

NORTH CAROLINA GENERAL ASSEMBLY  
1973 SESSION

CHAPTER 1284  
SENATE BILL 972

AN ACT RELATING TO MANAGEMENT OF THE COASTAL AREA OF NORTH  
CAROLINA.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. Chapter 113A is hereby amended by adding thereto a new Article 7, to be entitled "Coastal Area Management", and to read as follows:

"Article 7.

"Coastal Area Management.

"Part 1. Organization and Goals.

"§ 113A-100. **Short title.** — This Article shall be known as the Coastal Area Management Act of 1974.

"§ 113A-101. **Cooperative State-local program.** — This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent State-local responsibility.

"§ 113A-102. **Legislative findings and goals.** — (a) Findings. It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost 90 percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. The goals of the coastal area management system to be created pursuant to this Article are as follows:

- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
- (4) To establish policies, guidelines and standards for:
  - (i) Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
  - (ii) The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
  - (iii) Recreation and tourist facilities and parklands;
  - (iv) Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
  - (v) Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
  - (vi) Protection of present common law and statutory public rights in the lands and waters of the coastal area;
  - (vii) Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

**"§ 113A-103. Definitions.** — As used in this Article:

- (1) 'Advisory Council' means the Coastal Resources Advisory Council created by G.S. 113A-105.
- (2) 'Coastal area' means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the 'coastal area', as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).
- (3) 'Coastal sound' means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a

sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. 'Normal conditions' shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:

- (a) On the Chowan River, its confluence with the Meherrin River;
- (b) On the Roanoke River, its confluence with the northeast branch of the Cashie River;
- (c) On the Tar River, its confluence with Tranters Creek;
- (d) On the Neuse River, its confluence with Swift Creek;
- (e) On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (a) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (b) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

- (4) 'Commission' means the Coastal Resources Commission created by G.S. 113A-104.
- (5) (a) 'Development' means any activity in a duly designated area of environmental concern (except as provided in paragraph (b) of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal.
- (b) The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
  - (i) Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
  - (ii) Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
  - (iii) Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and

- transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
- (iv) The use of any land for the purpose of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
  - (v) Emergency maintenance or repairs;
  - (vi) The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach.
  - (vii) Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article.
  - (viii) Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article.
  - (ix) Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974.
  - (x) It is the intention of the General Assembly that if the provisions of any of the foregoing paragraphs (i) - (ix) of this subsection are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Sections 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.
- (c) The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph (b) of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:
- (i) The size of the improvement or scope of the maintenance work;
  - (ii) The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity,

- areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
- (iii) Whether or not dredging or filling is involved in the maintenance or improvement.
- (6) 'Key facilities' include the site location and the location of major improvement and major access features of key facilities, and mean:
- (a) public facilities, as determined by the Commission, on non-Federal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
    - (i) any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
    - (ii) major interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways;
    - (iii) major frontage access streets and highways, both of State concern; and
    - (iv) major recreational lands and facilities;
  - (b) major facilities on non-Federal lands for the development, generation, and transmission of energy.
- (7) 'Lead regional organizations' mean the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.
- (8) 'Local government' means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.
- (9) 'Person' means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.
- (10) 'Rule' means any policy, regulation or requirement of general application adopted pursuant to this Article.

**"§ 113A-104. Coastal Resources Commission.** — (a) The General Assembly hereby establishes within the Department of Natural and Economic Resources a commission to be designated the Coastal Resources Commission.

(b) Composition: The Coastal Resources Commission shall consist of 15 members appointed by the Governor, as follows:

- (1) One who shall at the time of appointment be actively connected with or have experience in commercial fishing.
- (2) One who shall at the time of appointment be actively connected with or have experience in wildlife or sports fishing.
- (3) One who shall at the time of appointment be actively connected with or have experience in marine ecology.
- (4) One who shall at the time of appointment be actively connected with or have experience in coastal agriculture.
- (5) One who shall at the time of appointment be actively connected with or have experience in coastal forestry.
- (6) One who shall at the time of appointment be actively connected with or have experience in coastal land development.
- (7) One who shall at the time of appointment be actively connected with or have experience in marine-related business (other than fishing and wildlife).

- (8) One who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area.
- (9) One who shall at the time of appointment be actively associated with a State or national conservation organization.
- (10) One who shall at the time of appointment be actively connected with or have experience in financing of coastal land development.
- (11) Two who shall at the time of appointment be actively connected with or have experience in local government within the coastal area.
- (12) Three at-large members.

