



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

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Secretary

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Director

CRC-21-35

October 15, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Public Beach & Coastal Waterfront Access Program and Parking Fees

At the September meeting, the Commission continued discussion of the proposed amendments to the Public Beach and Coastal Waterfront Access Program (Access Program), specifically the intended uses of fees collected from users of state-funded access sites by local governments.

You will recall your rules have allowed local governments to collect parking fees at sites funded by the Access Program, provided that the fees are used exclusively for the operation and maintenance of access facilities as well as the acquisition or development of new access facilities. Recent discussions have focused on whether or not parking fees associated with Division-funded access sites can be used as a source of revenue for beach nourishment projects.

Commissioner Smith offered her analysis of the existing rules, concluding that the current rule falls within the CRC's authority to ensure that state-funded public access facilities are operated and maintained for public access and does not conflict with the more general authority of local governments to use fees from other municipally owned or leased parking sites. Furthermore, when a local government receives a grant, the agreement includes a condition that fees are to be used exclusively for acquiring, improving, or enhancing access sites.

While a motion to approve the current application and interpretation of 15A NCAC 7M .0310 regarding the use of fees at state-funded access facilities was approved, several Commissioners request continued discussion at the next CRC meeting. To facilitate further discussion, three options are presented in the proposed amendments to 7M .0310 with Option A being a clarification of the allowed uses of fees (operation, improvement or enhancement sites); Option B with more specific examples of allowed operational expenses to be supported by fees (trash removal, law enforcement and public safety); and Option C which would allow fees to support beach nourishment projects.

I look forward to discussing these options at our upcoming meeting in Atlantic Beach.



SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

~~(a) The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance, and ensure access to the public beaches and waters of the 20 county coastal region as described in G.S. 113A-103(2). The Coastal Resources Commission shall ensure that access is consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.~~

~~(b) The State has created the Public Beach and Coastal Waterfront Access Program for the purpose of acquiring, improving, and maintaining waterfront recreational property at intervals throughout the coastal region for public access to these public trust resources as described in G.S. 113A-134.1.~~

~~(c) In addition, some properties, due to their location, are subject to severe erosion so that development is not possible or due to the requirements of 15A NCAC 7H .0306. In these cases, a public purpose as described in G.S. 113A-134.1(b) may be served by the donation or acquisition of these properties for public access.~~

~~(d) The primary purpose of the public access program is to provide funds to acquire, develop, or maintain land for public access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities are eligible for funding under the Public Beach and Coastal Waterfront Access Program provided that pedestrian access is also incorporated in the design of the facility.~~

*History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982.*

Readopted Eff. September 1, 2021

Repealed Eff. Month day, year.

15A NCAC 07M .0302 DEFINITIONS

As used in this Section, the Public Beach and Coastal Waterfront Access Program is to provide public access to the public trust beaches and waters as defined in 15A NCAC 7H .0305(a)(1) and 15A NCAC 07H .0207(a) in the 20 coastal counties described in G.S. 113A-103(2).

- (1) "Beach" is defined as described in 15A NCAC 7H .0305(a)(1).
- (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the 20-county area under the Coastal Area Management Act (CAMA) jurisdiction as described in G.S. 113A-103(2) that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights.
- ~~(3) "Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.~~

