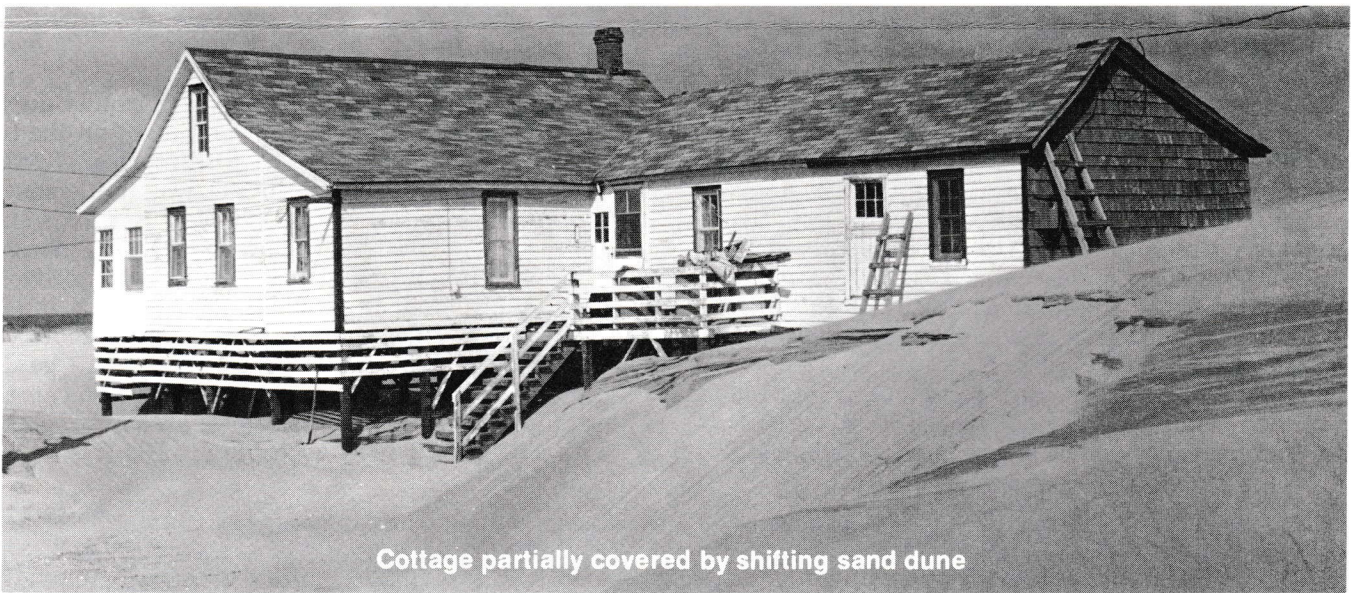




UNIVERSITY OF NORTH CAROLINA SEA GRANT COLLEGE NEWSLETTER

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Cottage partially covered by shifting sand dune

Planning for coastal development

In the spring of 1974, the North Carolina General Assembly passed a bill which was designed to protect natural resources and regulate development in the state's coastal area. It was called the Coastal Area Management Act (CAMA).

This controversial legislation made North Carolina one of the first states in the nation to pass comprehensive land use planning laws for its coastal area. The bill was in part a response to the Federal Coastal Zone Management Act passed by Congress in 1972. That act provided federal assistance to states to develop management programs for preserving coastal resources.

CAMA is based upon the assumption that the coast—with its estuaries, marshlands and ocean—is a fragile and ecologically important area. Because of its high recreational and economic value, there is growing competition for the use of the land and water. CAMA is an attempt to provide for orderly development of the coast, according to one

of the authors of the act, Thomas Schoenbaum of the UNC Law School.

"Much of what we have in the coastal area results from the fact that we have a relatively natural system," notes Gene Huntsman of the National Marine Fisheries Service. "We have good production of finfish and shellfish. In order to retain this we must make choices about what kind of development we will have. If we have unplanned development, we will lose the waters as a source of fish, recreation and occupations." Huntsman is also a member of the Coastal Resources Commission.

The act covers 20 coastal counties, all of which are bounded either by the Atlantic Ocean or a coastal sound. Basically, it requires each county to draw up comprehensive land use plans and provides for the designation of special areas of environmental concern (AECs).

The legislature established the 15-member Coastal Resources Commission (CRC) to ad-
(See "CAMA," p. 2)

CAMA gets underway in 20 coastal

(Continued from p. 1)

minister the act. The commission was required to be made up of at least one representative from each of the following interests: commercial fishing, wild-life or sports fishing, coastal agriculture, coastal forestry, coastal land development, conservation, local government, engineering, marine-related business and coastal development financing. Also required were two local government representatives and three at-large members. In addition the act set up a 47-member advisory council, which is made up largely of representatives from various state agencies and residents of the 20 coastal counties.