(c) The Governor shall appoint in his sole discretion those members of the Commission whose qualifications are described in paragraphs (6) and (10), and one of the three members described in paragraph (12) of subsection (b) of this section. The remaining members of the Commission shall be appointed by the Governor after completion of the nominating procedures prescribed by subsection (d) of this section.

(d) On or before May 1 in every even-numbered year the Governor shall designate and transmit to the board of commissioners in each county in the coastal area four nominating categories applicable to that county for that year. Said nominating categories shall be selected by the Governor from among the categories represented, respectively by paragraphs (1), (2), (3), (4), (5), (7), (8), (9), (11) - two persons, and (12) - two persons, of subsection (b) of this section (or so many of the above-listed paragraphs as may correspond to vacancies by expiration of term that are subject to being filled in that year). On or before June 1 in every even-numbered year the board of commissioners of each county in the coastal area shall nominate (and transmit to the Governor the names of) one qualified person in each of the four nominating categories that was designated by the Governor for that county for that year. In designating nominating categories from biennium to biennium, the Governor shall equitably rotate said categories among the several counties of the coastal area as in his judgment he deems best; and he shall assign, as near as may be, an even number of nominees to each nominating category and shall assign in his best judgment any excess above such even number of nominees. On or before June 1 in every even-numbered year the governing body of each incorporated city within the coastal area having a population of 2,000 or more, and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, shall nominate (and transmit to the Governor the name of) one person as a nominee to the Commission. The Governor shall appoint 12 persons from among said city and county nominees to the Commission. The several boards of county commissioners and city governing bodies shall transmit the names, addresses, and a brief summary of the qualifications of their nominees to the Governor on or before June 1 in each even-numbered year, beginning in 1974; provided, that the Governor, by registered or certified mail, shall notify the chairmen or the mayors of the said local governing boards by May 20 in each such even-numbered year of the duties of local governing boards under this sentence. If any board of commissioners or city governing body fails to transmit its list of nominations to the Governor by June 1, the Governor may add to the nominations a list of qualified nominees in lieu of those that were not transmitted by the board of commissioners or city governing body. Within the meaning of this section, the 'governing body' is the mayor and council of a city as defined in G.S. 160A-66. The population of cities shall be determined according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of Administration.

(e) All nominees of the several boards of county commissioners and city governing bodies must reside within the coastal area, but need not reside in the county from which they were nominated. No more than one of those members appointed by the Governor from among said nominees may reside in a particular county. No more than two members of the entire

Commission, at any time, may reside in a particular county. No more than two members of the entire Commission, at any time, may reside outside the coastal area.

(f) Membership on the Coastal Resources Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(g) The members shall serve staggered terms of office of four years. At the expiration of each member's term, the Governor shall reappoint or replace the member with a new member of like qualification (as specified in subsection (b) of this section), in the manner provided by subsections (c) and (d) of this section. The initial term shall be determined by the Governor in accordance with customary practice but eight of the initial members shall be appointed for two years and seven for four years.

(h) In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualification (as specified in subsection (b) of this section) who shall then serve the remainder of his predecessor's term. When any such vacancy arises, the Governor shall immediately notify the board of commissioners of each county in the coastal area and the governing body of each incorporated city within the coastal area having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean. Within 30 days after receipt of such notification each such county board and city governing body shall nominate and transmit to the Governor the name and address of one person who is qualified in the category represented by the position to be filled, together with a brief summary of the qualifications of the nominee. The Governor shall make the appointment from among said city and county nominees. If any county board or city governing body fails to make a timely transmittal to its nominee, the Governor may add to the nominations a qualified person in lieu of said nominee.

(i) The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term.

(j) Compensation: The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

**"§ 113A-105. Coastal Resources Advisory Council.** — (a) Creation: There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) The Coastal Resources Advisory Council shall consist of not more than 47 members appointed or designated as follows:

- (1) Three individuals designated by the Secretary of Natural and Economic Resources from among the employees of his department;
- (2) The Secretary of the Department of Administration or his designee;
- (3) The Secretary of the Department of Transportation and Highway Safety or his designee, and one additional member selected by him from his department;
- (4) The Secretary of the Department of Human Resources or his designee;
- (5) The Commissioner of Agriculture or his designee;
- (6) The Secretary of the Department of Cultural Resources or his designee;
- (7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;
- (8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;
- (9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission.
- (10) Three members selected by the Commission who are marine scientists or technologists;

(11) One member who is a local health director selected by the Commission upon the recommendation of the State Health Director.

