*, 7 CAMPBELL L. REV. 1, 20-27 (1984) (proposing a greater tie between plans and zoning).

243. *See, e.g.,* CRC Minutes, February 26-27, 1980, at 1-3 (discussing interpretation of Dare County's land use plan). N.C. GEN. STAT. § 113A-111 (1989) mandates that local ordinances be consistent with the land use plans only within the AECs designated by the CRC. The CRC may only recommend changes for inconsistencies outside the AECs. *Id.*

ously.²⁴⁴ Still, the CRC and the CRAC have retained a continuing role in the land use planning process. The CRC's guidelines for land use plans are periodically updated, but there have been no substantial policy or framework changes since 1985.²⁴⁵ CRC approval of plan updates and amendments tends to be rather routine.²⁴⁶

The experience with land use planning under CAMA has been largely positive.²⁴⁷ Since CAMA was North Carolina's first mandate for comprehensive local planning, there was a substantial possibility of intense state-local conflict on this issue. Two primary factors helped to prevent conflict. First, the state guidelines focused on the framework of the plans and the process of their preparation, leaving most substantive policy decisions to local elected officials.²⁴⁸ Second, state and federal funds were made available to cover most of the local costs in plan production.²⁴⁹ As a result, the plans were produced and adopted in a timely fashion, with a minimum of

244. See, e.g., Gottovi, *supra* note 223 (discussing importance of local land use plans).

245. The guidelines, N.C. ADMIN. CODE tit. 15A, r. 7B.0101-.0500 (Dec. 1989 & Nov. 1991), originally were adopted Feb. 27, 1975. CRC Minutes, Feb. 27, 1975, at 6. They have been updated repeatedly to emphasize clarity and plan implementation. CRC Minutes, July 18, 1979, at 13-14; CRC Minutes, May 17-18, 1984, at 11; CRC Minutes, July 27-28, 1989, at 17.

246. Through 1993, the CRC made 357 decisions on land use plan adoptions, updates, and amendments. See CRC Minutes, July 18, 1974-Nov. 19, 1993. Only two of these resulted in denial of approval, and only four were not unanimous decisions. Both denials were 1987 amendments to plans—Atlantic Beach and Belhaven. CRC Minutes, Apr. 4, 1986, at 6; CRC Minutes, June 5, 1987, at 7. The denials were based on inconsistency with AEC guidelines. *Id.* Several other amendments were withdrawn by local governments during the review process, usually after discovery of procedural errors in the local adoption process, such as an inadequate public notice of the required hearing.

The four non-unanimous votes were approval of an Edenton amendment in 1986, CRC Minutes, May 29-30, 1986, at 8; a Pamlico County amendment in 1990, CRC Minutes, Jan. 24-25, 1990, at 6-7; a Topsail Beach amendment in 1992, CRC Minutes, Jan. 22, 1992, at 4-5; and the Hyde County update in 1992, CRC Minutes, May 28-29, 1992, at 36-37. Only the Hyde County and Topsail Beach decisions had more than a single dissenting vote. CRC Minutes, May 29-30, 1986, at 8; CRC Minutes, Jan. 24-25, 1990, at 6-7; CRC Minutes, Jan. 22, 1992, at 4-5; CRC Minutes, May 28-29, 1992, at 36-37.

247. One study compared the ways with which local land use plans in 140 communities in North Carolina, California, Florida, Texas, and Washington dealt with development in natural hazard areas. Raymond J. Burby et al., *Is State-Mandated Planning Effective?*, 45 LAND USE LAW & ZONING DIGEST, Oct. 1993, at 6. In assessing plan quality, the authors concluded, "Plan quality was highest on average, by a significant margin, among local governments in the North Carolina coastal region." *Id.*

