

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0102

DEADLINE FOR RECEIPT: Friday, May 15, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The name of a Rule is not within the scope of the RRC's review. However, should this Rule be "Eligible Applicants" instead? If you decide to rename it, you will need to submit a new Submission for Permanent Rule form with the new name in Box 2.

In the Introductory Statement, you will say "07 NCAC 13K .0102 is readopted as published in 34:14 NCR 1287 with changes as follows:" This is because you do not note in the Introductory Statement whether you made substantive changes when publishing in the NC Register. However, as you will be making changes to the rule in response to this Request, you will note "with changes" here.

On line 4, "State of North Carolina" is redundant. I suggest retaining "State" and deleting "of North Carolina"

On line 5, what are the contents of these applications? Are they set forth in rule or law?

In Item (2), line 8, what authority are you relying upon to allow school administrative units to do this? And what is a "school administrative unit"?

In the History Note, line 11, there is no G.S. 143B-135.66. Did you mean G.S. 143B-135.56?

On line 19, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0102 is readopted without changes as published in 34:14 NCR 1287 as follows:

07 NCAC 13K .0102 ELIGIBLE APPLICATIONS

All county governments and incorporated municipalities of the State of North Carolina are eligible to submit applications. Public authorities, as defined by G.S. 159-7, are eligible applicants if they are authorized to acquire land or develop facilities for public recreation purposes.

- (1) Eligible applicants may apply jointly for a project.
- (2) School administrative units may submit a joint application with an eligible applicant for funding of facilities.

History Note: Authority G.S. 143B-135.66;
Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1995;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. December 9, 2002;
Amended Eff. April 1, 2003;
Transferred from 15A NCAC 12K .0102 Eff. April 1, 2017;
Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0103

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0103 is amended as published in 34:14 1287 with changes as follows:" This is because you will be making changes to this Rule based upon this Request and it will differ from what was published in the Register.

So that I'm clear – the Authority is not setting by rule the application process nor the deadline to do so? What authority are you relying upon to do this?

In Item (1), what do you mean by "describing the funding schedule"?

On line 6, so that I'm clear – are "eligible applicants" those who are listed in Rule .0102? If not, then who are these eligible applicants and how is it determined?

On line 8, please insert a comma after "27699-1615"

In (2), line 10, what are "local governments"? Do you mean "local governmental unit" as used in G.S. 143B-135.56(b)(2)? And does that mean that public authorities can request more money?

Also on line 10, you need to spell out what "PARTF" means, since you've not used that term in the Rules yet. You can say "in Parks and Recreation Trust Fund (PARTF)" and that will address this.

In (3), what are the contents of this application? G.S. 150B-2(8a)(d) requires that the substantive requirements of forms be in rules or law. Where are these contents set forth?

In the History Note, line 26, please change the History Note to "Amended Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0103 is amended with changes as published in 34:14 NCR 1287 as follows:

07 NCAC 13K .0103 FUNDING CYCLE

Annual funding schedule dates shall be the following:

- (1) An announcement letter describing the funding schedule and how to apply shall be mailed to all eligible applicants by November 1. This information shall be made available to other interested parties who contact the Department of Natural and Cultural Resources (Department) at: NC Division of Parks and Recreation, 1615 MSC, Raleigh, North Carolina 27699-1615 as well as on the following website: <http://www.ncparks.gov/partf>.
- (2) Local governments shall not request more than five hundred thousand dollars (\$500,000) in PARTF assistance with each application.
- (3) Applications shall be received by the Department or its designee or postmarked no later than ~~5:00 p.m.~~ of the deadline date stated in the announcement letter for the current grant cycle pursuant to Item (1) of this Rule. The Parks and Recreation Authority will set the deadline date for between January 31 and May 30. If the deadline falls on a weekend or holiday, applications shall be received by the Department or postmarked no later than ~~5:00 p.m. on~~ the following business day.
- (4) The Authority shall meet within 180 days of the application deadline to select projects for funding.

History Note: Authority G.S. 143B-135.56; 143B-135.200;
Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1995;
Amended Eff. August 1, 2016; June 1, 2004; August 1, 1998;
Transferred from 15A NCAC 12K .0103 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0105

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0105 is readopted as published in 34:14 NCR 1288 with changes as follows:"

What is the purpose of (a)? The Department will review and do what with that review? Make a recommendation to the Authority?

On line 4, who will be the Department's designee? Employees of the Department?

On line 5, what are these criteria? What is in Paragraph (d) only? Because it says in Paragraph (e) that the Authority will consider it, not the Department.

In (b), line 6, define "relevant"

On line 7, are you mandating the Authority approve these projects? Or are you saying that after review, the Authority will determine which grants will be approved? If so, you need to state that more clearly.

In (c), line 8, who will determine the applicability to the project? Based upon what?

On lines 8 and 11, why do you refer to it as "general" criteria?

Are the requirements of the application what is set forth in Paragraph (d)? If not, then you must state the requirements here or else the return of the application on lines 9-10 is ambiguous, since it's unclear what makes an application incomplete.

In (d), line 11, replace the period after "projects" with a colon.

In (d)(1), line 12, what qualifies as "new"?