Primary among the CRC duties has been the task of selecting AECs and setting up standards for their use. The act states that permits for major development within the AECs must be obtained from the CRC. Major development is generally defined as that which occupies more than 20 acres or a structure of more than 60,000 square feet. Development which requires license or approval of some state agency is also under CRC jurisdiction. Permits for other development may be obtained from local governments in compliance with standards set up by the CRC.

The act provides virtually complete exemption from the permit requirement for utilities, agriculture and forestry, except where such development

involves the dredging or filling of estuarine or navigable waters, according to Mike Black, CRC staff member. Judicial review is provided by the superior court of the county where the concerned land is located.

In the three years since CAMA went into effect, much of the act has been implemented. Land use plans have been drawn up by local governments in all 20 counties and 32 municipalities. Most of them have been officially approved by the CRC. Under the act, the CRC has no authority to enforce the plans and implementation is left to county and local governments. This spring and summer, synopses of county plans are being distributed to citizens in each county.

Public hearings were held in each county during April and May to get public sentiment on the proposed AECs. This was the third series of public hearings on AECs since CAMA was implemented. Following a public hearing in New Bern last summer, the CRC designated interim AECs. Since that time developers have been required to notify the CRC of proposed development in the AECs, but the CRC does not yet have permit-letting authority. If all goes on schedule, the final AECs will be designated by the CRC in June. That will mean that regulations on permits in these areas will go into effect by March 1978, according to Black.



Marshland on Portsmouth Island

al counties

While CAMA has been hailed as model environmental legislation, opposition to the act remains vocal. A bill to repeal CAMA was introduced in the N.C. General Assembly this spring by Sen. Livingston Stallings of New Bern and Rep. Howard Chapin of Washington, N.C.

In some coastal counties opposition to CAMA has been loud. To date four law suits have been filed against the CRC. Three of the suits are being brought by citizens' groups in Hyde, Carteret and Onslow Counties. A fourth suit has been filed by the Carteret County Commissioners. None of the suits have yet come to trial, but preliminary hearings on the Onslow and Carteret citizens' suits are expected late this summer. Members of two groups, both called Citizens to Save Our Land, are behind the suits, according to Wendell Ott. Ott is an attorney with the Greensboro firm Turner, Enoch, Foster and Burnley, which is handling the cases.

The two organizations are loosely-knit and separate, but they share major objections to CAMA. The suits claim that CAMA is unconstitutional as it is written and as it may be applied, said Ott. A major bone of contention for some of the plaintiffs is the issue of local versus state and federal control over land use.

"My clients see the creation of a new government bureaucracy to handle what has been a local affair," said Ott.

Other opponents of CAMA have charged that, as a local act, CAMA discriminates against coastal North Carolina and is therefore unconstitutional. Local acts are those passed by the legislature which do not apply to all areas of the state. According to Schoenbaum, state law provides that the legislature can make local laws if there is "reasonable" justification for treating a certain section of the state differently. Opponents contend that CAMA does not provide that justification.

According to Ott, the suits also claim that "excessive legislative power has been delegated to a non-legislative body, the CRC" and that the process for appealing a denial of permit to develop is too lengthy and expensive.

Another argument commonly used against CAMA concerns the legal issue of "taking" of property without due compensation.

What are the AECs?

The areas of environmental concern that have been proposed by the Coastal Resources Commission (CRC) fall into four major categories: the estuarine system, ocean hazard areas, public water supply and fragile natural resource areas.

The estuarine system covers an estimated 85 percent of the total AEC area and includes coastal wetlands, estuarine waters, public trust waters and the estuarine shoreline. The estuarine shoreline is defined as the area extending to 75 feet landward from the mean high water level or normal water level along estuaries, sounds, bays and brackish waters. These shorelines are considered to be especially vulnerable to erosion, flooding and other adverse effects of wind and water. Public trust areas include all navigable coastal waters, the part of the Atlantic Ocean that is covered by state jurisdiction (to three miles from shore) and the land under those waters.

Beaches, frontal dunes, excessive erosion areas and inlet lands make up the ocean hazard category. Inlet lands are erosion-prone areas located adjacent to inlets. The CRC has defined excessive erosion areas as extremely dynamic lands susceptible to becoming completely displaced by water due to periodic storm surges. The following areas (measured landward from the toe of the frontal dune) would be designated as part of the AEC in the eight ocean-fronting counties:

Dare, Currituck and Hyde	61 feet
Carteret	72 feet
Onslow	133 feet
Pender	112 feet
New Hanover	156 feet
Brunswick	144 feet

The public water supply category takes in small surface water, supply watersheds and public water supply well fields. Regulations would be aimed mainly at coordinating development which would affect a few coastal community water supplies, according to CRC staff member Mike Black.

