

15A NCAC 7M
SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 7M .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 pedestrian access to these important public resources.

(c) In addition, some properties, due to their location, are subject to severe erosion so that development here is not possible or feasible. In these cases, a valid public purpose may be served by the donation, acquisition and improvement of these properties for public access.

7M .0302 DEFINITIONS

The primary purpose of the Public Beach and Coastal Waterfront Access program is to provide pedestrian access to the public trust waters for the 20 coastal counties.

- (1) "Ocean Beach Access" is defined to include the acquisition and improvement of properties situated along the Atlantic Ocean for parking and public passage to the oceanfront. Beach access facilities may include, but are not limited to, parking areas, restrooms, showers, picnic areas, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, dune crossovers, security lighting, emergency and pay telephones, interpretive and public beach access signs, and other appropriate facilities.
- (2) "Coastal Waterfront Access" is defined to include the acquisition and improvement of properties located in the 20 county area under the Coastal Area Management Act (CAMA) jurisdiction that are coastal waterways to which the public has rights of access or public trust rights. Coastal Waterfront access facilities may include, but are not limited to parking areas, restrooms, showers, picnic areas, fishing piers, boardwalks, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, security lighting, emergency and pay telephones, interpretive and coastal waterfront access signs, and other appropriate facilities.
- (3) "Inlet Beach Access" is defined to include the acquisition and improvement of buildable and unbuildable properties situated along the confluence of estuarine and ocean waters for parking and public passage to the beach area. The construction of facilities other than parking, litter receptacles and public access signs is not encouraged.
- (4) "Public Trust Waters" is defined in 15A NCAC 7H .0207(a).
- (5) "Beach" is defined as an area adjacent to the ocean extending from the mean low to the mean high water line and beyond this line to where either the growth of vegetation occurs or a distinct change in slope or elevation occurs, 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.

- (6) "Local Access Sites" are defined to include those public access points which offer minimal or no facilities. They are primarily used by pedestrians who reside within a few hundred yards of the site. Generally, these accessways are a minimum of 10 feet in width and 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" are defined as those public access areas offering parking, usually for 5 to 25 vehicles, a dune crossover or pier, litter receptacles and public access signs. Such access ways are typically 40 to 60 feet in width and are primarily used by individuals within the immediate subdivision or vicinity of the site. 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. Where possible one-half acre of open space in addition to all required setback areas should be provided for buffering, day use, nature study or similar purposes.
- (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 and a maximum of 200 cars, restrooms with indoor showers and changing rooms, and concession stands. Where possible two acres of open space in addition to all required setback areas should be provided for buffering, day use, nature study or similar purposes.
- (10) "Urban Waterfront Redevelopment 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 which 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, bicycle racks and foot showers.
- (12) "Maintenance" is the proper 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), it shall be the local government's responsibility to provide operation and maintenance of the facility for the useful life of that facility.
- (13) "Handicapped Accessible" is defined as meeting the standards of the State Building Code and federal guidelines for handicapped accessibility. Any facility constructed with these grant funds must meet State and Federal regulations for handicapped accessibility.

7M .0303 GUIDELINES FOR PUBLIC ACCESS

(a) Development shall not interfere with the public's right of access to the waterfront where such access has been established through donation, acquisition, express or implied dedication or prescriptive easement.

(b) Public beach nourishment projects funded by the state and federal government must include provisions for adequate public access within the vicinity of the project based on applicable Division of Coastal Management standards.

(c) Policies regarding state and federal properties with waterfront areas intended to be used by the public must provide for public access and adequate parking so as to achieve maximum public use and benefit of these areas consistent with established legislation.

(d) Local governments are encouraged to participate in the Public Beach and Coastal Waterfront Access Program as authorized by G.S. 113A-134.1 - 113A-134.3. The access program is intended to serve both year-round and seasonal users. In determining parking needs for access, particularly for day visitor destination beaches, local governments may use the peak seasonal population estimate provided in their land use plan as set out in 7B .0211.

(e) Public access projects shall be consistent with public access policies contained in the local government's land use plan as required in 15A NCAC 7B .0212(a)(3)(x) of this Chapter or in its local waterfront access plan. If a local access plan does not exist, a local recreation plan that addresses public access may provide guidance as to local needs.

(f) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 may charge reasonable user fees as long as those fees are used exclusively for operation and maintenance of the access facility. Funding from other agencies or sources may carry different regulations about user fees. Other regulations, including schedules of operation, may also be established.

(g) Local governments shall 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 approved pursuant to 15A NCAC 7B .0216 of this Chapter and local waterfront access plans. The Division of Coastal Management may provide some assistance in determining the location of regional and multi-regional sites.

(h) The primary purpose of the public access program is to provide funds to acquire or develop land for pedestrian access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities may be funded, provided pedestrian access is the primary objective of the proposed project.