248. N.C. ADMIN. CODE tit. 15A, r. 7B.0203(b)(3) (Nov. 1991).

249. N.C. ADMIN. CODE tit. 15A, r. 7L.0202(b)(1) (September 1991) provides for the highest funding priority for mandated land use plans. While grants have covered the actual cost of plan preparation, the total funds expended are relatively modest. For the 11 fiscal years from 1983-84 through 1993-94, a total of \$2.2 million in state and federal grants was channelled to local governments for 190 land use planning projects and 121 other related projects. Telephone Interview with Richard Shaw, Assistant Director, North Carolina Div. of Coastal Management (Mar. 10, 1994). The average individual grant in this period was \$7,105. *Id.*

state-local friction.²⁵⁰ Local institutional capacity for planning has been expanded. There are now eighty-seven adopted land use plans in the coastal area, complemented by planning boards, local planners, and public interest in planning issues.²⁵¹ The cooperative venture in planning has also established a state-local working partnership that has resulted in enhanced support for the overall coastal management program.²⁵²

Examination of the more productive local planning efforts suggests several factors that have contributed to their success. Detailed involvement of local elected officials has been critical. At the heart of the CAMA land use plans are the policy choices made on key issues. For these to be meaningful, the local elected officials not only must be aware of these choices; they must have active involvement in formulating plans and a commitment to implementation. Broad public participation in plan production has also been a key ingredient of the successful plans.²⁵³ The CRC's strong early emphasis on making these "people plans" rather than more technical "planner plans" proved to be a wise decision.²⁵⁴ Other key factors in success include a focus on important issues and regular evaluation and update of the plans.²⁵⁵

250. See *supra* notes 227-30 and accompanying text.

251. See, e.g., CRC Minutes, Sept. 23, 1993, at 4-8 (recording public comments on land use planning in Wilmington, New Hanover County, North Topsail Beach, and Long Beach).

252. A public hearing held in 1982 to assess CAMA implementation "indicated there is broad support for CAMA in general, and for the local land use plan program in particular." LEGISLATIVE RESEARCH COMMISSION, COASTAL AREA MANAGEMENT, REPORT TO THE 1983 GENERAL ASSEMBLY 3 (1983). The committee therefore recommended "that since land use planning as embodied in CAMA works well and has been beneficial to the coastal area, it should be considered for the rest of the State." *Id.* at 16.

253. DAVID STICK, REPORT TO THE COASTAL RESOURCES COMMISSION AND THE COASTAL RESOURCES ADVISORY COUNCIL, Sept. 28, 1977, at 4-5.

254. David Stick, the chair of the CRC during its early planning efforts, recalled:

We insisted, over the objection of experienced planners who said it couldn't be done, that there be massive involvement of the public in determining goals and objectives. . . . Thousands of citizens have been brought into the planning process, so that the decisions on what the people want their area to be like in the future have in most instances been made by the people, instead of by the small courthouse or city hall power structure.

Id.

255. Telephone Interview with Gary Ferguson, Planning Director, Town of Nags Head (Apr. 20, 1994). However, several difficulties remain unresolved. Plan quality is inconsistent. Some merely meet the minimum requirements and are quickly shelved by the local governments. Others contain only vague generalities and equivocal platitudes rather than clear policy choices. Plans for adjacent local governments are sometimes uncoordinated or incompatible. Finally, frequently omitted altogether are the long-term issues of cumulative and secondary impacts of development, the overall carrying capacity of an area for development, and the sustainability of growth.

C. Acquisition of Critical Areas

As the regulatory and planning programs of CAMA were implemented in the late 1970s, it became apparent that an effective comprehensive coastal management program must include a land acquisition program. Some privately owned areas were deemed too hazardous or sensitive to develop, even if subject to regulation.²⁵⁶ In other areas, public ownership was needed to allow active public access to coastal resources.²⁵⁷ To fill this gap, two land acquisition programs—the beach access and coastal reserve programs—were incorporated into CAMA in the early 1980s.²⁵⁸

The beach access program was created in 1981, when senators concerned about restrictions on use of private property²⁵⁹ joined with house members concerned about loss of access to ocean beaches by those not affluent enough to purchase oceanfront property.²⁶⁰ Ultimately the bills were merged and adopted, adding a beach access component to CAMA.²⁶¹ In 1983, the program was expanded to the state's estuarine beaches.²⁶²

256. See, e.g., NORTH CAROLINA COASTAL RESOURCES COMM'N, OUTER BANKS EROSION TASK FORCE REPORT 21 (1984) (recommending acquisition of hazardous oceanfront property); see also *Lucas v. South Carolina Coastal Comm'n*, 112 S. Ct. 2886 (1992) (striking down as an unconstitutional taking a regulation prohibiting all use of hazardous property).

