



NORTH CAROLINA  
Environmental Quality

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## MEMORANDUM

**TO:** Coastal Resources Commission  
**FROM:** Mike Lopazanski  
**SUBJECT:** Amendments to 15A NCAC 7M .0300 – Shoreline Access Policies

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. Local governments are required to match 25% of the project costs. Tier 1 communities have a 10% match requirement for acquisitions and improvements.



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 mainly implementation aspects of the Program, as well as reorganize some of the individual rules based on grant administration, local government requirements, and project selection, as follows:

#### 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 .0306

- This 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 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 hinderance to some communities in applying for funding and has been an issue in some locations.
- 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.

I look forward to discussing the proposed rule language at our upcoming meeting.

## 1 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 optimum access to the public beaches and waters of the 20 county coastal region. Access shall be 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 an access program for the purpose of acquiring, improving and maintaining waterfront recreational property at frequent intervals throughout the coastal region for public access to these important public trust resources.~~

~~(c) In addition, some properties, due to their location, are subject to severe erosion so that development is not possible or feasible. In these cases, a valid public purpose 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 or develop land for public access, including parking as authorized by G.S. 113A-134.3(e). 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.  
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 in the 20 coastal ~~counties.~~ counties as defined in G.S. § 113A-103(2).

- (1) "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.
- (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 that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights.
- ~~(3) "Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(3).~~
- ~~(4)(3)~~ "Public Trust Waters" is defined in 15A NCAC 07H .0207(a).
- ~~(5)(4)~~ "Beach" is defined as an area adjacent to the ocean extending landward from the mean low water line to a point where either the growth of vegetation occurs or a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward, or riparian owners have specifically and legally restricted access above the mean high water line. This definition is intended to describe those shorefront areas customarily freely used by the ~~public~~ public consistent with N.C. G.S. § 77-20.
- (5) A "Local Waterfront Access Plan" identifies access needs and opportunities, determines access and facility requirements, establishes standards, develops specific 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,
- ~~(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.
- ~~(6)~~ "Local Access Sites" include those public access points which offer minimal or no facilities. Generally, these accessways provide only a dune crossover or pier, if needed, litter receptacles and public access signs. Vehicle parking is generally not available at these access sites. However, bicycle racks may be provided.
- ~~(7)~~ "Neighborhood Access Sites" includes those public access areas offering parking, usually for 5 to 25 vehicles, a dune crossover or pier, litter receptacles and public access signs. Restroom facilities may be installed.

- (8) ~~"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 normally provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles and public access signs.~~
- (9) ~~"Multi-regional Access Sites" are generally 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.~~
- (10) ~~"Urban Waterfront Access Projects" improve public access to deteriorating or under utilized 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.~~
- (11) ~~"Improvements" are facilities that are added to promote public access at a designated access site. The most common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks and foot showers.~~
- (12)(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 North Carolina Coastal Management Program (NCCMP), the local government shall provide operation and maintenance of the facility for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.
- (13) ~~"Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.~~
- (8) "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. Month day, year; February 1, 2009; January 1, 1998; March 1, 1988; March 1, 1985;  
July 1, 1982.*

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

- (a) ~~Coastal Waterfront access in the 20 county coastal area is a concern of local, state, regional and national importance. Local governments have lead 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 07B .0702(d)(3)(A) and local waterfront access plans. The Division of Coastal Management may take the lead in acquiring and improving access sites as such opportunities arise.~~
- (b) A local policy in a land use plan sets the community objectives for access. 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, determine access and facility requirements, establish standards, and develop specific project design plans or guidelines by appropriate 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 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 full 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 to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for a minimum of 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 making progress throughout project implementation and ensure that completed projects 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.  
Repealed Eff. Month day, year.*

### **15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA, 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 to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission (CRC) for a minimum of 30 days prior to the expenditure of non-competitive money by the DCM.~~

~~(a)(c) Local governments have lead responsibility for the selection of public access sites within their jurisdiction. Any local government in the 20 coastal county region having ocean beaches or public trust waters within their jurisdiction may apply for access funds for the acquisition and development of beach or coastal waterfront access facilities.~~

~~(d) Prior to submitting their final application for a Public Beach and Coastal Waterfront Access grant from the DCM 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.~~

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

- (1) Land acquisition, including acquisition of unbuildable lots as outlined in 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;~~
- (4)(3) ~~Regional Access Sites or improvements;~~ Development of improvements to public access at deteriorating or underutilized 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) ~~Multi regional Access Sites or improvements;~~
- (6) ~~Urban waterfront development access projects;~~
- ~~(7)(4) Reconstruction, replacement or relocation of existing, damaged facilities; deteriorating facilities;~~
- ~~(8) Reconstruction or replacement of aging facilities; and~~
- ~~(9)(5) Offsite parking areas servicing access sites within the local government's jurisdiction, jurisdiction;~~
- ~~(10)(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) Priority shall be given to the acquisition of lands that meet § 113A-134.3(a);
- (2) The project acquires land for future access improvements;
- (3) The project creates handicapped-accessible facilities at new access sites, adds handicapped-accessible facilities to existing sites, or replaces deteriorating facilities;
- (4)(4) Applicant-The Applicant demonstrates a need for the project due to a high demand for public access and limited availability;
- (2)(5) Project-The project is identified in the certified CAMA Land Use Plan local land use plan or local access plan;
- (3)(6) Applicant-The applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
- (4)(7) Applicants The applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Paragraphs-(d) and (e) (h) of this Rule;
- (5)(8) Project-The project proposal includes multiple funding sources;
- (6)(9) The project's location is within a Tier 1 community.

(d) The North Carolina Department of Commerce's Tier designations by the Lee Act (G.S. 105-129.3) 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.

(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.

(f)(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.

(g)(j) Multi-phase projects and previous contingency 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 eligible land acquisition projects when a waiver has been requested by the applicant in writing and approved by the DCM. 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. Month day, year; February 1, 2009; September 1, 2007; August 1, 2000.*

**15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE**

~~Prior to submitting its final application for a public access grant 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.  
Repealed Eff. Month day, year.*