

Fiscal Analysis

Shoreline Access Policies
Amendments to 15A NCAC 7M .0300

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Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	Shoreline Access Policies
Citation	15A NCAC 07M .0300
Description of the Proposed Rule	Subchapter 07M establishes the criteria for funding grants to local governments for the Public Beach and Coastal Waterfront Access Program within the 20 coastal counties.
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Authority	113A-124; 113A-134.1; 113A-134.3
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: Yes
Necessity	The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Public Beach and Coastal Waterfront Access Program. These amendments are intended to address implementation aspects of the Program, as well as reorganize some of the individual rules based on grant administration, local government requirements, and project selection. These changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.

Introduction and Purpose

The Public Beach and Coastal Waterfront Access Program (Access Program) was established by the General Assembly in 1981. The Coastal Area Management Act (CAMA; GS 113A-134.1) states that "...public purposes would be served by providing increased access to ocean beaches, public parking facilities, or other related public uses." The Program is administered by the Division for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights.

Beginning in fiscal year 1996-97, the program began receiving 5% of the revenues from the NC Parks and Recreation Trust Fund (PARTF), which was (at the time) funded by a portion of the state's deed stamp tax. However, the 2013 NC General Assembly amended the law, directing the proceeds of the deed stamp tax to the general fund. The PARTF now receives biannual appropriations, as well as some revenue from specialty license plates. Over the past several years, the Division has received approximately \$1M in annual appropriations to fund the Access Program.

The Access Program offers matching grant funds primarily to local governments throughout the 20 coastal counties for low-cost capital projects designed to improve pedestrian access to the state's beaches and waterways. Since 1981, 451 public access sites have been acquired or improved at a cost of over \$47 million in grant funds. Local governments are responsible for construction, operation and long-term maintenance of the facilities. While most of the early projects were located along the oceanfront, more projects are now designed to improve access to estuarine shorelines, coastal rivers, and urban waterfronts.

The Division of Coastal Management solicits for proposals from local governments in the 20 coastal counties in February of each year, using criteria adopted by the Commission (15A NCAC 7M .0300) to select grant recipients. Over the past several years approximately \$1M in grants have been awarded each year. Local governments are required to match 25% of the project cost for site improvements projects, and 15% for land acquisition projects. Tier 1 communities (counties and municipalities designated as economically distressed by the N.C. Dept. of Commerce) have a 10% match requirement for improvements and acquisitions. Recipients are generally selected in August and contracts are awarded in January. Grant recipients have 18 months to complete their projects.

It has been at least 10 years since many of the rules associated with the Public Beach and Coastal Waterfront Access Program have been amended. While the Program continues to be quite successful and popular with local governments, Staff are proposing amendments to address implementation aspects of the Program, as well as reorganize some of the individual rules based on grant administration, local government requirements, and project selection. These changes are not expected to have financial impacts on local governments.

Specifically, the proposed amendments achieve the following major goals:

- Reorganization of individual rules based on grant administration, local government requirements, and project selection in support of the goals of the Coastal Area Management Act.
- Adds maintenance of previously funded access sites as a new eligible activity for Tier 1 communities.

- Adds an acquisition waiver to allow land acquisition outside of the normal solicitation period (February – April) as eligible projects.
- Clarifies through examples the types of activities that can be supported by user fees under operation, maintenance and enhancement.

The proposed effective date of these amendments is June 1, 2021.

Description of Rule Amendment

Subchapter 15A NCAC 7M of the Coastal Resources Commission’s rules establish the criteria and procedure for funding the Public Beach and Coastal Waterfront Access Program. The following section outlines the proposed amendments and the intent of the changes to each section.

SUBCHAPTER 7M – SHORELINE ACCESS POLICIES

15A NCAC 7M .0301

- This section of the access policies is proposed for repeal as it introductory in nature and is repetitive of the language found in CAMA.

15A NCAC 7M .0302

- Relocates and clarifies the definition of a local water access plan and a Certified CAMA Land Use Plan.
- Deletes definitions of types of access sites, as these are not used in decision making.
- “Improvements” section is moved to 7M .0307, as this section describes what improvements are eligible for funding under the grant program.
- Relocates the definition of Tier 1 Communities to the definitions section.

15A NCAC 7M .0303

- Proposed for deletion. The Commission is now proposing to address a provision concerning the disposition of properties acquired with Access Program funds [7M .0303(d)] was inconsistent with a similar provision in CAMA. The existing rule language of 7M .0303(d) states (emphasis added):

“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”.