257. See, e.g., *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994) (invalidating requirement that private property owner dedicate a greenway and a bike path); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (invalidating required dedication of beach access); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) (invalidating requirement that property owner dedicate part of property for public boating access to pond).

258. Beach Access Act of 1981, ch. 925, 1981 N.C. Sess. Laws 1422 (current version at N.C. GEN. STAT. §§ 113A-134.1 to .3 (1989)); Coastal Reserve Act of 1989, ch. 344, 1989 N.C. Sess. Laws 779 (codified at N.C. GEN. STAT. § 113A-129.1 to .3 (1989)). For a more detailed review of the origins of these programs, see David Owens, *Land Acquisition and Coastal Resource Management*, 24 WM. & MARY L. REV. 625, 640-66 (1983) (noting that a substantial amount of significant coastal land was in public ownership prior to CAMA).

259. See S: 232, 1981 N.C. Gen. Assembly, 1st Sess. (1981). The principal sponsor was Sen. Melvin Daniels of Elizabeth City. *Id.* The Division of Coastal Management had estimated that some 500 to 750 existing lots could not meet the setback regulations. CHARLES D. LINER, *THE IMPACT OF STATE REGULATION OF COASTAL LAND IN NORTH CAROLINA 73-75* (1980); CHARLES D. LINER, *AN ANALYSIS OF THE COASTAL AREA MANAGEMENT ACT EROSION-RATE SETBACK REGULATION 5-10* (1982).

260. See H. 1173, 1981 N.C. Gen. Assembly, 1st Sess. (1981).

261. See Beach Access Act of 1981.

262. Act of July 14, 1983, ch. 757, 1983 N. C. Sess. Laws 781, 786 (codified at N.C. GEN. STAT. §§ 113A-129.1 to .3 (1989)). The expansion of the program was recommended by a 1982 legislative study that had evaluated the CAMA program. See LEGISLATIVE RESEARCH COMM'N, *COASTAL AREA MANAGEMENT ACT, REPORT TO THE GENERAL ASSEMBLY OF NORTH CAROLINA 8-10* (1983).

In its first four years of operation, the beach access program was funded entirely through state appropriations and local government's matching contributions. NORTH CAROLINA DIV. OF COASTAL MANAGEMENT, N.C. DEP'T OF RESOURCES AND COMMUNITY DEV., *GETTING TO THE BEACH: A REPORT ON NORTH CAROLINA'S PUBLIC ACCESS PROGRAM 1981-88* (n.d.). In 1980 the federal Coastal Zone Management Act was amended by the addition of Section 306A, which allows federal grant funds to be used for land acquisition and low-cost access construction

The second acquisition component of CAMA is the coastal reserve program. This program acquires largely undisturbed natural areas and preserves them for future research, education, and non-disruptive public recreation and use.²⁶³ The federal Coastal Zone Management Act provides funding to acquire coastal natural areas for future research and education.²⁶⁴ In 1982 North Carolina initiated a project to establish a four-site Estuarine Research Reserve including Zeke's Island in New Hanover County, Carrot Island in Carteret County, a site on the Currituck Banks, and Masonboro Island in New Hanover County.²⁶⁵ All four sites were acquired within ten years.²⁶⁶

As this program was implemented, the state recognized that there were other significant coastal areas that also should be acquired and preserved, but that could not be incorporated into the national estuarine reserve pro-

projects. Coastal Zone Management Improvement Act of 1980, Pub. L. No. 96-464 § 6, 94 Stat. 2062 (codified at 16 U.S.C. § 1455a (1988 & Supp. IV 1992)). Beginning in 1985, grant funds were made available for this purpose. David W. Owens, *National Goals, State Flexibility, and Accountability in Coastal Zone Management*, 20 COASTAL MANAGEMENT 143, 150-52 (1992).