A final category, the fragile natural resource area, is designed to include specific sites that would be nominated by the public. Nominations would be submitted next year to local governments, which would make comments and forward recommendations to the CRC. The CRC would make final designations. Complex natural areas, places that sustain remnant species and unique geologic formations fall into this category.

There are to date no regulations to control development in this type of AEC. Development in all other groups of AECs is already controlled by a number of state and federal regulations, including state dredge and fill statutes, state septic tank regulations and dune ordinances.

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Two sides to the issue

Pro:

As chairman of the Coastal Resources Commission (CRC), David Stick is an official spokesman for the Coastal Area Management Act (CAMA). Born in New Jersey, he moved to the Outer Banks in 1929 and now lives in Kitty Hawk. An author and historian, he has written several books on North Carolina. Among his many former occupations, he lists real estate, contracting, map publishing and journalism. Following are excerpts from an April interview with Stick in which he explained his position on CAMA.

Do you think CAMA is necessary? Why or why not?

Definitely. The main reason for retaining CAMA is that for the last decade or so there has been continually increasing involvement of state and federal government in environmental and land use matters—especially in the regulatory phases—to the exclusion of local governments. CAMA offers the only opportunity I have seen for years for a reversal of this trend and for the active involvement of local governments in many matters which have become the exclusive domain of bureaucrats out of Raleigh and Washington.

The key to this is federal Office of Coastal Zone Management approval of a coastal zone management program for North Carolina. That means that when we get it [an approved plan] the federal agencies will have to consult the state and local plans. There is also a strong implication that some of the authority of federal agencies will actually be turned over to the local or state governments.

Another key reason is that though most of the

(See "CAMA: Key," p. 5)



Con:



Sen. Livingston Stallings of New Bern is an outspoken opponent of the Coastal Area Management Act (CAMA). Now serving his third term as a state senator, he co-sponsored a bill to repeal CAMA during the current session of the General Assembly. He is a native of Craven County and a former county commissioner. Stallings has an insurance and real estate business in New Bern. Following are excerpts from an April interview in which he explained his position on CAMA.

Do you think CAMA is necessary? Why or Why not?

I think an act similar to CAMA that would be altered so that the act would apply to all of North Carolina would be very helpful to the state. Certainly we need to plan direction so that we can conserve our natural resources, so that the essential features of our coastline and our mountains and our piedmont that have a bearing on life in North Carolina should be looked upon and should be [treated] in a way that will preserve our natural resources.

What is your major criticism of CAMA?

My criticism is two- or three-fold. First [is] the fact that this act only applies to 20 counties in North Carolina. Nothing was done to work in the same direction in the other 80 counties. . . . Even though some parts of it (CAMA) would not be applicable to the other counties, much of it would. And I say it's not constitutional applying to only 20 counties. That's one concern.

Secondly, this act does affect property rights. It does limit to a degree the use that one can make of his property and there is no provision made for remuneration in the event of a take-over of property rights or a curtailment of property rights. And

(See "It goes," p. 6)

CAMA: Key to "orderly growth"

(Continued from p. 4)

proposed AECs overlap existing regulatory programs, they [other programs] were adopted and were administered on a piecemeal basis. This [CAMA] is the first real effort to tie them together under one understandable umbrella.

Some people feel that the powers of the Coastal Resources Commission are too broad. What is your response to that criticism?

It may well be that some of the powers of the CRC are too broad. We are working with members of the General Assembly on amendments to CAMA that would limit the authority of the CRC where it isn't essential to the CAMA program and where it seems to scare the daylight out of people on the basis of what we might do rather than what we have done or are doing.

Do you think CAMA is necessary from an ecological standpoint?

From an ecological standpoint, it is not going to accomplish as much as the conservation enthusiast would hope. It is a method of getting local government and the state, with our commission serving as a bridge, working together on these problems. But as far as saving something that would otherwise be destroyed, there are few instances where CAMA will accomplish that.

Do you think CAMA should apply to the whole state?

To begin with, it can't—not as far as coastal resources are concerned—because coastal resources are unique to the coast. However, there are parts of CAMA that can apply statewide—specifically the planning. It would be fine. I'm all for it. I would like to see all counties and all cities that choose to develop their own plans for the first time.

Another criticism of CAMA relates to the question of local versus state control. Do you feel there is a conflict here?

First, land use plans have been developed and will be implemented locally. There are no provisions for state control over the enforcement of land use plans. Second, the incentives are given to the local governments under the AEC program to handle all the permit-letting and enforcement in the minor developments which generally are those under 20 acres and buildings under 60,000 square feet and those not covered by another state regulatory program. This means that local governments will issue most all permits.