However, § 113A-134.3 states *“All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access.”*

During the early days of the Access Program, the State purchased properties and leased them to local governments. The Program soon shifted to providing grant funds to local

governments for acquisitions because the Division did not have the resources to manage properties acquired for access. At that time, language began to appear in the contracts with local governments related to the disposition of properties if they were not used for access and requiring reimbursement of grant funds. This reimbursement language eventually included an accounting requirement for the appreciation of real property that should be included in the reimbursement to the State. Around 2008, Staff included this language in general amendments to Shoreline Access Policies in the Commission's 7M rules, but the inconsistency with CAMA was not noted until recentl.

A bill (S389) has been introduced in the legislature which addresses the current language in the Shoreline Access Policies. The reimbursement language proposed for amendment is intended to match that of S389, to be consistent with CAMA. Since many of the existing Access Program rules have been consolidated or rearranged, these provisions are now proposed to be moved from 7M .0303 (which will be deleted) and incorporated into 7M .0310.

The Commission rules for the Public Access Program have allowed local governments to collect parking fees at sites funded by the Access Program for the past 20 years, provided that the fees are used exclusively for the operation and maintenance of access facilities. The allowable uses of fee revenues were expanded in 2007 to include the acquisition or development of new access facilities. Also in 2007, a provision was added to require biannual reporting on the use of fees to the Division. However, since there was no consequence for failing to report on time, it was incumbent upon the Division to periodically remind local governments of this obligation. The fact that this report could be included with the biannual land use implementation reports added to tracking issues, and as a result, fee expenditure reports have been submitted to the Division inconsistently.

To address the inconsistency in local governments' reporting of fee expenditures to the Division, the Commission is proposing that the requirement be amended to prohibit local eligibility for Access Program funding if they have not made their annual fee expenditures report publicly available and proposing to remove the requirement that the report be sent to the Division.

The decision to charge a fee for use of access facilities is a local issue, dependent upon on the maintenance needs and additional amenities associated with the facilities such as trash, utilities, policing, lifeguards, etc. This reporting requirement is further complicated by the fact that the Public Beach and Coastal Waterfront Access Program is not necessarily involved in the funding of all access sites within a jurisdiction. For example, New Hanover County has approximately 94 beach access sites with only 26 funded by the Division. In Wrightsville Beach, there are 44 access sites with only five funded through the Access Program. Carolina Beach has 28 access sites, with nine funded through the Access Program. The Division does not have the resources to conduct the forensic accounting or auditing to determine that the revenue generated at a particular site or parking area is going back into the maintenance or provision of access. However, the CRC believes making the revenue and expenses associated with access sites publicly available provides a level of accountability. Emerald Isle, for example, provides this information on its website as "Emerald Isle Parking 101" (<https://www.emeraldisle-nc.org/emerald-isle-paid-parking-101>). This level of information is similar to what has been provided to the Division in the past and provides details on the income from parking

fees compared to costs associated with providing access. The Commission has also received input from local government on their use of parking fees. To incorporate this input, the Commission has incorporated examples of uses of parking fees that are consistent with the existing requirement that user fees be utilized for operation, maintenance and enhancement of existing public access sites. Enhancement has been added to capture projects funded by the Division that do necessarily increase the amount of access (e.g. increased parking) but add to the amenities associated with a site such as restrooms/showers, bike racks, gazebos etc. and enhancement of the beach itself through beach nourishment.

15A NCAC 7M .0306

- This information is being retained but reorganized and relocated into other sections (7M .0302 and 7M .0307).

15A NCAC 7M .0307

- This section has been reorganized to include requirements (from 7M .0306 and .0308) directly associated with the access grant program including DCM responsibilities, local government requirements, eligible activities, handicap accessibility, criteria & priorities for funding, and requirements for matching funds.
- For funds utilized by the Division for non-competitive access projects, Staff is proposing to reduce the public comment period from 60 to 30 days which is more in line with other comment periods in the Commission's rules.
- Adds maintenance of previously funded access sites as a new eligible activity for Tier 1 communities. Staff have observed that the ability to maintain projects after initial funding is often a hindrance to some communities in applying for funding and has been an issue in some locations. Currently the grant only funds maintenance of prior projects that have exceeded their useful life (typically 15 to 20 years).
- Adds acquisition projects outside of the normal solicitation period (February – April) as eligible projects. Local governments often discover acquisition opportunities that are time sensitive or occur outside the Division's typical grant cycle. Staff is proposing the ability to grant a waiver, which if approved by the Division, would allow local governments to apply for funding of an acquisition taking place within an 18-month period. The waiver provision is similar to what is allowed and implemented by the NC Parks and Recreation Authority.

