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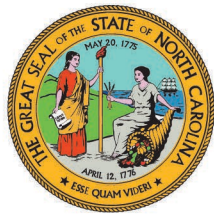
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NORTH CAROLINA
Environmental Quality

CRC-21-12

April 15, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Additional 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.

At the September 2020 Commission meeting, amendments to 15A NCAC 7M .0300 were approved for public hearing that addressed implementation aspects of the Program, and to reorganize some of the individual rules based on grant administration, local government requirements, and project selection.

During the initial Staff review it was noted that 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 State did not want to be responsible for managing 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



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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 this latest effort.

Because amending CAMA to reflect the Commission's intent would require legislative action during the upcoming session, and in order to avoid delaying important programmatic revisions, Staff did not bring proposed rule updates related to reimbursement requirements to the CRC in September 2020. A bill (S389) has since been introduced 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.

In addition to these changes, one other issue related to the Access Program has arisen over the past few months. There has been news coverage regarding fees charged at various public beach access sites along the coast. Most notably, Emerald Isle decided to raise parking fees for the coming summer season for access sites that include some sites funded through the CAMA Access Program. 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. 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 Staff to periodically remind local governments of this obligation. The fact that this report could be included with the biannual land use implementation reports may have 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, Staff 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. Staff is also proposing to remove the requirement that the report be sent to the Division.

15A NCAC 7M .0310

- (d) 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 and maintenance and enhancement of public access, or the provision of new public access. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites, and shall make the report publicly available. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.*

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 DCM is not necessarily involved in the funding of all access sites within a jurisdiction. For example, New Hanover County has about 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. DCM 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, Staff do believe 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.

With regard to the use of parking fees associated with access sites, a question has been raised 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. However, when the provision was expanded in 2007, it is not clear if the use of parking fees for beach nourishment projects can be consider as an effort toward ‘...the provision of access.’ Staff is looking for guidance from the Commission in order to advise local governments in considering this use of parking fees.

Attached is the amended rule language which repeals 7M .0303 Standards For Public Access, incorporating its provision into a new section 7M .0310 of the same title. Additionally, the provision that local governments maintain Program-funded facilities for their useful life, as specific under contract, has been moved from 7M .0302 to 7M .0310. This was an oversight in the original proposed rule language update and is being corrected now. In order to minimize confusion with the previously approved rule changes, I have updated and attached the proposed amendments to 7M .0300 Shoreline Access Policies as proposed in September 2020 (CRC-20-21).

I look forward to discussing this amendments and other issue at our upcoming meeting.

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 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) "Public Trust Waters" is defined in 15A NCAC 07H .0207(a).
- (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 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.
- ~~(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.~~
- ~~(8)~~⁽⁷⁾ "Tier 1 communities" include Tier 1 counties as determined annually by the North Carolina Department of Commerce as outlined in G.S. § 143B-437.08, and the counties respective municipalities. The Division shall use the Tier 1 designation to encourage economic activity in economically distressed communities.

History Note:

Authority G.S. 113A-124; 113A-134.3;

Eff. March 1, 1979;

Amended Eff. 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.
Repealed Eff. Month day, year.

15A NCAC 07M .0310 — STANDARDS FOR PUBLIC ACCESS

- (a) Public access projects funded under the Public Beach and Coastal Waterfront Access program shall be consistent with public access policies contained in the local government's land use plan as required under 15A NCAC 07B .702(d)(2)(A), its local waterfront access plan, or a local recreation plan that addresses public access.
- (b) Land acquired with Public Beach and Coastal Waterfront Access program funds shall be dedicated in perpetuity for public access and benefit of the general public, and the dedication shall be recorded in the local Register of Deeds by the grantee. Any lease or easement agreement shall extend at least 25 years. If the local government uses the property for a purpose other than beach or coastal water access or elects to sell or otherwise dispose of the property, the local government shall reimburse the State the amount that is greater of the amount of Program grant funds provided to purchase the property or an amount equal to the same proportion of the current market

value of the property as the proportion of the original purchase price of the property funded with Program grant funds.

(c) Local governments that receive or have received funding through this grant program shall operate and maintain the public access sites and their facilities in such a manner that public health and safety is ensured for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.

(d) 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 and maintenance and enhancement of public access, or the provision of new public access. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites, and shall make the report publicly available. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-227(a); 160A-314(a); 16 U.S.C. Sec. 1453; Eff. Month day, year.