(c) Functions and Duties: The Advisory Council shall assist the Secretaries of Administration and of Natural and Economic Resources in an advisory capacity: (1) on matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules and regulations, and (2) on such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices: Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman: A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation: The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

"Part 2. Planning Processes.

**"§ 113A-106. Scope of planning processes.** — Planning processes covered by this Article include the development and adoption of State guidelines for the coastal area and the development and adoption of a land use plan for each county within the coastal area, which plans shall serve as criteria for the issuance or denial of development permits under Part 4.

**"§ 113A-107. State guidelines for the coastal area.** — (a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Such guidelines shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such staff assistance as it requires by the Secretary of Natural and Economic Resources and the Secretary of the Department of Administration, together with such incidental assistance as may be requested of any other State department or agency.

(c) Within 90 days after the effective date of this Article the Commission shall submit proposed State guidelines to all cities and counties and lead regional organizations within the coastal area for their comments and recommendations. In addition, it shall submit such guidelines to all State, private, federal, regional, and local agencies which it deems to have special expertise with respect to any environmental, social, economic, esthetic, cultural, or historical aspect of development in the coastal area. It shall make copies of the proposed guidelines available to the public through the Department of Administration.

(d) Cities, counties, and lead regional organizations and such other agencies or individuals as desire to do so shall have 60 days from receipt of such proposed guidelines within which to submit to the Commission their written comments and recommendations concerning the proposed guidelines.

(e) The Commission shall review and consider all such written comments and recommendations. Within 210 days after the effective date of this Article, the Commission shall by rule adopt State guidelines for the coastal area. Certified copies of such guidelines shall be filed with the Secretary of State and the Principal Clerks of the Senate and House, and the guidelines shall be mailed to each city, county, and lead regional organization in the coastal

area and to such other agencies or individuals as the Commission deems appropriate. Copies shall be made available to the public through the Department of Administration.

(f) The Commission may from time to time amend the State guidelines as it deems necessary. In addition, it shall review such guidelines each five years after the effective date of this Article in accordance with the procedures for adoption of the original guidelines, to determine whether further amendments are desirable. Any proposed amendments shall be submitted to all cities, counties, members of the General Assembly and lead regional organizations in the coastal area, and may be distributed to such other agencies and individuals as the Commission deems appropriate. All comments and recommendations of such governments, agencies, and individuals shall be submitted to the Commission in writing within 30 days of receipt of the proposed amendments. The Commission shall review and consider these written comments and thereupon may by rule reject or adopt the proposed amendments or modify and adopt the amendments. Certified copies of all amendments shall be filed with the Secretary of State and the Principal Clerks of the Senate and House. Amendments shall thereupon be mailed to each city, county, members of the General Assembly and lead regional organization in the coastal area and to such other agencies and individuals as the Commission deems appropriate. ^Copies shall be made available to the public through the Department of Administration.

**"§ 113A-108. Effect of State guidelines.** — All local land use plans adopted pursuant to this Article within the coastal area shall be consistent with the State guidelines. No permit shall be issued under Part 4 of this Article which is inconsistent with the State guidelines. Any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines adopted under this Article, insofar as lands within the coastal area are concerned. Any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area.

**"§ 113A-109. County letter of intent; timetable for preparation of land use plan.** — Within 120 days after the effective date of this Article, each county within the coastal area shall submit to the Commission a written statement of its intent to develop a land use plan under this Article or its intent not to develop such a plan. If any county states its intent not to develop a land use plan or fails to submit a statement of intent within the required period, the Commission shall prepare and adopt a land use plan for that county. If a county states its intent to develop a land use plan, it shall complete the preparation and adoption of such plan within 300 days after adoption of the State guidelines. In the event of failure by any county to complete its required plan within this time, the Commission shall promptly prepare and adopt such a plan.

In any case where the Commission has adopted a land use plan for a county that county may prepare its own land use plan in accordance with the procedures of this Article, and upon approval of such plan by the Commission it shall supersede the Commission's plan on a date specified by the Commission.