Coastal states are not required to spend any of their grant funds for acquisition or construction. *Id.* at 152-55. North Carolina has opted to make more use of the acquisition and construction authorization than most other coastal states. In 1985-88, only seven of the 29 participating states devoted more than 20% of their federal grant funds to Section 306A projects. *Id.* North Carolina devoted 45% of its funds to these projects (only Mississippi, at 47%, was higher). *Id.*

Another indicator of the relative importance North Carolina has attached to its beach access program is its overall allocation of federal grant funds to all eligible topics. Between 1982 and 1987, the state allocated to public access projects 28% of the total federal coastal management funds available to the state. CENTER FOR URBAN AND REGIONAL STUDIES, UNIV. OF N.C., EVALUATION OF THE NATIONAL COASTAL ZONE MANAGEMENT PROGRAM 77 (1991). The median allocation to public access was seven percent for the 29 states and territories participating in the federal program. *Id.* By 1993, over \$2 million in state funds and \$1 million in federal funds, combined with over \$2 million in local matching contributions, had been applied to the access program, establishing more than 200 waterfront access projects. NORTH CAROLINA DIV. OF COASTAL MANAGEMENT, NORTH CAROLINA DEP'T OF ENV'T, HEALTH, AND NATURAL RESOURCES, COASTAL COMMENTS: NORTH CAROLINA'S WATERFRONT ACCESS PROGRAM: 10 YEARS IN REVIEW (1993). Also see DIV. OF COASTAL MANAGEMENT, N.C. DEP'T OF NATURAL RESOURCES AND COMMUNITY DEV., GETTING TO THE BEACH: A REPORT ON THE NORTH CAROLINA PUBLIC BEACH ACCESS PROGRAM 1981-88 14-15 (n.d.). Most of the state funding was provided in the early years of the program, primarily through a \$1 million appropriation in 1981. *Id.* No state funds have been appropriated for the access program since 1989-90.

263. N.C. GEN. STAT. § 113A-129.2 (1989).

264. 16 U.S.C. § 1461 (1988 & Supp. IV 1992). These areas were originally termed "estuarine sanctuaries." Act of Apr. 7, 1986, Pub. L. 99-272, Title IV, § 604, 100 Stat. 125. They are now referred to as components of the "National Estuarine Research Reserve." 16 U.S.C. § 1461. The management plan for these areas is set forth in UNITED STATES DEP'T OF COMMERCE, FINAL MANAGEMENT PLAN: NORTH CAROLINA NATIONAL ESTUARINE RESEARCH RESERVE (December 1990).

265. UNITED STATES DEP'T OF COMMERCE, FINAL MANAGEMENT PLAN: NORTH CAROLINA NATIONAL ESTUARINE RESEARCH RESERVE 9-11 (Dec. 1990).

266. Telephone Interview with Richard Shaw, Assistant Director, North Carolina Division of Coastal Management (Jan. 1, 1994). The cost of acquisition of these four sites, through 1993, was \$4.27 million, 75% of which were federal grants. *Id.*

gram. It therefore established a parallel state program, which it initiated in 1987 by acquiring Permuda Island in Stump Sound.²⁶⁷ The purpose of the acquisition was to prevent development of the island.²⁶⁸ Similarly, Buxton Woods at Cape Hatteras, the largest intact maritime forest in the state, faced proposals for intensive development in the mid-1980s.²⁶⁹ In 1988, the state began an acquisition project to preserve the heart of the woods.²⁷⁰ The third site in the state coastal reserve system is a maritime forest complex on Baldhead Island in Brunswick County.²⁷¹

In 1989, the legislature amended CAMA to establish formally the state coastal reserve program.²⁷² The standards for use of both the national and state reserve sites stress the preservation of the sites, and place the highest priority on research and education.²⁷³ Other uses may be allowed so long as the essential natural character of the site is maintained.²⁷⁴ Between 1983 and 1993, these combined preservation initiatives resulted in the expenditure of over \$14 million for land acquisition.²⁷⁵

