



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director

CRC-21-26

August 23, 2021

MEMORANDUM

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

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.

You will recall approving revisions to the rules guiding administration and implementation of the Access Program and reorganizing some of the individual rules based on grant administration, local government requirements, and project selection. Also included were amended provisions from 7M .0303 requiring that 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.

In discussing these amendments, Staff have noted news coverage regarding fees charged at various public beach access sites along the coast. It has been Staff's experience that there tends to be a public discussion and debate over parking fees when a municipality raises fees or particularly when a local government begins to charge parking fees at access facilities. Your rules 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.

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. The collection and use of fees are further complicated by the fact that DCM is not necessarily involved in the funding of all access sites within a jurisdiction. As reported earlier, New Hanover County has about 94 beach access sites with only 26 partially funded by the Division. In Wrightsville Beach, there are 44 access sites with only five partially funded through the Access Program. Carolina Beach has 28 access sites, with nine partially funded through the Access Program.



In discussing the use of parking fees associated with access sites, Staff posed a question to the Commission as to whether or not parking fees associated with Division-funded access sites can be used as a source of revenue for beach nourishment projects. At the time the allowance of parking fees was incorporated into your rules, only a few municipalities conducted ongoing beach nourishment projects and the Commission's intent was clear that the revenue generated should only be used for the maintenance of the access sites. The currently proposed amendments have the following language regarding fees:

Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 may charge user fees as long as those fees are used exclusively for the operation, maintenance and enhancement of public access, or the provision of new public access.

The word "enhancement" is a new addition and Staff interpret it to cover projects that add amenities (gazebos, piers, restrooms etc.) to existing access sites.

Since our discussion of the intent of this language, DCM has received a comment from New Hanover County in which they maintain that NC G.S. 160A-301 gives the County authority to use "on-street" parking fees to defray the cost of traffic/parking ordinances and "off-street" parking fees for any public purpose. The comment from New Hanover County further states that S.L. 98-86 gives Wrightsville Beach the authority to use parking fees for any public purpose.

For the September 2021 meeting, Commissioner Smith offered to research the justification for the existing rules (and rule interpretation) limiting use of parking fees from state-funded access sites to operation/maintenance and acquisition of shoreline access facilities. Her analysis and interpretation are attached, and I look forward to continuing this discussion at our upcoming September meeting.

TO: Coastal Resources Commission
FROM: Commissioner Robin Smith
RE: Public Access User Fees
DATE: August 31, 2021

Earlier this year, DCM staff informed the CRC of local government questions about both the meaning and the authority for a CRC rule restricting use of revenue from local user fees (usually parking fees) at state-funded public access facilities.¹

The rule, 15A NCAC 7M.0303, allows local governments to charge user fees at state-funded public access facilities, but limits the use of fee revenue to operation and maintenance or providing new access facilities:

Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 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 07L .0511.

15A NCAC 7M.0303(a) [Emphasis added].

When a local government accepts a state access grant, the grant agreement includes a condition based on the rule:

“Reasonable user fees may be assessed as long as those fees are used exclusively for the operation and maintenance of the access facility and/or other public access facilities within the local jurisdiction.”

¹ The CAMA access statutes cover both beach access facilities and facilities to access public trust waters. For simplicity, the memo will just refer to “public access” facilities.

At our last meeting, the Commission decided to review the rule to be sure there is a common understanding of what the rule means as currently written. This memo addresses the recent local government questions about the rule. The questions all relate to the local governments' interest in using public access fees to fund beach nourishment projects.

The conclusion proposes a CRC position on interpretation of the current rule. It does not make any recommendation on whether the rule on use of access fees should be changed.

I. Does the CAMA rule allow use of local public access fee revenue for beach nourishment projects?

State laws creating the public access program expressly address access *to* the beach or public trust waters. It is clear from the wording and the context of these laws that the legislature intended to address the lack of pedestrian access *across upland property* to reach the beach or public trust waters and associated parking.

G.S. §113A-134. Findings

(b) ... The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. *There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters.*

G.S. §113A-134.3. Standards for public access program.

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the *acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters*...Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. *The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.*

In each statute, the reference to “public access” means facilities (including parking) necessary for visitors to reach the beach or public trust waters. G.S. § 113A-134.3 encourages acquisition of erosion and flood-threatened oceanfront property for public access. The statutes do not use the term “public access” to mean enhancement of the beach. When 15A NCAC 7M.0303 limits use of fee revenue from state-funded access facilities to “operation and maintenance, or provision of new public access”, it uses the term “public access” as the term is used in the statutes – to mean access from the upland to the beach or public trust waters.

II. Does the rule allow local governments to use fee revenue from a state-funded beach access facility for any type of “operation and maintenance” rather than just operation and maintenance of access facilities?

The “operation and maintenance” phrase in 7M.0303 would have to be taken entirely out of context to interpret it to cover *all* operation and maintenance activities of a local government.

The rule also relates back to another CAMA public access provision that encourages state/local cooperation to provide access. G.S. § 113A-134.3(b) allows property purchased with state access funding to be controlled and operated by the local government without charge “subject to an agreement requiring that the local government use and maintain the property for its intended public purpose”. Consistent with the public purpose of the access program, the CAMA rule allows fees at state-funded access facilities to be used to meet local maintenance and operation costs or to provide additional public access.

III. State law gives local governments authority to use parking fees for a wide range of purposes. Does the CRC have authority to limit use of parking fees collected at state-funded beach access facilities?

G.S. §160A-301(b) allows cities to impose fees for off-street parking in “lots, garages, or other facilities owned or leased by the city” and use the revenue for any public purpose. The law applies to parking facilities owned or leased by the city for general public parking. The law does not specifically address a city’s authority to charge user fees for *state-funded* public access facilities intended to provide access to beaches and public trust waters.

CAMA authorizes the CRC to insure that property acquired for public access is operated and maintained for that purpose. The current CRC rule balances the local government need to fund maintenance and operation of public access facilities with the burden user fees place on the public the facilities are intended to benefit. Since the more general law on use of municipal parking fees doesn’t address *state-funded public access facilities*, it wouldn’t likely be interpreted to prevent the CRC from limiting use of fees generated by those facilities.

Local governments raising the question about use of public access parking fees are interested in using the fee revenue for beach nourishment projects. CAMA’s public access provisions do not address beach nourishment, but a series of state laws expressly identify other sources of beach nourishment funding. For the most part, those laws authorize beach towns (including those in New Hanover County, Carteret County, Dare County and Pender County) to use a local room occupancy tax to fund beach nourishment projects.²

² See Session Law 2001-439 (Dare County, North Topsail Beach), Session Law 2001-381 (Carteret County) and Session Law 2010-78 (amending existing occupancy tax authority for New Hanover County) for examples.

PROPOSED INTERPRETATION OF 15A 7M.0303

Based on the language of the rule and the statutory public access provisions, the CRC interprets the existing rule as follows:

1. Consistent with the public access provisions in CAMA, the reference to public access in the rule means access across upland property to reach the beach or public trust waters and associated facilities such as parking. It does not include beach nourishment.
2. The rule limits use of revenue from user fees at state-funded public access facilities to operation and maintenance of public access facilities. It does not allow use of those fees for local government operation and maintenance activities unrelated to public access.
3. The rule falls within the CRC's authority to ensure that state-funded public access facilities are adequately operated and maintained for public access.