- ~~(4) "Improvements" are facilities that are added to promote public access at an access site. Common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks, and foot showers.~~
- ~~(5) "Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(2).~~
- ~~(6) "Local Access Sites" include those public access points that offer no facilities. These accessways provide only a dune crossover or pier, if needed, litter receptacles, and public access signs. Vehicle parking is not available at these access sites. However, bicycle racks may be provided by local governments.~~
- ~~(7) "Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the Division of Coastal Management (DCM), the local government shall provide operation and maintenance of the facility for the useful life of that facility as set forth in the individual grant contract.~~
- ~~(8) "Multi regional Access Sites" are larger than regional accessways but smaller than State parks. Such facilities may be undertaken and constructed with the involvement and support of State and local government agencies. Multi regional accessways provide parking for a minimum of 80 vehicles, restrooms with indoor showers and changing rooms, and concession stands.~~
- ~~(9) "Neighborhood Access Sites" includes those public access areas offering parking for 5 to 25 vehicles, a dune crossover or pier, litter receptacles, and public access signs. Restroom facilities may be installed.~~
- ~~(10)³ "Ocean Beach Access" includes the acquisition and improvement of properties adjacent or proximate to the Atlantic Ocean for parking and public passage to the oceanfront.~~
- ~~(11)(4) "Public Trust Areas" is defined in 15A NCAC 07H .0207(a).~~
- ~~(12) "Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles, and public access signs.~~
- ~~(13) "Urban Waterfront Access Projects" improve public access to deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.~~
- (5) A "Local Waterfront Access Plan" identifies access needs and opportunities for public access, determines access and facility requirements, establishes standards, develops project design plans or guidelines, establishes priorities, considers financial resource availability (such as grants, impact fees, or occupancy taxes) and construction timing, and provides a system for evaluation of the plan.

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- (6) “Certified CAMA Land Use Plan” is defined in 15A NCAC 07B. A local government may identify access needs, develop a local waterfront access plan, and develop local policies to pursue access funding through its land use plan.
- (7) “Tier 1 communities” include Tier 1 counties as determined annually by the North Carolina Department of Commerce as outlined in G.S. 143B-437.08, and the counties respective municipalities. The Division shall use the Tier 1 designation to encourage economic activity in economically distressed communities.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985; July 1, 1982.*

Readopted Eff. September 1, 2021

Amended Eff. Month day, year:

15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS

- ~~(a) Beach nourishment projects undertaken with public funds shall include provisions for public access and parking within the boundaries of the project to achieve public use and benefit of these areas.~~
- ~~(b) Public access projects funded through the Public Beach and Coastal Waterfront Access Program shall be consistent with public access policies contained in the local government's land use plan as required in 15A NCAC 07B .0702(d)(3)(A) and its local waterfront access plan, or a local recreation plan that addresses public access.~~
- ~~(c) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for operation and maintenance, or provision of new public access. Local governments shall include biannual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites. Biannual accounting reports shall be submitted to the Director of the Division of Coastal Management by June 30 of the year in which it is due. Accounting reports may be included in Biannual LUP Implementation Status Reports under 15A NCAC 07B .0804.~~
- ~~(d) Land acquired with Public Beach and Coastal Waterfront Access grant funds shall be dedicated in perpetuity for public access and benefit of the general public. The dedication shall be recorded in the property records by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with access grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the proportion of access grant funds provided for the original purchase at current market value at the time of sale.~~

*History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a);
Eff. March 1, 1979;
Amended Eff. March 1, 1988; March 1, 1985; July 1, 1982;
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;
Amended Eff. February 1, 2009; August 1, 2007; January 1, 1998; March 1, 1992.*

Readopted Eff. September 1, 2021

Repealed Eff. Month day, year.

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

~~(a) Coastal waterfront access in the 20 county coastal region is a concern of local, State, and national importance. Local governments have responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans pursuant to 15A NCAC .0702(d)(2)(A) and local waterfront access plans.~~

~~(b) A local government may, through its land use plan:~~

- ~~(1) identify access needs and develop local policy to pursue access funding;~~
- ~~(2) develop a local access plan; and~~
- ~~(3) solicit access sites through corporate assistance.~~

~~(c) An access plan shall identify needs and opportunities for public access, determine access and facility requirements, establish standards, and develop project design plans or guidelines by site. An access plan shall consider both financial resource availability (such as grants, impact fees, or hotel/motel tax revenues) and construction timing. It shall establish priorities for the development of access plans and devise a system for annual evaluation of the plan.~~