The land acquisition programs established under CAMA have proved to be an important component of the overall management system. The beach access program not only has provided access to the beaches, but it has been a safety valve that allows particularly threatened lots to be ac-

267. DIV. OF COASTAL MANAGEMENT, N.C. DEP'T OF ENV'T., HEALTH, AND NATURAL RESOURCES, MANAGEMENT PLAN FOR THE PERMUDA ISLAND COMPONENT OF THE NORTH CAROLINA COASTAL RESERVE 4-5 (1993).

268. *Id.* The cost of acquiring this island was \$1.78 million. Telephone Interview with Richard Shaw, Assistant Director, North Carolina Division of Coastal Management (Mar. 30, 1994).

269. *See* CRC Minutes, Jan. 23, 1987, at 13-14.

270. Telephone Interview with Richard Shaw, Assistant Director, N.C. Division of Coastal Management (Mar. 30, 1994). Through 1993, 756 acres had been acquired at Buxton Woods at a cost of \$5.5 million. *Id.*

271. *Id.* Through 1993, 128 acres had been acquired at Baldhead Island at a cost of \$2.5 million. *Id.*

272. Coastal Reserve Act of 1989, ch. 344, 1989 N.C. Sess. Laws 779 (codified at N.C. GEN. STAT. § 113A-129.1 to .3 (1989)).

273. N.C. ADMIN. CODE tit. 15A, r. 70.0101-.0202 (July 1991 & Nov. 1991).

274. *Id.* r. 70.0101, .0201 (July 1991 & Nov. 1991). The compatibility of other uses was a key issue in the Cape Hatteras Water Association permit appeal. CRC Minutes, Nov. 19, 1992, at 20-28. The Association applied for and was granted a CAMA permit to expand a water-supply well field in the Cape Hatteras well-field AEC. However, after the well-field AEC was established, the site of the proposed expansion was acquired as part of the Buxton Woods coastal reserve. *Id.* at 23. A local environmental group, the Friends of Hatteras, challenged the permit issuance. *Id.* at 20. The CRC upheld the permit, ruling there was inadequate evidence to conclude the wells would harm the natural resources of the reserve. *Id.* On judicial review, the superior court reversed the CRC and revoked the permit, holding the use was incompatible. *Friends of Hatteras Island v. Coastal Resources Comm'n*, No. 93-CVS301 (Dare Cty. Super. 1993), *appeal docketed*, No. 941SC289 (N.C. App. Mar. 15, 1994). The case is currently on appeal before the court of appeals. *Id.* This case illustrates that even consolidating a regulatory and acquisition program into a single agency does not preclude subsequent controversy.

275. Telephone Interview with Richard Shaw, Director, N.C. Div. of Coastal Management (Jan. 1, 1994). Also, land valued at \$4 million was donated to the system. *Id.*

quired for public use, precluding the need for the state to rely entirely on regulatory means to prevent undesirable uses.²⁷⁶ The coastal reserve program has allowed natural areas to remain undisturbed when that could not have been accomplished through the use of planning or regulatory tools. A research and education program has been established within the reserve that will provide better scientific and public understanding of these natural systems.²⁷⁷

D. Conclusions

Important factors in the success of CAMA²⁷⁸ include an active partnership between state and local governments, conducting citizen board business in open forums with full participation by affected parties, and balancing public interests in both development and preservation of the coastal area.²⁷⁹ Yet the CAMA program faces a new set of challenges as it enters its third decade. Key management issues must be addressed, including coastal water quality, cumulative and secondary impacts of develop-

276. In 1985 the Division of Coastal Management asked local governments to provide a list of the owners of lots that were likely to be unbuildable under the oceanfront setback regulation. Interview with Preston P. Pate, Assistant Director, N.C. Div. of Coastal Management (Apr. 14, 1994). It then sent a letter to all of the owners advising them that the beach-access statute provided priority for the acquisition of unbuildable lots, that they might own such a lot, and inviting them to contact the state if they wished to discuss sale. *Id.* The owners were also advised of the state income tax credits provided by N.C. GEN. STAT. §§ 105-130.34, -151.12 (1992) for the donation of land for access purposes. *Id.* Although the Division mailed over 500 such letters, it received less than a dozen responses. *Id.* Only a few lots were purchased as a result of this notice. *Id.*

