

V. SUMMARY OF LAWS GUIDING PARK MANAGEMENT

There are many federal and state statutes, state and federal executive orders, and administrative rules and policies that govern the operation of the state parks system. This chapter includes a brief discussion of the primary legal basis for the existence and operation of the state parks system. It also includes other legal issues of particular concern at Lake Waccamaw State Park.

STATE LEGAL MANDATES

North Carolina Constitution

Article XIV, Section 5 of the North Carolina Constitution sets overall policy by broadly defining the conservation and protection of natural resources and the acquisition of such resources as a proper function of government. The amendment reads in part as follows:

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivision to acquire and preserve park, recreation, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open land, and places of beauty.

State Parks Act

The State Parks Act (G.S. 113-44.7 through 113-44.14) sets forth a mission statement for the state parks system. It states that the system functions to preserve and manage representative examples of significant biological, geological, scenic, archaeological, and recreational resources, and that park lands are to be used by the people of the state and their visitors and descendants in order to promote understanding of and pride in the state's natural heritage.

The State Parks Act also calls for development and periodic revisions of a system plan to achieve the mission and purpose of the state parks system in a reasonable, timely, and cost-efficient manner. The Act describes the System Plan components and requires that public participation be a component of plan development and revisions.

The State Parks Act also calls for the classification of park resources and development of general management plans (GMPs) for each park. GMPs are to include a statement of park purpose, an analysis of major resources and facilities, and a statement of management direction.

Powers and Duties of the Department of Environment and Natural Resources

The Department is authorized to make investigations of the resources of the state and to take such measures as it may deem best suited to promote the conservation and development of such resources. In addition, the Department may care for state forests and parks and other recreational areas now owned, or to be acquired by, the state. (G.S. 113-8)

State Nature and Historic Preserve Dedication Act

The State Nature and Historic Preserve Dedication Act (G.S. 143-260.6) was authorized by Article 14, Section 5 of the North Carolina Constitution. It seeks to ensure that lands and waters acquired and preserved for park, recreational, and scenic areas for the purpose of controlling and limiting the pollution of air and water, controlling excessive noise, and in every other appropriate way preserving as a part of the common heritage of the state, continue to be used for those purposes. The State Nature and Historic Preserve Dedication Act provides a strong legal tool for protecting lands from incompatible uses. The addition and removal of lands to and from the State Nature and Historic Preserve require a vote of three-fifths of the members of each house of the General Assembly. The State Nature and Historic Preserve Dedication Act protects all land and water within Lake Waccamaw State Park's boundaries as of May 6, 2003.

Nature Preserves Act

The Nature Preserves Act (G.S. 113A-164) prescribes methods by which nature preserves may be dedicated for the benefit of present and future citizens of North Carolina. It authorizes a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas.

The state may accept the dedication of outstanding natural areas by gift, grant, or purchase of fee simple title or other interest in land. Lands dedicated are held in trust by the state and are managed and protected according to regulations. They may not be used for any purpose inconsistent with the provision of the Nature Preserves Act or disposed of by the state without a finding by the Governor and Council of State that the other use or disposition is in the best interest of the state. Dedicated nature preserves highest and best use is contributing to public understanding of natural systems, scientific research, education about natural processes, habitat for rare species and natural communities, contemplation and compatible recreation, and preservation of natural beauty (N.C.A.C. 12H .0309).

Lake Waccamaw became a registered nature preserve November 28, 1979. The park's land acreage is excluded from the registered area. Management is to be in accordance with general recommendations contained in the registry agreement.

North Carolina Environmental Policy Act of 1971

Recognizing the profound influence that human activity has on the natural environment, the General

Assembly passed the Environmental Policy Act “...to assure that an environment of high quality will be maintained for the health and well-being of all....”

The Act declares that:

It shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all its citizens safe, healthful, productive, and aesthetically pleasing surroundings; to attain the widest possible range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (G.S. 113A-3)

Archaeological Resources Protection Act

The Lake Waccamaw area is known to have been occupied by American Indian tribes. Unknown archaeological resources may exist, both within the existing park boundaries and in nearby areas. Development of recreational facilities should avoid destruction of these resources.