~~(d) Local governments may also include provisions in local ordinances that require access for waterfront developments or require payment in lieu of access for non water dependent subdivisions.~~

~~(e) Dedicated street ends may be acceptable for accessways.~~

~~(f) The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the Division of Coastal Management shall annually solicit pre application proposals from local governments and shall select competitive projects for application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section.~~

~~(g) The Division of Coastal Management may use available funds on a non competitive basis to plan for and provide public access through acquisition of improvements. Prior to expending funds, the Division of Coastal Management shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for 60 days prior to the expenditure of non competitive money by the Division of Coastal Management.~~

~~(h) The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal Waterfront Access Program are operated and maintained for access purposes.~~

History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. February 1, 2009; August 1, 2007.
Readopted Eff. September 1, 2021

Repealed Eff. Month day, year.

**15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS
PUBLIC BEACH AND COASTAL WATERFRONT ACCESS PROGRAM**

(a) The Division of Coastal Management (DCM) has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the DCM shall annually solicit pre-application proposals from local governments and shall select competitive projects for final application submittal. Projects from these final applications shall be selected for funding based on criteria in Paragraph (h) of this Rule.

(b) The DCM may use available funds on a non-competitive basis to plan for and provide public access through acquisition or improvements. Prior to expending funds, the DCM shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission (CRC) for 60 days prior to the expenditure of non-competitive money by the DCM.

~~(a)~~(c) Local governments have responsibility for the selection of public access sites within their jurisdiction. Any local government in the 20-county coastal region having ocean beaches or estuarine or public trust waters within its jurisdiction may apply for access funds for the ~~development of beach or coastal waterfront access facilities with associated improvements.~~ acquisition and development of beach or coastal waterfront access facilities. ~~Boat ramps, or canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters.~~

(d) Prior to submitting its final application for a Public Beach and Coastal Waterfront Access grant **in accordance with Paragraph (a) of this rule** from the DCM the local government shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

~~(b)~~(e) Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots as described in G.S. 113A-134.3(a);
- (2) ~~Local access sites;~~ Development of improvements at new or existing sites that provide public access, such as dune crossovers, piers, boardwalks, parking areas, restrooms, showers, benches, litter receptacles, and bicycle racks;
- (3) ~~Neighborhood access sites or improvements;~~ Development of improvements to public access at deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront
- (4) ~~Regional access sites or improvements;~~
- (5) ~~Multi regional access sites or improvements;~~
- (6) ~~Urban waterfront development access projects;~~
- (7)(4) Reconstruction, replacement or relocation of existing, damaged facilities;
- (8) ~~Reconstruction or replacement of facilities; and~~

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- ~~(9)(5)~~ Offsite parking areas servicing access sites within the local government's ~~jurisdiction.~~ jurisdiction;
- ~~(6)~~ Boat ramps and canoe/kayak launch areas provided that the public access facility incorporates pedestrian access to coastal waters, or;
- ~~(7)~~ Maintenance of previously funded access sites. This project category is available only to Tier 1 communities. Such projects include repair and maintenance of access site facilities and amenities to ensure public health and safety. Repair and maintenance does not include activities such as trash removal, grounds keeping, or custodial services, nor can it be used to pay local government staff salaries.

(f) All projects must meet the standards of handicapped accessibility for individuals with disabilities according to the North Carolina Building Code. Exceptions may be granted where site characteristics impede accessibility improvements.