277. See generally JOHN TAGGERT & KATHRYN HENDERSON, N.C. DEP'T OF RESOURCES & COMMUNITY DEV., A FIELD GUIDE TO EXPLORING THE NORTH CAROLINA NATIONAL ESTUARINE RESEARCH RESERVE (1988) (providing educational materials about coastal ecology). Land acquisition in coastal management is not without its drawbacks. To design and implement an effective strategy requires considerable expertise, including the ability to identify multiple funding sources, secure necessary political approvals, comply with complex public purchase procedural requirements, negotiate reasonable purchase agreements with land owners, and arrange for long-term site management. The CAMA experience has confirmed that significant acquisition projects are technically difficult, lengthy, time consuming, and expensive undertakings, but that they are also a realistic, achievable, and important addition to an effective resource management program.

278. See David R. Godschalk, *Implementing Coastal Zone Management: 1972-1990*, 20 COASTAL MGMT. 93, 106 (1992) (recognizing CAMA as one of the nation's best coastal management programs).

279. See generally N.C. DEP'T OF NATURAL RESOURCES & COMMUNITY DEV., STRIKING A BALANCE: REFLECTIONS ON TEN YEARS OF MANAGING THE NORTH CAROLINA COAST (1985) (providing an overview of factors important to the initial success of the program). Other factors have also been important. Governors Holshouser and Hunt made quality appointments to the CRC in its formative years, ensuring that program development was guided by well-respected, pragmatic, nonpartisan commissioners. A capable professional staff was assembled to provide scientific, technical, and legal support for the CRC's policy decisions. A strong public education and involvement program provided citizens with both important information and increased opportunities to participate in coastal decisionmaking.

ment,²⁸⁰ sustainable growth, and maintaining the character of coastal communities. These present even more complicated technical and institutional hurdles than have been considered in the past.²⁸¹

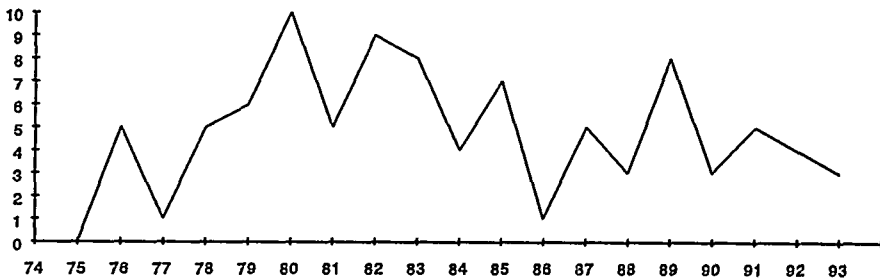
It is possible that the CRC and CRAC might simply settle into the routine of program implementation rather than address these difficult challenges.²⁸² The political leaders who fought for CAMA's adoption and early survival over time have departed from both the executive and legislative branches of government. The intellectual interests and political energies of their successors naturally focus on the successors' own new initiatives. Similarly, the interest of local governments, the media, and the public has shifted to new programs rather than the implementation of the existing CAMA program. Strong, well-organized advocacy groups have emerged, representing both environmental and development interests.²⁸³ This has pushed CAMA toward an adversarial, rather than a collaborative, approach

280. See generally NORTH CAROLINA DIV. OF COASTAL MANAGEMENT, *MANAGING CUMULATIVE IMPACTS IN THE NORTH CAROLINA COASTAL AREA* (1994); cf. Allison Rieser, *Managing the Cumulative Effects of Coastal Land Development: Can Maine Law Meet the Challenge?*, 39 MAINE L. REV. 321, 365-85 (1987) (reviewing efforts to address cumulative impacts in Florida and California).