**"§ 113A-110. Land use plans.** — (a) A land use plan for a county shall, for the purpose of this Article, consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use and their relationships to each other and to public facilities and by specific criteria for particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern designated under Part 3. The plan shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107. The plan shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The body charged with preparation and adoption of a county's land use plan (whether the county government or the Commission) may delegate some or all of its responsibilities to the lead regional organization for the region of which the county is a part. Any such delegation shall become effective upon the acceptance thereof by the lead regional organization. Any county proposing a delegation to the lead regional organization shall give written notice thereof to the Commission at least two weeks prior to the date on which such action is to be taken. Any city or county within the coastal area may also seek the assistance or advice of its lead regional organization in carrying out any planning activity under this Article.

(c) The body charged with preparation and adoption of a county's land use plan (whether the county or the Commission or a unit delegated such responsibility) may either (i) delegate to a city within the county responsibility for preparing those portions of the land use plan which affect land within the city's zoning jurisdiction or (ii) receive recommendations from the city concerning those portions of the land use plan which affect land within the city's zoning jurisdiction, prior to finally adopting the plan or any amendments thereto or (iii) delegate responsibility to some cities and receive recommendations from other cities in the county. The body shall give written notice to the Commission of its election among these alternatives. On written application from a city to the Commission, the Commission shall require the body to delegate plan-making authority to that city for land within the city's zoning jurisdiction if the Commission finds that the city is currently enforcing its zoning ordinance, its subdivision regulations, and the State Building Code within such jurisdiction.

(d) The body charged with adoption of a land use plan may either adopt it as a whole by a single resolution or adopt it in parts by successive resolutions; said parts may either correspond with major geographical sections or divisions of the county or with functional subdivisions of the subject matters of the plan. Amendments and extensions to the plan may be adopted in the same manner.

(e) Prior to adoption or subsequent amendment of any land use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.

(f) No land use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.

(g) Copies of each county land use plan which has been approved, and as it may have been amended from time to time, shall be maintained in a form available for public inspection by (i) the county, (ii) the Commission, and (iii) the lead regional organization of the region which includes the county.

**"§ 113A-111. Effect of land use plan.** — No permit shall be issued under Part 4 of this Article for development which is inconsistent with the approved land use plan for the county in which it is proposed. No local ordinance or other local regulation shall be adopted which, within an

area of environmental concern, is inconsistent with the land use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land use plan, it shall transmit recommendations for modification to the adopting local government.

**"§ 113A-112. Planning grants.** — The Secretary of Natural and Economic Resources is authorized to make annual grants to local governmental units for the purpose of assisting in the development of local plans and management programs under this Article. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance.

"Part 3. Areas of Environmental Concern.

**"§ 113A-113. Areas of environmental concern; in general.** — (a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

- (1) Coastal wetlands as defined in G.S. 113-230(a);
- (2) Estuarine waters as defined in G.S. 113-229(n)(2), that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Conservation and Development filed with the Secretary of State, entitled 'Boundary Lines, North Carolina Commercial Fishing- Inland Fishing Waters, Revised to March 1, 1965';
- (3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long- range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:
  - (i) Watersheds or aquifers that are present sources of public water supply, as identified by the North Carolina Board of Health or Board of Water and Air Resources, or that are classified for water supply use pursuant to G.S. 143-214.1;
  - (ii) Capacity use areas that have been declared by the Board of Water and Air Resources pursuant to G.S. 143-215. 13(c) and areas wherein said Board (pursuant to G.S. 143-215.3(d) or G.S. 143-215.3(a)(8) has determined that a generalized condition of water depletion or water or air pollution exists;
  - (iii) Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the North Carolina Forest Service.
- (4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:

- (i) Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary of Natural and Economic Resources; and proposed sites for any of the same, as identified by the Secretary of Natural and Economic Resources, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;
  - (ii) Present sections of the natural and scenic rivers system;
  - (iii) Stream segments that have been classified for scientific or research uses by the Board of Water and Air Resources, or that are proposed to be so classified in a proceeding that is pending before said Board pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;
  - (iv) Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;
  - (v) Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;
  - (vi) Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
  - (vii) Areas containing unique geological formations, as identified by the State Geologist; and
  - (viii) Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to G.S. Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as Registered Natural Landmarks or as National Historic Landmarks;
- (5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Section 5 of the North Carolina Constitution;
- (6) Natural hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include :
- (i) Sand dunes along the Outer Banks;
  - (ii) Ocean and estuarine beaches and shoreline;
  - (iii) Floodways and flood plains;
  - (iv) Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;

(v) Areas with a significant potential for air inversions, as identified by the Board of Water and Air Resources.

