

From: GreeneColleen
Sent: Monday, October 15, 2012 9:13 AM
To: HenningTom
Cc: KlatzkowJeff
Subject: Public Beach Access & the Florida Administrative Code

Good Morning Commissioner Henning:

In response to your request, attached are two relevant sections from the Florida Administrative Code to define "public beach access."

I am planning to add this information to the next TDC Agenda based on the discussion from the last meeting. Please feel free to contact me with any questions or if you would like any additional information. Thank you.

Section 62B-36.002(11) defines "public beach access" both primary and secondary.

(11) "Public Beach Access" is an entry zone adjacent to a sandy beach under public ownership or control which is specifically used for providing access to the beach for the general public. The access must be signed, maintained and clearly visible from the adjacent roadway. The types of public beach access sites are:

(a) "Primary Beach Access" is a site with at least 100 public parking spaces and public restrooms.

(b) "Secondary Beach Access" is a site that may have parking and amenities, but does not qualify as a primary beach access.

Section 62B-36.007(a) and (c) also defines "public beach access" as it is used to determine cost share (state funding) for eligible beach projects.

(1) Until the unmet demand for repairing Florida's beaches is satisfied, the Department intends to cost share equally the costs with local governmental entities, except where actual cost savings from regional coordination can be demonstrated pursuant to [subsection 62B-36.007\(2\)](#), F.A.C. The Department will cost share up to 50% of the non-federal share of projects subject to adjustment for the level of public accessibility calculated using the following criteria:

(a) Primary beach access sites shall be granted eligibility for **one-half mile** in each shore-parallel direction from the access site plus the shoreline length of the access site.

(b) Public lodging establishments shall be granted eligibility based upon the percentage of units available to the public, rounded to the nearest 10%, times the property's beachfront footage.

(c) Secondary beach access sites shall be granted eligibility for the shoreline length of the access site. Additional eligibility shall be granted for up to **one-quarter mile** in each shore parallel direction at a rate of 52.8 linear feet per parking space, provided:

1. Parking is located within one-quarter mile of the secondary beach access site; and

2. Parking is clearly signed or otherwise clearly designated as parking for the general public on an equal basis.



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*** This document reflects changes received through August 31, 2012 ***

TITLE 62 DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION 62B BEACHES AND COASTAL SYSTEMS
CHAPTER 62B-36 BEACH EROSION CONTROL ASSISTANCE PROGRAM

62B-36.002, F.A.C.

62B-36.002 Definitions.

(1) "Annual Funding Request and Local Long Range Budget Plan" is the document submitted by the eligible governmental entity which includes a detailed description for the next fiscal year's funding request and a schedule for the disbursement of funds to be requested for beach management projects or related activities over a given period of time.

(2) "Beach Management" is protecting, maintaining, preserving, or enhancing Florida's beaches including but not limited to, restoring or nourishing beach and dune systems, dune protection and restoration activities, restoration of natural shoreline processes, inlet management activities to facilitate sand bypassing, construction of erosion control structures, supporting engineering and environmental studies, project monitoring, mitigation, and removal of derelict structures and obstacles to natural shoreline processes.

(3) "Contractual Services" are the provision of engineering, professional, or scientific services for eligible activities as otherwise described in this chapter. Such activities may be performed by a private company or individual, or, if approved by the Department, pursuant to *subsection 62B-36.007(4)*, F.A.C., an eligible governmental entity.

(4) "Critically Eroded Shoreline" is a segment of shoreline where natural processes or human activities have caused, or contributed to, erosion and recession of the beach and dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost. Critically eroded shoreline may also include adjacent segments or gaps between identified critical erosion areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects.

(5) "Department" is the Department of Environmental Protection.

(6) "Eligible Governmental Entity" is any state, county, municipality, township, special district, or any other public agency having authority and responsibility for preserving and protecting the beach and dune system.

(7) "Inlet" is a short narrow waterway including all related flood and ebb tidal shoals and the inlet shorelines, connecting a bay, lagoon, or similar body of water with the Gulf of Mexico, the Straits of Florida, or the Atlantic Ocean. Improved, altered or modified inlets are those where stabilizing rigid coastal structures have been constructed, or where inlet related structures or features such as channels have been constructed or are actively maintained and the channel depth is greater than the inlet system would support in a natural state.

(8) "Project Agreement" is a contract executed between the Department and the eligible governmental entity that explicitly defines the terms and conditions under which the project shall be conducted.

(9) "Project Boundary" means the shoreline of the beach management project and the first row of development immediately landward of the beach vegetation line or beach erosion control line, whichever is further landward.

62B-36.002, F.A.C.

(10) "Project Phase" is a logical step required in developing and implementing a project. A typical project will normally include the following phases:

(a) "Feasibility" - is the characterization of the erosion problem and constraints on remediation alternatives, development and analysis of alternatives to address the problem, and selection of the cost-effective, environmentally sound alternative that avoids or minimizes adverse impacts.