281. The federal Coastal Zone Management Act was amended in 1990 to mandate production of a non-point source program to improve coastal water quality and make funds available for new work in areas of strong interest to North Carolina, including wetland conservation, management of cumulative and secondary impacts of development, special area management, and ocean resource planning. Pub. L. 101-508, Title VI, §§ 6210, 6217, 104 Stat. 1388-309, -314 (codified at 16 U.S.C. §§ 1455b, 1456b (1988 & Supp. IV 1992)). The state's proposed four year action plan to address the new opportunities is set out in DIV. OF COASTAL MANAGEMENT, *FINAL STRATEGY FOR ACHIEVING ENHANCEMENTS TO THE NORTH CAROLINA COASTAL MANAGEMENT PROGRAM* (1992).

282. The overall level of CRC quasi-legislative activity has declined since the late 1980s. OWENS, *supra* note 108, at 4. The following chart illustrates this decline:

CRC Quasi-Legislative Decisions: Substantial Rules



Id. The number of contested cases also has declined over time. *Id.* at 20-21; see also *supra* note 200.

283. These include the North Carolina Coastal Federation, the Southern Environmental Law Center, the Pamlico-Tar River Foundation, the North Carolina Economic Alliance, and the North Carolina Home Builders Association.

to conflict resolution.²⁸⁴ Finally, the pressure of processing permit applications, enforcing the regulatory program, and administering grants threatens to overwhelm the staff and divert efforts from analysis of emerging issues, program coordination, and public education and involvement.²⁸⁵

Securing the appropriate balance of present enjoyment of the coast and its resources while ensuring its future productivity and attractiveness is a challenge that becomes more difficult with continued and expanded human use of the coast. That balance is never permanently achieved, but is constantly adjusted in the continuing process of implementing CAMA. CAMA has withstood two decades of litigation,²⁸⁶ including fundamental constitutional challenges,²⁸⁷ and has received a generally supportive judicial response.²⁸⁸ It has survived ten sessions of legislative scrutiny, emerging with its basic concepts strengthened by a series of incremental changes.²⁸⁹ It has a record of administrative implementation²⁹⁰ that provides a framework for the fair and reasonable management of North Carolina's coastal resources. The challenges of CAMA's next twenty years will be substantial, but a solid foundation has been laid to meet them successfully.

284. The concern that CRC members were increasingly coming to view their role as representing a specific interest group rather than bringing a specialized expertise to the larger group led to enactment of a CAMA amendment to add the following provision:

Appointments to the Commission shall be made to provide knowledge and experience in a diverse range of coastal interests. The members of the Commission shall serve and act on the Commission solely for the best interests of the public and public trust, and shall bring their particular knowledge and experience to the Commission for that end alone.

Act of June 29, 1989, ch. 505, sec. 1, 1989 N.C. Sess. Laws 1265, 1266 (codified at N.C. GEN. STAT. § 113A-104(c) (1989)).

285. OWENS, *supra* note 123, at 328. To address the need for expedited permit processing and enforcement, the Secretary of the Department of Natural Resources and Community Development in 1987 proposed a reorganization of the Division of Coastal Management that would have largely converted the Division to an exclusively regulatory agency. See S. Thomas Rhodes 5-6 (Feb. 5, 1987) (on file with authors). The land use planning, beach access, and coastal reserve programs would have all been transferred to other divisions, and the staff for those programs, as well as much of the policy analysis staff, would have been converted to permit-processing responsibilities. *Id.* The decision to eliminate the planning staff and to transfer the coastal reserve program was rescinded before implementation, but the beach access staff and much of the policy analysis staff were shifted to regulatory implementation. Memorandum from Lynn R. Machmore to Division of Coastal Management Employees 2-3 (Mar. 6, 1987).

286. See *supra* notes 68-107 and accompanying text.

287. See *supra* notes 71-80 and accompanying text.

288. See *supra* note 69 and accompanying text.

289. See *supra* notes 8-67 and accompanying text.

290. See *supra* notes 108-277 and accompanying text.