15A NCAC 7M .0308

- Public notices provisions have been moved into 7M .0307 along with other grant program requirements.

15A NCAC 7M .0310 (New)

- Includes relocated provision requiring consistency with CAMA land use plans from 7M .0303.
- Incorporates recent legislative amendments to CAMA regarding disposition of properties acquired with access funds, should they be sold by a local government.

- Included relocated provision from 7M .0303 requiring maintenance of the access site and associated facilities for their useful life.
- Includes relocated and amended provision from 7M .0303 requiring an annual report on the use of fees be made publicly available and that a local government will be ineligible for funding if the report is not provided until it is rectified.
- Clarifies through examples that local governments may use fees 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.

Fiscal Impacts

Private Sector

As private property owners and the general public are not eligible for this funding, they are unlikely to be directly affected by these amendments. While they do have an interest in projects funded through the Access Program, their interests are primarily confined to the substance of the projects and not necessarily the procedures of the grant program. The amendments to 15A NCAC 7M Shoreline Policies provides flexibility to the timing of land acquisitions (through acquisition waivers) and provides funding for site maintenance to Tier 1 communities. It is therefore unlikely that these amendments will have a direct financial impact on private property owners.

However, the rules provide indirect benefits to private property owners and the general public by providing and enhancing public access to the state's beaches and waterways. Under the proposed rule change property purchased outside of a contract will be eligible for grant funding. Previously local governments either purchased the property using their own funds or did not purchase the property, resulting in a lost opportunity to provide access. The waiver benefits the general public and property owners in two ways; it creates permanent access site, as all land acquired with grant funds must be held in perpetuity for public access, and secondly by making these land acquisitions eligible for grant funding the waiver will reduce the amount of local funds a government pays out of pocket towards creating access.

Since 2015, an average of ten out of the twenty coastal counties have been considered economically distressed. Over the past several years' staff has observed that the ability to maintain projects after initial funding has become a hindrance to Tier 1 communities, in some instances these communities have chosen not to submit final applications or accept grant awards. It is the Divisions belief that funding for project maintenance to Tier 1 communities will increase and enhance the public's access to the state's waterways and beaches in these communities.

NC Department of Transportation (NC DOT):

The amendments to the 15A NCAC 7M Shoreline Access Policies affect the implementation aspects of the Program. While NCDOT may be a partner with local government through lease or easement agreements, NCDOT is not eligible for this funding, and is unlikely to be affected by these amendments.

Local Government:

The primary purpose of the amendments to the 15A NCAC 7M Shoreline Access Policies are intended to address implementation aspects of the Program including flexibility in the timing of land acquisitions and funding for site maintenance to Tier 1 communities. The amendments also reorganize some of the individual rules based on grant administration, local government requirements, and project selection. These amendments are not expected to significantly affect how the state funds are to be distributed to local governments through the Access Program as they are primarily administrative in nature. The economic impacts of these proposed rule changes are expected to be minimal, but beneficial to local governments by aligning the types of eligible projects with priorities of local government in the coastal area.

While the funding of the Access Program is dependent upon the availability of funds in any given fiscal year, the Division is assuming for this analysis that approximately \$1,000,000 per year in state appropriations will continue to be available and positively benefit local governments.

Land Acquisition Analysis

Since 2012 the Division has awarded 110 grants totaling \$11,147,122.65, of these 13 grants totaling \$1,946,937 were for the acquisition of 20 acres.

- Nine grants totaling \$1,339,077 were awarded to purchase 17.43 acres of land fronting estuarine waters. The average price of an estuarine acre was \$76,826.
- Four grants totaling \$607,860 were awarded to purchase 2.57 acres of land on the ocean front. The average price of an ocean front acre was \$236,521.