(i) Local governments are encouraged to plan for and develop ocean access areas that provide convenient access opportunities along the entire length of the shoreline within its jurisdiction. In preparing land use plan policies on public beach access pursuant to 15A NCAC 7B .0212(3)(B)(x) of this Chapter, local governments are encouraged to consider the following guidelines:

- (1) Local/Neighborhood Access Sites - one per block in the community;
- (2) Regional Access Sites - one per locality or one per four miles, whichever yields the most public access;
- (3) Multi-regional Access Sites - one per barrier island or one per 10 miles whichever yields the most public access.

(j) In preparing land use plan policies on public waterfront access pursuant to 15A NCAC 7B .0212(3)(B)(x) of this Chapter, local governments are encouraged to consider the following guidelines:

- (1) Local Access Sites - one per block;
- (2) Neighborhood Access Sites - one per 50 dwelling units;
- (3) Regional Access Sites - one per local government jurisdiction;
- (4) Multi-regional Access Sites - one per coastal county. Parking facilities for these projects shall be based on seasonal population estimates.

(k) Pursuant to G.S. 113A-134.3(a), local governments shall give priority to the acquisition of unbuildable lots for public access purposes.

(l) The construction of facilities other than parking, litter receptacles, and public access signs is not encouraged in inlet beach areas.

7M .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. As such, the NCCMP can provide some guidance as to location of facilities that are of multi-regional and regional significance. The local government, however, has the primary responsibility for identifying local, neighborhood and regional accessways through its land use plan policies and local access plan.

- (1) A local policy in a land use plan sets the community objectives for access; a local government may determine that public access is not a pressing issue and thus develop a policy of private sector access provision and no public involvement. Similarly local governments may:
 - (i) identify numerous access needs and develop local policy to pursue access funding;
 - (ii) develop a local access plan; and
 - (iii) solicit access sites through corporate assistance.
- (2) A local access plan shall identify needs and opportunities, determine access and facility requirements, establish local standards, and develop specific project design plans or guidelines by appropriate site. A local plan shall consider both financial resource availability (such as grants, impact fees or hotel/motel tax revenues) and construction timing. It shall establish local priorities and devise a system for annual evaluation of the plan.
- (3) Local governments may also include provisions in local subdivision ordinances that require access for waterfront developments or require payment in lieu of access for non-water dependent subdivisions. The principle here is that, as land is subdivided and more people become residents, access and other recreation demands will follow.
- (4) Dedicated street stub outs may be acceptable for accessways.

(b) The NCCMP has primary responsibility for administering the coastal access program. Annually, the Division of Coastal Management (DCM) will solicit for pre-application proposals from local governments and will select competitive projects for full application submittal. A group of these final applications will be selected for funding based on guidelines in Rule 7M .0305 of this Section and anticipated fund availability.

(c) DCM will ensure all projects funded through the annual grant program are making reasonable progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.

7M .0307 ELIGIBLE APPLICANTS/GRANT SELECTION CRITERIA

Any local government in the 20 coastal county region having ocean beaches, estuarine or public trust waters within its jurisdiction may apply for access funds:

- (1) Eligible projects include:
 - (a) Land acquisition, including acquisition of unbuildable lots;
 - (b) Local Access Sites;
 - (c) Neighborhood Access Sites;
 - (d) Regional Access Sites;
 - (e) Multi-regional Access Sites;
 - (f) Urban waterfront development projects;
 - (g) Reconstruction or relocation of existing, damaged facilities; and
 - (h) Reconstruction or replacement of aging facilities.

- (2) The following general criteria will be used to select projects that may receive financial assistance. These criteria assist the Division of Coastal Management in carrying out the goals of this program. Other factors may also be considered in the funding decision:
 - (a) Applicant demonstrates a need for the project due to a high demand for public access and limited opportunities;
 - (b) Project is identified in a local beach or waterfront access plan;
 - (c) 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;
 - (d) Applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Item (3) of this Rule;
 - (e) Project proposal includes multiple funding sources;
 - (f) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
 - (g) Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.
- (3) Local government contributions must be at least 25 percent of the project costs. At least one half of the local contribution must be cash match; the remainder may be in-kind match.
- (4) Multi-phase projects and previous contingency projects will be considered on their own merits within the pool of applications being reviewed in that year.

7M .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.

7M .0309 COMPLIANCE WITH THE NC ENVIRONMENTAL POLICY ACT

The public access program shall comply with the requirements of the North Carolina Environmental Policy Act (NCEPA) and rules adopted by the Department of Environment and Natural Resources concerning NCEPA implementation as set out in 15A NCAC 1C .0201 - .0504. Future amendments by the Department shall be deemed to be incorporated into this Rule pursuant to G.S. 150B-14(c).