~~(e)(g)~~ The following criteria shall be used to select projects that may receive financial assistance:

- (1) The applicant demonstrates a need for the project due to a high demand for public access and limited availability within the local government jurisdiction.
- (2) The project is identified in the certified CAMA Land Use Plan ~~local land use plan~~ or local access plan;
- (3) The applicant has not received previous assistance from the Public Beach and Coastal Waterfront Access Program grant program or the applicant has received assistance and demonstrated its ability to complete previous projects with funds from the grant program;
- (4) The applicant's commitment of matching funds exceeds the required local share of the total project cost provided in ~~Paragraphs (d) and (e)~~ Paragraph (h) of this Rule;
- (5) The project proposal includes multiple funding sources; ~~and~~
- (6) The project location includes donated land with physical limitations, or it has been deemed unbuildable as described in G.S. 113A-134.3(a).
- ~~(7)~~ Priority shall be given to the acquisition of lands that meet § 113A-134.3(a);
- ~~(8)~~ The project acquires land for future access improvements;
- ~~(9)~~ The project creates handicapped-accessible facilities at new access sites, adds handicapped-accessible facilities to existing sites, or replaces deteriorating facilities; and
- ~~(10)~~ The project's location within a Tier 1 community.

~~(d) The North Carolina Department of Commerce's Tier designations, as outlined by G.S. 143B-437.08 shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities, which shall have a contribution of at least 10 percent. At least one half of the local contribution shall be cash match, the remainder may be in kind match.~~

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~~(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities, which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.~~

~~(h) The applicant's matching requirements are based on project type and their designation as a Tier 1 community. Match requirements are as follows:~~

- ~~(1) Local government contributions for land acquisition shall be at least 15 percent of the acquisition cost, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project cost. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.~~
- ~~(2) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.~~
- ~~(3) Local government contributions for maintenance of previously funded access sites shall be at least 10 percent of the maintenance project costs. At least one half of the local contributions shall be cash match; the remainder may be in-kind match. This project type is only available to Tier 1 communities.~~

~~(i) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other State programs.~~

~~(j) Multi-phase projects shall be considered on their own merits within the pool of applications being reviewed in any year.~~

~~(k) Projects selected for funding may not begin until the Department of Environmental Quality and grant recipient sign a contract. An exception may be granted for land acquisition projects when a waiver has been requested by the applicant in writing and approved by the Division of Coastal Management. A waiver shall be in effect for 18 months from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.~~

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. February 1, 2009; September 1, 2007; August 1, 2000.
Readopted Eff. September 1, 2021
Amended Eff. Month Day, Year:*

15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE

~~Prior to submitting its final application for a public access grant in accordance with 15A NCAC 07M .0306(f) from the Division of Coastal Management, the local government shall hold a public meeting or hearing to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.~~

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998.*

Readopted Eff. September 1, 2021

Repealed Eff. Month day, year.

15A NCAC 07M .0310 STANDARDS FOR PUBLIC ACCESS

- (a) Public access projects funded through the Public Beach and Coastal Waterfront Access program shall be consistent with public access policies contained in the local government's land use plan as required under 15A NCAC 07B .702(d)(2)(A), its local waterfront access plan, or a local recreation plan that addresses public access.
- (b) Land acquired with Public Beach and Coastal Waterfront Access program funds shall be dedicated in perpetuity for public access and benefit of the general public, and the dedication shall be recorded in the local Register of Deeds by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with Public Beach and Coastal Waterfront Access Program grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the percentage of grant funds provided for the original purchase or improvement, at current market value at the time of sale or disposition.
- (c) Local governments that receive or have received funding through this grant program shall operate and maintain the public access sites and their facilities in such a manner that public health and safety is ensured for the useful life of that facility as set forth in the individual grant contract.

OPTION A

- (d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for the **operation, maintenance, improvement or enhancement of existing public access sites**, or the provision of new public access. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites, and shall make the report available upon request. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

OPTION B

- (d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for the **operation, maintenance and enhancement of existing public access sites, including trash removal, law enforcement and public safety**, or the provision of new public access **sites through acquisition or easement**. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites, and shall make the report available upon request. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

OPTION C

(d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for the operation, maintenance and enhancement of existing public access sites, including trash removal, law enforcement and public safety, beach nourishment projects or the provision of new public access sites through acquisition or easement. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites, and shall make the report available upon request. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a); Readopted Eff. September 1, 2021