(7) Areas which are or may be impacted by key facilities.

(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of subparagraphs (4)(i) and (iv) of subsection (b) of this section, the proposed site has been at least 75% acquired. Within the meaning of this section, 'formal designation for acquisition' means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).

(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly.

**"§ 113A-114. Designation of interim areas of environmental concern; notice of developments within such areas.** — (a) Pending the designation of areas of environmental concern pursuant to G.S. 113A-115, the Commission may by rule designate such interim areas of environmental concern (hereafter referred to as 'interim areas') as it deems appropriate.

(b) Not earlier than 15 days nor later than 75 days after the effective date of this Article the Secretary of Natural and Economic Resources, or his designee or designees, shall hold a one-day public hearing, at which public and private parties shall have the opportunity to present views and comments concerning proposed interim areas, in each of the following cities: Elizabeth City, Jacksonville, Manteo, Morehead City, Washington and Wilmington. The following provisions shall apply for all such hearings:

- (1) The hearing shall begin with a description of interim areas proposed by the Secretary.
- (2) Notice of any such hearing shall be given not less than seven days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing and the action to be taken. The notice shall state that a copy of a description of interim areas proposed by the Secretary (including a map of such proposed areas) is available for public inspection at the county courthouse of each county affected.
- (3) Any such notice shall be published one time in a newspaper of general circulation in the county or counties affected at least seven days before the date of the public hearing.
- (4) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to proposed interim areas within five days following the conclusion of any public hearing or within such additional time as he may allow in his discretion.
- (5) A record of each such hearing shall be presented to the Commission by the Secretary, together with the description of interim areas proposed by the Secretary (with such revisions as he deems appropriate in light of the hearings). Upon receipt of said hearing records and description, and consideration of submitted evidence and arguments with respect to any

proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Secretary of State and with the board of commissioners of each county affected thereby.

(c) The Commission may revise the interim areas (or any part thereof) at any time in the manner provided by subsection (b) of this section, except that the hearing or hearings shall be held in each county in which lands to be affected are located.

(d) The interim areas (with such revisions as may be made pursuant to this section) shall remain in effect until designation of areas of environmental concern are made pursuant to G.S. 113A-115.

(e) During the period while interim areas are in effect, any person proposing to undertake any development in an interim area shall notify the Commission at least 60 days in advance of initiating construction, installation or other land or water disturbing activity in connection with said development.

**"§ 113A-115. Designation of areas of environmental concern.** — (a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. The following provisions shall apply for all such hearings:

- (1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.
- (2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.
- (3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.
- (4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Secretary of State and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered.

"Part 4. Permit Letting and Enforcement.

"§ 113A-116. **Local government letter of intent.** — Within one year after the effective date of this Article, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary of Natural and Economic Resources shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance.

"§ 113A-117. **Implementation and enforcement programs.** — (a) The Secretary of Natural and Economic Resources shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 14 months after the effective date of this Article, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 20 months after the effective date of this Article. The board of commissioners of each coastal area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 20 months after the effective date of this Article, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local

government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

**"§ 113A-118. Permit required.** — (a) After the date designated by the Secretary of Natural and Economic Resources pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary of Natural and Economic Resources.

(c) Under the quasi-judicial procedure provided for by G.S. 113A-122, the permit shall be obtained from the Commission.

(d) Within the meaning of this Part:

(1) A 'major development' is any development which requires permission, licensing, approval, certification or authorization in any form from the Board of Water and Air Resources, the State Board of Health, the State Departments of Natural and Economic Resources or Conservation and Development, the State Department of Administration, the North Carolina Mining Council, the North Carolina Pesticides Board, or the North Carolina Sedimentation Control Board; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A 'minor development' is any development other than a 'major development'.

(e) If, within the meaning of G.S. 113A-103(5)(b)(iii), the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

**"§ 113A-119. Permit applications generally.** — (a) Any person required to obtain a permit under this Part shall file with the Secretary of Natural and Economic Resources and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a reasonable fee (not to exceed twenty-five dollars (\$25.00)) set by the Commission to cover the administrative costs in processing the said application.

(b) Upon receipt of an application, the Secretary shall issue public notice of the proposed development (1) by mailing a copy of the application, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (2) by posting or causing to be posted a copy of the application at the location of the proposed development; and (3) by publishing notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the

Secretary by a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory.

(c) Within the meaning of this Part, the 'designated local official' is the official who has been designated by the local governing body to receive and consider permit applications under this Part.