A permit is required from the Department of Administration, in consultation with the Department of Cultural Resources, to excavate, remove, damage, or alter any archaeological resource on state lands. Archaeological resources are defined as the remains of past human life or activities that are at least 50 years old and are of archaeological interest (G.S. 70-10).

State Lakes Statutes

Statutes that govern state lakes also protect Lake Waccamaw. State lakes are required to be retained by the state for public purposes (G.S. 143-3), and the state has authority to construct public facilities, regulate piers and docks, and make rules for operation of watercraft and use of water by the public (G.S. 113-34).

While there are other General Statutes that concern the state parks system and the environment, the above-described statutes, along with Article XIV, Section 5, of the North Carolina Constitution, largely define the purposes of the state parks system and serve to guide its operation.

FEDERAL LAWS

Land and Water Conservation Fund Act of 1965

The federal Land and Water Conservation Fund Act (PL 88-578) offers protection and places restrictions on fund-assisted outdoor recreation areas. By virtue of receiving Land and Water Conservation Fund (LWCF) grant assistance, most of the state parks system - including Lake Waccamaw State Park - is subject to LWCF rules and regulations. Lake Waccamaw State Park has received one LWCF development grant, awarded in 1983 (Grant #37-00770), that was used for

initial recreational facility development.

Property acquired or developed in whole or in part with LWCF assistance cannot be converted to other than public outdoor recreation use without federal approval. A conversion may take place only if approved by the Secretary of the Interior, and only then if replacement property of equal fair market value and reasonably equivalent usefulness and location is made. Park land acquired at Lake Waccamaw State Park since the 1983 LWCF grant award does not fall under LWCF regulations.

LWCF requirements include: programming, operating and maintaining areas in a manner that encourages public participation; maintaining the property so it appears attractive and inviting to the public; maintaining property, facilities and equipment to provide for public safety; keeping facilities, roads, trails and other improvements in reasonable repair throughout their lifetime to prevent undue deterioration and encourage public use; keeping the park and facilities open for use at reasonable hours and times; and making future development meet LWCF rules and regulations. LWCF-assisted sites are periodically inspected by state and federal inspectors to ensure compliance with LWCF requirements.

The Americans With Disabilities Act

Title II of the ADA prohibits discrimination against any "*qualified individual with a disability.*"

New Construction and Alterations

Buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities. (Section 35.151 of Title II)

Existing Facilities

Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. ("Structural changes" include all physical changes to a facility [28 CFR Part 35, Section 35.150, Title II of the ADA Section-by-Section Analysis].)

When alterations affect access to a primary function of a facility, the entity shall also make alterations to the path of travel to the area and bathrooms, public telephones, and drinking fountains serving the altered area.

Programs and Services

....each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. (Title II, Section 35.150)

This includes, but is not limited to, the provision of auxiliary aids and services, including services and devices for effective communication where necessary to afford persons with disabilities an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by a public entity.

Signs

A public entity must ensure that persons with impaired vision and hearing can obtain information regarding the location of accessible services, activities, and facilities. Signs must be provided at all inaccessible entrances to each facility directing users to an accessible entrance or to a location where information can be obtained about accessible facilities. The international symbol for accessibility must be used at each accessible entrance to a facility. (Title II, Section 35.163)

Clean Water Act

Lake Waccamaw State Park's sensitive wetland areas receive protection from Section 404 of the federal Clean Water Act. The Act prohibits the discharge of dredge or fill materials into waters, including wetlands, without a permit from the U.S. Army Corps of Engineers. Activities in wetlands for which permits may be required include but are not limited to: placement of fill material; ditching activities; land clearing involving relocation of soil material; land leveling; most road construction; and dam construction (33 USC 1344). The Division will avoid undertaking construction located in wetlands unless there is no practical alternative and all practical measures are taken to minimize harm to the wetland.

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