(b) "Design and Permitting" - is the development of plans, specifications, permit applications and final costs for the project.

(c) "Construction" - is the execution of the selected project.

(d) "Monitoring" - is the collection of project performance, biological and environmental data.

(11) "Public Beach Access" is an entry zone adjacent to a sandy beach under public ownership or control which is specifically used for providing access to the beach for the general public. The access must be signed, maintained and clearly visible from the adjacent roadway. The types of public beach access sites are:

(a) "Primary Beach Access" is a site with at least 100 public parking spaces and public restrooms.

(b) "Secondary Beach Access" is a site that may have parking and amenities, but does not qualify as a primary beach access.

(12) "Public Lodging Establishment" is any public lodging establishment currently licensed by the Department of Business and Professional Regulation in the classification of "hotel", "motel" and "resort condominium" with six or more units and fronting directly on the sandy beach.

(13) "Statewide Long Range Budget Plan" is the planning document used by the Department to schedule the disbursement of funds over a given period of time. It is developed in coordination with eligible governmental entities based on the Strategic Beach Management Plan and Local Long Range Budget Plans.

(14) "Strategic Beach Management Plan" is the Department's adopted plan for management of the critically eroded shoreline of the state and the related coastal system.

AUTHORITY: Rulemaking Authority *161.101, 161.161 FS.*
Law Implemented *161.088, 161.091, 161.101, 161.161 FS.*

HISTORY

New 6-10-83, Formerly 16B-36.02, *16B-36.002*, Amended 12-25-03.

ANNOTATIONS

Critically-eroded beaches

In an action involving damage by hurricanes and tropical storms, beaches within a county were identified as critically-eroded beaches under subsection *62B-36.002(4)*, F.A.C., and the county sought to restore the beaches through renourishment. It was held that, if the shoreline was lost due to avulsive event, the public (in this case, the county) had the right to restore its shoreline up to the mean high water line. *Walton County v. Stop the Beach Renourishment, Inc.*, 2008 Fla. LEXIS 1646 (Fla. Sept. 29, 2008).



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CHAPTER 62B-36 BEACH EROSION CONTROL ASSISTANCE PROGRAM

62B-36.007, F.A.C.

62B-36.007 Project Cost Sharing.

(1) Until the unmet demand for repairing Florida's beaches is satisfied, the Department intends to cost share equally the costs with local governmental entities, except where actual cost savings from regional coordination can be demonstrated pursuant to subsection 62B-36.007(2), F.A.C. The Department will cost share up to 50% of the non-federal share of projects subject to adjustment for the level of public accessibility calculated using the following criteria:

(a) Primary beach access sites shall be granted eligibility for one-half mile in each shore-parallel direction from the access site plus the shoreline length of the access site.

(b) Public lodging establishments shall be granted eligibility based upon the percentage of units available to the public, rounded to the nearest 10%, times the property's beachfront footage.

(c) Secondary beach access sites shall be granted eligibility for the shoreline length of the access site. Additional eligibility shall be granted for up to one-quarter mile in each shore parallel direction at a rate of 52.8 linear feet per parking space, provided:

1. Parking is located within one-quarter mile of the secondary beach access site; and
2. Parking is clearly signed or otherwise clearly designated as parking for the general public on an equal basis.

(d) Eligible shoreline lengths cannot overlap.

(e) The sum of the eligible shoreline lengths, as defined above, is divided by the total project length to determine the percentage of the total project that is eligible for cost sharing.

(2) Cost savings, which occur due to the planned geographic coordination or sequencing of two or more projects between eligible governmental entities, may qualify for additional reimbursement. Geographic sequencing means combining two projects together for the purpose of construction contracting. In order to determine the increase in the state's cost share the projects shall be bid jointly and separately to demonstrate the cost savings of combining the projects. The cost share shall be adjusted not to exceed the state's maximum cost share amount of 75 percent of the eligible costs.

(3) All costs of environmental and performance monitoring required by the Department's permit with the governmental entity or a permit issued to the US Army Corps of Engineers, are eligible for cost sharing.

(4) The Department will cost share for private contractual services necessary to conduct the project. Services may be contracted to a governmental entity if the Department is shown evidence that the entity's proposal is cost effective, of sufficient professional quality, and otherwise in the general public interest. In determining whether contractual services are cost effective, the Department shall consider cost estimates provided by the governmental entity from fully qualified private companies or individuals. Specific contractual services performed by or for local governments shall be subject to

62B-36.007, F.A.C.

specific accountability measures and audit requirements and be consistent with the principles of Chapter 287, F.S., for competitive bidding and opportunity.

AUTHORITY: Rulemaking Authority *161.101, 161.161 FS.*
Law Implemented *161.088, 161.091, 161.101, 161.161 FS.*

HISTORY

New 6-10-83, Formerly 16B-36.07, Amended 4-27-86, Formerly *16B-36.007*, Amended 12-25-03.