**"§ 113A-120. Grant or denial of permits.** — (a) After consideration of submitted evidence and arguments submitted at the hearing, or otherwise in the case where no hearing was conducted, the responsible official or body shall deny the application for permit upon finding:

- (i) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
- (ii) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
- (iii) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subparagraphs (i) - (iii) of paragraph (b)(3) of G.S. 113A-113.
- (iv) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subparagraphs (i) - (viii) of paragraph(b)(4) of G.S. 113A-113.
- (v) In the case of areas covered by G.S. 113A-113(4), that the development will jeopardize the public rights or interests specified in said subdivision.
- (vi) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subparagraphs (i) - (v) of paragraph (b)(6) in such a manner as to unreasonably endanger life or property.
- (vii) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land use plans, or would contravene any of the provisions of paragraphs (i) through (vi) of this subsection.
- (viii) In any case, that the development is inconsistent with the State guidelines or the local land use plans.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(c) Variances. Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, regulations, standards or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (a) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, regulations, standards, or other restrictions applicable to the property, (b) such difficulties or hardships result from conditions which are peculiar to the property involved, (c) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, regulations, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In varying such regulations, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall

notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

**"§ 113A-121. Permits for minor developments under expedited procedures.** — (a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.

(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary of Natural and Economic Resources.

(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a permit for a minor development within 30 days from receipt of application shall be treated as approval of such application, except that the Secretary or the designated local official (as the case may be) may extend such deadline by not more than an additional 30 days if necessary properly to consider the application. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.

(d) Any person who is directly affected by the decision of the Secretary or the designated local official (as the case may be) to grant or deny an application for minor development permit, may request within 20 days of such action, a hearing before the Commission. In the case of a grant or denial of a permit by a local official, the Secretary shall be considered to be a person affected by the decision. Pending final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this section.

**"§ 113A-122. Permits under quasi-judicial procedures.** — (a) The procedure set forth in this section applies to all permit applications for major developments, as well as to permit applications for minor developments whose disposition was appealed under G.S. 113A-121(d). All permit applications subject to this section shall be heard by the Commission.

(b) The following provisions shall be applicable in connection with hearings pursuant to this section:

- (i) Any hearing held pursuant to this section shall be held upon not less than 30 days' written notice given by the Commission to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.
- (ii) All hearings under this section shall be open to the public. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.
- (iii) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.
- (iv) The Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.
- (v) The Commission and its duly authorized agents may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

- (vi) Subpoenas issued by the Commission in connection with any hearing under this section shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Commission, application may be made to the superior court of the appropriate county for enforcement thereof.
- (vii) The burden of proof at any hearing under this section on appeal pursuant to G. S. 113A-121(d) shall be upon the Secretary. The burden of proof at any hearing under this section on a permit application for a major development shall be upon the applicant. The provisions of this paragraph shall apply only to the hearings specified in this paragraph.
- (viii) No decision or order of the Commission shall be made in any proceeding unless the same is supported by competent, material, and substantial evidence upon consideration of the whole record.
- (ix) Following any hearing, the Commission shall afford the parties thereto an opportunity to submit within 30 days, or within such additional time as prescribed by the Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.
- (x) After hearing the evidence, the Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.
- (xi) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(c) Failure of the Commission to approve or deny an application for a permit (or to dispose of an appeal) pursuant to this section within 90 days from receipt of application or notice of appeal shall be treated as approval of such application or of the action appealed from, as the case may be, except that the Commission may extend such deadline by not more than an additional 90 days if necessary properly to consider the application or the appeal.

(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice.

"§ 113A-123. **Judicial review.** — (a) Any person directly affected by any final decision or order of the Commission under this Part may appeal such decision or order to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes. Pending final disposition of any appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary of Natural and Economic Resources shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others, civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right.

(c) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Commission and upon finding that sufficient funds are available therefor, and with the consent of the Governor and Council of State may take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this Article.

"§ 113A-124. **Additional powers and duties.** — (a) The Secretary of Natural and Economic Resources shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.
- (4) To propose rules and regulations to implement this Article for consideration by the Commission.

- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department of Natural and Economic Resources or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental regulations.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department of Natural and Economic Resources. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Natural and Economic Resources may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State Personnel Regulations and Budgetary Laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said Secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary of Natural and Economic Resources the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department of Natural and Economic Resources. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission.

