



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-20-27

MEMORANDUM

TO: Coastal Resource Commission

FROM: Rachel Love-Adrick

DATE: November 2, 2020

SUBJECT: Fiscal Analysis for Shoreline Access Policies 15A NCAC 7M .0300

Summary of Rule Change

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 Access 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.

It has been at least 10 years since many of the rules associated with the Access Program have been amended. While the Access Program continues to be quite successful and popular with local governments, Staff are proposing amendments to address implementation aspects of the Access Program. 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 (counties and municipalities designated as economically distressed by the N.C. Dept. of Commerce). 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.
- 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, 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.



Summary of Fiscal Analysis

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for 15A NCAC 7M .0300 has been prepared by the Division and approved by DEQ and the Office of State Budget & Management (OSBM).

Private Sector: The amendments do not have a direct financial impact on private property owners or the general public. However, these amendments provide indirect benefits to them 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 sites, 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 expends in creating access sites.

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. The Divisions believes 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 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.

Land Acquisition - 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 multiple variables [price and availability, location (urban vs. rural and oceanfront vs. estuarine), as well as current market conditions], it is difficult to estimate the anticipated dollar amount of acquisitions to be funded based on the proposed rule change.

Tier 1 Maintenance - 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 grants for \$81,250.



Recommendation

Staff recommends approval of the attached Fiscal Analysis. If the Commission approves, the attached fiscal analysis will be sent to public hearing with a proposed effective date of June 1, 2021.



Fiscal Analysis

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

Prepared by

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October 22, 2020

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	Shoreline Access Policies
Citation	15A NCAC 07M
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.
Agency Contact	Rachel Love-Adrick, District Planner – Morehead City Rachel.Love-Adrick@ncdenr.gov (252) 808-2808 ext. 203
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.

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 .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.

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.

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.

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 .0303 STANDARDS FOR PUBLIC ACCESS

- (a) Public beach nourishment projects undertaken with public funds shall include provisions for public access and parking within the boundaries of the project to achieve maximum public use and benefit of these areas.
- (b) Public access projects funded under this 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. 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.
- (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-227(a); 160A-314(a); 16 U.S.C. Sec. 1453;
 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.

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.

~~(c)~~ (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)~~ (e) 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;
- (2) The project creates handicapped-accessible facilities at new access sites, adds handicapped-accessible facilities to existing sites, or replaces deteriorating facilities;
- ~~(1)(3) ~~Applicant~~ The Applicant demonstrates a need for the project due to a high demand for public access and limited availability;~~
- ~~(2)(3) ~~Project~~ The project is identified in the certified CAMA Land Use Plan ~~local land use plan~~ or local access plan;~~
- ~~(3)(5) ~~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)(6)~~ ~~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)(7)~~ ~~Project~~ The project proposal includes multiple funding sources;
~~(6)(8)~~ 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.

~~(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 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.*

**15A NCAC 07M.0309 COMPLIANCE WITH THE NORTH CAROLINA ENVIRONMENTAL
POLICY ACT**

*History Note: Authority G.S. 113A-2; 113A-124;
Eff. July 1, 1990;
Recodified from .0306 Eff. January 1, 1998;
Amended Eff. January 1, 1998;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.*