

PUBLIC BEACH & COASTAL WATERFRONT ACCESS PROGRAM

State Authorization: Coastal Area Management Act NCGS 113A-124; 113A-134.1]

**NC Department of Environment & Natural Resources
Division of Coastal Management**

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The auditor should not consider the Supplement to be “safe harbor” for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a “safe harbor” for identification of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current. The grantor agency may elect to review audit working papers to determine that audit tests are adequate.

I. PROGRAM OBJECTIVES

The Department of Environmental and Natural Resources (DENR) has been charged with the responsibility of developing a comprehensive public beach access program, pursuant to Part 6 of Article 7 of Chapter 113A of the North Carolina General Statutes, entitled the Public Beach and Coastal Waterfront Access Program. The Division of Coastal Management (DCM) is the designated sub-agency for administering the program per the *North Carolina Shorefront Access Policies (15A NCAC 7M Section .0300)*. In 1996, the NC General Assembly established a dedicated source of state funds for the Access Program - a 5% share of the receipts of a land transfer tax collected by the NC Parks and Recreation Trust Fund. The annual amount received from this funding source is variable. The Division of Coastal Management is authorized to award grants to local governments for the purpose of funding a public access program to assure acquisition; construction and maintenance of a system of pedestrian public access to ocean beaches, estuarine water beaches, and other public trust waters.

II. PROGRAM PROCEDURES

Annually letters are circulated to each municipality and county within the twenty (20) County Coastal Zone (see attached map) that funds are available towards acquiring and developing public pedestrian access sites and facilities. Attached to the annual letter is a pre-application packet, which includes both a copy of the State’s Shorefront Access Policies (15A NCAC 7M Section .0300) and “Guidelines For Matching Contributions”. Based on a review of the pre-applications received some communities are invited to submit a Final Application. All Final Applications are required to include a “Title Opinion”. Following a final review of requests projects are prioritized for funding whereby such projects are forwarded for State Environmental, Clearinghouse Review and formal development of a Grant Contract. Following Clearinghouse Review three (3) unsigned copies of the grant award contract are forwarded for local approval and signature by the local government to be returned to the State.

All contracts are required to have been approved by adoption of a local resolution. As part of the contract packet distributed to the local government are copies of the monitoring and requisition for payment forms. Each project is assigned to one of the four (4) Districts, Division of Coastal Management Planners who monitors the paperwork, progress and completion of the project per the requirements of the grant contract and other procedural requirements of the DENR and the Division of Coastal Management. All improvement projects are required to meet the ADA, handicapped accessible requirements.

III. COMPLIANCE REQUIREMENTS

1. Activities Allowed or Un-allowed:

- In the event funds should not be available for future stages of the project, the community is required to agree to complete the project to a degree of usefulness as a public water access agreed upon by the State.
- All significant deviations from the project proposal are required to be submitted to the State for prior approval. If any tract or parcel of, or interest in, real property subject to being purchased under the provisions of the contract, but not identified herein, is found by the State for any reason not to be suitable, all obligations of the State may cease as to such parcel, tract, or interest.

2. Allowable Costs/Cost Principles:

- No grant funds may be expended on this project until a Title Opinion for the site has been submitted to and approved by the Division of Coastal Management's local District Planner.
- Unapproved changes to the project site may not be allowed and will be cause for the State to seek repayment of previously committed/granted funds for site acquisition and improvements.
- The State per the contract only agrees to reimburse to the community only for costs actually incurred by the community under the terms of the contract. Should the total costs of the project exceed the project cost stated in the contract, the State will only reimburse the community for the excess attributable to change orders approved by the State.
- The community is required to agree to refund to the State, subsequent to audit of the project financial records by the State, any funds not expended in the completion of the project under the terms of the contract.
- Project costs eligible for assistance shall be determined upon the basis of the criteria set forth by the State.

3. Cash Management

- If the community subcontracts with a company engaged in another project(s) for the locality, all accounting and reporting specific to the project governed by the grant contract must be wholly separate from that of the other project(s).
- Eligible expenses are only those, which occur and are documented between the effective start and end date of the contract.