**"§ 113A-125. Transitional provisions.** — (a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 27 months after the effective date of this Article), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.

(b) From and after the 'permit changeover date', all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission. The provisions of this paragraph concerning consultation and coordination shall not be interpreted

to authorize or require the extension of any deadline established by this Article or any other law for completion of any permit, licensing, certification or other regulatory proceedings.

(c) Within the meaning of this section, 'existing regulatory permits' include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and G.S. 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to G.S. Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; restricted use pesticide permits issued pursuant to G.S. 143-440(b), pesticide applicator licenses issued pursuant to G.S. 143-452 for persons who may apply pesticides within the coastal area, and regulations concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the State Board of Health of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and G.S. 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the State Board of Health pursuant to G.S. Chapter 130, Article 13B; permits relating to sanitation of shellfish, Crustacea or scallops issued pursuant to G.S. Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and regulations issued by the State Board of Health pursuant to Articles 23 or 24 of G.S. Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, regulations, approvals or certificates issued by the State Board of Health relating to septic tanks or water wells; oil or gas well regulations and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to G.S. Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forest lands, State parks or other State-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or G.S. 113A-61; and any permits, licenses, authorizations, regulations, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. Specifically, the Commission shall report to the 1975 General Assembly recommended procedures to implement the requirement of subsection (b) of this section for administration of existing regulatory permits within the coastal area in coordination and consultation with the Commission. In its 1975 recommendations, the Commission shall seek to develop procedures that are administratively practicable, that are not unduly burdensome for the affected agencies, and that are adapted to the circumstances of each agency, taking into account the volume of permits issued, the location of the regulated activity (whether or not within or near an area of environmental concern), the significance of the environmental consequences of the regulated activity, and the scheduling problems and needs of the regulatory agency: provided, however, that no consultation or coordination shall be required in advance of issuance of individual pesticide applicator licenses, but only periodic consultation concerning the overall effect of the applicator licensing program within the coastal area. In its 1975 recommendations, the Commission shall also evaluate the desirability of legislation to provide for coordination of

environmental permits at the option of permit applicants. In developing its 1975 recommendations, the Commission shall meet with all affected State agencies and shall hold one or more public hearings concerning its recommendations.

"§ 113A-126. **Injunctive relief and penalties.** — (a) Upon violation of any of the provisions of this Article or of any regulation, rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any regulation, rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for such other and further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any regulation, rule or order adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates, any such provision, regulation, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

- (d) (1) A civil penalty of not more than one thousand dollars (\$1,000) may be assessed by the Commission against any person who:
- (i) Is required but fails to apply for or to secure a permit required by G.S. 113A-122, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
  - (ii) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
  - (iii) Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
  - (iv) Violates any duly adopted regulation of the Commission implementing the provisions of this Article. Provided, however, that this paragraph (iv) shall not apply to regulations relating to minor developments.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Commission may assess a penalty not to exceed one thousand dollars (\$1,000) for each separate violation, after the first

- assessment, provided, however, no penalty shall be imposed under this subsection pending court review of the first assessment, if appealed pursuant to subsection (3).
- (3) The Commission may assess the penalties provided for in this subsection. When the Commission proposes to assess a penalty, it shall notify the person whom it proposes to assess by registered or certified mail of the proposal to assess a penalty, and the notice shall specify the reason for assessment and the date of the proposed hearing when assessment is to be determined. The hearing shall be no sooner than 15 days after the mailing of notice of the proposed assessment. Any hearing shall be based upon competent evidence, and the person the Commission proposes to assess shall be allowed to present evidence, and the hearing shall be reported. The person assessed may apply to the superior court of the county where such person resides for review of the hearing and assessment and the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.
- (4) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

**"§ 113A-127. Coordination with the federal government.** — All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies.

**"§ 113A-128. Protection of landowners' rights.** — Nothing in this Article authorizes any governmental agency to adopt a rule or regulation or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States.

**"§ 113A-129. Severability.** — If any provision of this Article or its application to any person or circumstance is held invalid, the remainder of the Article, or the application of the provisions to other persons or circumstances, is not affected.

**Sec. 2.** G.S. 146-22.1 is hereby amended by adding thereto at the end thereof the following additional subdivision (13):

- "(13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123."

**Sec. 3.** This act shall become effective July 1, 1974, except that the provisions of this act relating to the selection of the initial Commission shall become effective upon ratification, and the entire act shall expire on June 30, 1981.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.