Land Acquisitions (2012 to 2020)

Year	Acres Acquired	Local Government	Location	Grant Amount	Local Cash	Local In-kind	Total Cost
2012-2013	1.00	Windsor	Estuarine	8,550	900	0	9,450
2012-2013	2.60	Havelock	Estuarine	133,000	39,900	16,400	189,300
2012-2013	0.87	N. Topsail Beach	Ocean	125,000	45,850	0	170,850
2012-2013	0.03	Elizabeth City	Estuarine	102,000	38,000	2,500	142,500
2013-2014	3.12	Beaufort County	Estuarine	370,000	65,300	0	435,300
2013-2014	1.31	N. Topsail Beach	Ocean	274,860	116,836	134,000	525,696
2013-2014	0.66	Elizabeth City	Estuarine	260,157	46,190	3,250	309,597
2015-2016	6.87	Beaufort County	Estuarine	200,000	200,000	0	400,000
2015-2016	1.58	New Bern	Estuarine	55,000	250,000	0	305,000
2018-2019	1.47	Cape Carteret	Estuarine	114,750	20,250	0	135,000
2018-2019	0.25	Bald Head Island	Ocean	12,500	12,500	0	25,000
2019-2020	0.10	Varnamtown	Estuarine	95,620	54,380	0	150,000
2019-2020	0.14	Carolina Beach	Ocean	195,500	34,500	0	230,000
Totals	20.00			1,946,937	924,606	156,150	3,027,693
Averages				149,764	71,124	12,012	232,899

The price and availability of land varies greatly based on location (urban vs. rural and oceanfront vs. estuarine), as well as current market conditions. Due to these variables the purchase of land is often time sensitive. A few times a year, the Division is contacted by local governments requesting grant funding outside of the solicitation period for land acquisition. While the current rule allows the Division to use grant funds on a non-competitive basis, the use of funds in this way would require extenuating circumstances. To date this has not been utilized for land acquisitions in an effort to keep the awarding of grant funds equitable.

As the rule is currently written any land acquisition outside of a contract would not be eligible for grant funding, however the purchase would be eligible for use as an in-kind match when undertaking improvements to the site. The proposed rule changes will allow local governments to request an acquisition waiver, while the waiver does not guarantee future funding this waiver will ensure that the purchase of land outside of a contract period will be eligible for grant funding.

Based on past awards and staff's communication with local governments requesting acquisitions outside of the solicitation period, the Division anticipates providing acquisition waivers to 1-2 communities each year. As the proposed acquisition waiver does not guarantee funding and the cost of land on the coast is subject to the multiple variables as outlined above, it is difficult to estimate the anticipated dollar amount of acquisitions to be funded based on the proposed rule change. However, land acquisition is and remains a priority for grant funding.

Tier 1 Maintenance Analysis

Each year the N.C. Dept. of Commerce ranks counties as economically distressed. Since 2015, an average of ten out of the twenty coastal counties have been considered economically distressed. Over the past several years' staff has observed that the ability to maintain projects after initial funding has become a hindrance to Tier 1 communities, in some instances these communities have chosen not to submit final applications or accept grant awards.

Since 2012 the Division has awarded an average of three grants each year to Tier 1 communities. Currently the grant only funds maintenance of prior projects that have exceeded their useful life (typically 15 to 20 years). Over the past several years the Division has awarded maintenance grants to Pasquotank County (a Tier 1 community) for repairs to a boardwalk originally funded through the program in 2001-2002.

Year	Grant Amount	Local Cash	Local In-kind	Total Cost
2017-2018	80,000	8,500	500	89,000
2018-2019	84,000	8,835	500	93,335
2019-2020	79,750	8,611	250	88,611
Total	243,750			
Average	81,250			

The average amount of these grant awards is \$81,250. Based on the past awards for maintenance and staff's communication with Tier 1 communities, the Division anticipates awarding one Tier 1 maintenance grant each year. The amount of the grant is anticipated to be near or below the average of \$81,250.

There will be no additional costs associated with the amendment to require local government to make the use of fee reports publicly available rather than send these reports to the Division. Reporting on the use of fees is currently a requirement and only the presentation is changing. While non-compliance with the reporting requirement will now make local government ineligible to receive a grant from the Public Access Program, this ineligibility is temporary until the rectified. However, should non-compliance with the reporting requirement continue, a local government could be expected to be ineligible of \$104,579 per year in grant funding based on the average grant award over the past five years.

Division of Coastal Management (DCM):

While future funding of the Access Program is dependent upon the availability of funds in any given fiscal year, the Division is assuming for this analysis that approximately \$1,000,000 per year in state funds will continue to be available. These amendments do not significantly impact how state funds are distributed to local governments through the Access Program.