4. Conflict of Interest

- No official or employee of the community who is authorized in their official capacity to negotiate, make, accept, approve, or take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract.
- No person performing services for the community in connection with this project shall have a financial or other personal interest other than his employment or retention by the community in any contract or subcontract in connection with this project.
- No officer or employee of such person retained by the community shall have any financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the community, and such officer, employee or person has not participated in the acquisition for or on behalf of the community.
- The community is required to be responsible for enforcing the conflict of interest provisions.

5. Eligibility

- Contracts are limited to local municipalities and counties, however funds may be awarded for improvements on state or federal lands within or adjacent to the jurisdiction.

6. Equipment and Real Property Management

7. Matching, Level of Effort, Earmarking

- Non-cash in-kind match documentation associated with local employees contribution accredited to the project is required to be kept on file locally.

8. Period of Availability of Federal Funds: N/A

9. Procurement and Suspension and Debarment

10. Program Income

- 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 with the written consent of the State.
- Basic Changes in Recreational Use. The use of property acquired or developed with grant assistance may not be changed from that contemplated and approved when assistance was obtained, unless approval is obtained from the State.
- Reasonable Use Limitations. The community may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with grant assistance when such a limitation is necessary for maintenance or preservation. Thus, by way of example, limitations may be imposed on the number of persons

using an area or facility. All limitations shall be in accord with the applicable grant contract and amendments.

- Use of Proceeds of Sales of assisted areas and facilities. The proceeds of sale of assisted areas and facilities must be held by the State or the community and be disposed of only in accordance with a plan approved by the State.
- Notice of Limitations of Use and Restrictions. The community and/or owner of the real property acquired (including easements) or improved with grant funds awarded under this contract shall file, in the office of the Register of Deeds in the county or counties where such property is situated, a Notice of Limitation of Use and Restrictions which sets forth the land use restrictions contained in the contract.

11. Real Property Acquisitions and Relocation Assistance

- Retention and Use. Property acquired or developed with grant assistance shall be retained and used for public access. The Community 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 public access.
- The acquisition cost or fair market value of real property, including interest in donated lands, shall be based upon the appraisal of a competent appraiser. The appraisal reports shall be reviewed and approved by the State.

12. Reporting

- Amendments to contracts for construction shall be by written change order only. Such change orders shall be issued after approval of the State, are required to be made a part of the project file, and shall be kept available for audit.
- The community is required to agree to secure completion of the work in accordance with the approved construction plans and specifications, and is required to secure compliance with all applicable Federal, State, and local laws and regulations, including the State Building Code.
- No construction is to occur prior to the receipt of all required local, state, and federal permits. Authorized improvements and costs must comply with the grant application submitted to and approved by the State. Unauthorized changes in the project (from the approved site plan, budget and other material submitted with final grant application) will be sufficient cause for the reduction of grant funds at the sole discretion of the State.
- Changes not deemed substantial may be made at the discretion of the Division of Coastal Management District Planner.
- Project will be completed and closed out prior to the project termination date, as specified in this contract, in compliance with the conditions of this contract.
- Grant payment for any type of contract work will require submittal to the State of appropriate itemized documentation showing all charges incurred for each individual project, and shall include a progress report in the form or manner provided by the department.
- The community is required to agree to maintain and make available at proper times to the State all bid documents, and accurate records of all expenditures for costs applicable to the contract, and to submit properly certified billings for such costs on forms prescribed by the State and supported by detailed data sheets which will facilitate the audit of the community's records.
- Complete accounting records, including original invoices, payrolls, contracts, or

other documents clearly showing the nature and property of all costs incurred under the contract, is required to be retained by the community for a period of three years following project completion or until an audit has been completed, whichever is later. All accounting records and supporting documents will clearly show the number of the project to which they are applicable.

13. Sub-recipient Monitoring

- No pass federal funds.

14. Special Tests and Provisions

- The community is required to include certification of ADA compliance from the local chief building official with project closeout documentation submitted to the State.
- The community is required to agree to comply with the terms and intent of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and all applicable regulations and procedures implementing that Act.
- No grant funds are to be used for on-going operation and maintenance of the project.
- The community is required to install CAMA public access signs at the project site(s). The State provides these signs at no cost to the community.
- Future improvements, modifications, or changes to the project site will be subject to full review and approval by the State. This will include any changes that require permits or any modifications (reductions or additions) to recreational amenities.
- Public building contracts shall comply with the requirements of Article 8 of Chapter 143 of the General Statutes, and all other requirements placed on local governments.