There are currently four law suits pending against the CRC. What does this kind of citizen concern say to you about CAMA?

Somehow we have failed to get across to a large segment of the populace what this act is all about because most of the contentions that I've seen by the people who are filing suit are based on completely erroneous information. And I don't know that any of these that I have seen are wide-based citizens groups.

Some people believe that CAMA discriminates against the coastal area. What is your response?

My reaction to that is that if it is discrimination to have both the state and federal governments actively concerned with your local problems, to the extent that they are willing to put up vast amounts of money, so that you can address those problems yourself locally and come up with your own plans on what to do about them: then boy, give me more discrimination.

What effect do you think CAMA will have on coastal development?

It is a key mechanism in providing for orderly, planned growth rather than the completely uncontrolled growth we have had in the past. It will make it easier for developers because they will know what they can and can't do. And it will mean that everyone will be in a position to understand the costs of growth before it happens instead of learning about the public and private costs when they get the bill after it happens.

What kind of opposition do you expect to hear at the upcoming AEC hearings?

I'm sure that we're going to get a continuation of the same things that I have heard hundreds of times from the public, from local officials, from the members of the General Assembly who somehow feel that if an area is designated an AEC it means there can be no use of it and that they will be deprived of the right to use it, which is not true. The AEC program will simply make sure that whatever use is proposed is compatible with the capacity of the land and water resources to sustain that activity.

Some people contend that the proposed AEC regulations under CAMA involve the legal issue of "taking" of property. What is your response to that?

First, "taking" generally refers to the complete loss of use of property by the owner. Almost all of the AECs that we are now proposing are already covered by some other regulatory program. And if they aren't "taking" under the other programs, they sure aren't under ours. . . . We are proposing standards in uses of marshes, for example, that are now prohibited under dredge and fill regulations.

Now the structures on the foredunes, which is where the buildings fall overboard when you get a storm . . . this one might have to go to court to determine if it's "taking." We do feel and the AEC standards will so state that where you are in an excessively erosive area that all of the best data indicates will be gone in the next heavy storm, there shouldn't be any permanent construction. However, our proposals would allow structures on dunes if no other practical use can be made of an ocean front lot. And routes of appeal are built into the AEC proposals to make sure careful consideration will be given to permit requests.

"It goes further than is necessary"

(Continued from p. 4)

that is something that is very definitely opposed to by people in other parts of the state.

Do you think that CAMA adequately protects the public rights and environment of the coast?

I think that it goes further than is necessary to protect the essential coastal features that are vital to the continuation of marine life, to human existence and to the ecological considerations of our people. Instead of being what it started out to be—a bill that protects those vital areas such as sand dunes, marshlands, shorelines—it ended up being a bill that goes much further. It [provides for] much further inland control. And, too, it lacks a feature I think it should have. That is a definite proviso that in every instance whatever is necessary in the way of permits to do certain things so as to carry out the function of the bill, these permits should be handled by the individual counties rather than by a commission or board or state agency that's housed someplace other than in each individual county.

. . . I'm contending that the people in a given area—the people of Carteret County, for instance—want to deal with the Carteret County Board of Commissioners. They should be able to go to those commissioners, who have with some guidance established rules and regulations and [can] issue permits right out of their county courthouse.

Is there any particular group that you feel will be most affected by CAMA?

I think those who are living on the streams, the rivers, the sounds and the ocean, those who have land bordering these areas are the most directly affected.

There are currently four lawsuits pending against the CRC. What does this kind of citizens' concern say to you about CAMA?

It says to me that there is considerable concern

on their part that they are losing property rights, which makes the law unconstitutional.

You mentioned "unnecessary aspects of the bill." What do you think they are?

The bill needs to be simplified and it can be simplified. If we are going to continue with a statute such as this on the books, it ought to be modified so as to make provisions that are going to be maintained. We should make those provisions applicable to the entire state, not saddle all the burden on 20 counties and let all the rest of the state, so to speak, go free. At the same time the controls ought to be brought back to local government as the number one source. Certainly if local government abdicates its responsibilities in handling whatever controls are let, then it should be provided. . . that some higher authority should enforce those provisions.

Would you like to see CAMA repealed?

Only if that's the only way—if we cannot get the other counties to agree so that we can get sufficient votes from the legislature to make this a statewide item. It ought to be a statewide item.

How do you think CAMA will affect development on the coast?

I think it's going to make it very difficult for developers to move ahead. It puts a considerable amount of red tape in their way.

What response have you received from your constituents on CAMA?

I have had nothing but a continuous communication: "Please do something about CAMA." And they continue to say that they want relief either in the way of a repeal or they want it altered to the point that they can live with it. . . . These are people from all walks of life who live in these coastal areas. They all have one common denominator. They're all landowners.

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