In (d)(2), what do you mean by "degree of local recreational planning" Is there a quantifiable amount that is required? And what is "specific" and how is the determination of conformity made?

In (d)(3), line 15, define "unique"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

In (d)(5), how will this commitment be shown and determined/

So that I'm clear – the applicant must submit the information in (d). And the Authority shall evaluate that information in light of Paragraph (e) to determine funding distribution?

And are the criteria in Paragraph (e) in conformity with G.S. 143B-135.56(b)(2), which states:

These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

In the History Note, line 23, insert the correct citation, G.S. 143B-135.56

On line 29, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0105 is readopted without changes as published in 34:14 NCR 1288 as follows:

07 NCAC 13K .0105 EVALUATIONS OF APPLICATIONS

(a) Each completed application shall be evaluated by the Department or its designee on the information provided in the application and in accordance with the PARTF criteria described in this Rule.

(b) The Authority shall review the project evaluations and other relevant data prepared by the applicant and by Department staff. The Authority shall approve projects for funding.

(c) If applicable to the project, the general criteria in Paragraph (d) of this Rule shall be addressed by the applicant. The Department or its designee shall review all applications for completeness. Incomplete applications shall be returned to the applicant.

(d) The following general criteria shall be used to evaluate projects.

- (1) New public recreation facilities provided by the project;
- (2) The degree of local recreational planning for the project and how the specific elements in the project conform to the plan(s);
- (3) The acquisition or the conservation of unique natural, cultural, recreational, or scenic resources;
- (4) The level of public involvement in developing and supporting the project;
- (5) The applicant's commitment to operating and maintaining the project; and
- (6) The suitability of the site for the proposed project development.

(e) The Authority shall also consider the following factors to evaluate projects: the geographic distribution of projects, the presence or absence of other funding sources, the population of the applicant, the level of compliance with prior grant agreements, the amount of funds available, and the amount of funds requested.

History Note: Authority G.S. 143B-135.66;

Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. April 1, 1995;

Amended Eff. June 1, 2006; August 1, 1998;

Transferred from 15A NCAC 12K .0105 Eff. April 1, 2017;

Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0106

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0106 is readopted as published in 34:14 NCR 1288 with changes as follows:"

In (b), line 6, insert a comma after "scope"

In (c), line 7, what are the contents of the approved application and support documentation?

In (d), what does this mean? What laws are you referring to?

On line 8, why is "Clearinghouse" capitalized?

On lines 10-11, how will this have occurred? Based upon what?

In (e), line 12, since you say "mutual" and then "by the Department and the grant recipient(s)"? Isn't this duplicative?

On line 13, I believe you are missing some language here. Should this read, "in order to request an amendment, the grant recipient(s) shall..."

And will the Department not request an amendment?

In (f), consider rewriting this to simplify it: "Projects shall not begin until the Department and grant recipient(s) sing the agreement, . However, if an applicant submits a written request for waiver in order to begin a land acquisition project that requires action prior to the anticipated signing of the agreement, the Authority may grant a waiver."

On line 16, what is this executive committee and what authority does it have to do this, given that the Department is the signee of the agreement? I can understand if the Authority is pushing forward the effective date, but who is this committee that can allow that on the behalf of the Authority?

What is the purpose of the language on lines 18-19?

In (f), line 23, is "project scope" the same as what is in (b), line 6?

Amanda J. Reeder

Commission Counsel

Date submitted to agency: May 4, 2020

On line 23, delete the sentence, "This provision is effective after the 2002-03 grant cycle."

In (h), line 24, what is "Complete" here?

On line 24, what is a "certified" project data sheet? What is a "performance report verifying eligible costs"? Does your regulated public know?

On line 26, what is this "close-out inspection"? Is this addressed in 13K .0110?

In the History Note, line 29, insert the correct citation, G.S. 143B-135.56

On line 37, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

07 NCAC 13K .0106 is readopted with changes as published in 34:14 NCR 1288 as follows:

07 NCAC 13K .0106 GRANT AGREEMENT

- (a) Upon Authority approval, a written agreement shall be executed between the grant recipient(s) and the Department.
- (b) The agreement shall define the Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) State Clearinghouse environmental review comments made as a result of State Environmental Protection Act (SEPA) application review requirements shall be addressed by the applicant prior to execution of the project agreement. Projects judged to have a significant environmental impact shall submit an environmental assessment as required by SEPA.
- (e) The grant agreement may be amended upon mutual consent and approval by the Department and the grant recipient(s). The grant recipient(s) shall submit a written request to the Department. The Department shall approve the amendment if local circumstances justify the amendment request.
- (f) Projects may not begin until the Department and grant recipient(s) sign the agreement unless a waiver has been requested by the applicant in writing and approved by the Authority or its executive committee. Waivers may be granted only for land acquisition projects requiring action prior to the anticipated signing of the agreement. A waiver shall be in effect for ~~18~~ 24 months from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.
- (g) Following execution of the grant agreement, the Department shall reimburse the grant recipient for expenditures related to the project scope. All reimbursements shall be approved by the Department and shall total an amount that is less than or equal to the grant amount. The Department shall approve reimbursement requests for expenditures that are related to the project scope and occur during the project period. This provision is effective after the 2002-03 grant cycle.
- (h) Complete accounting records including a certified project data sheet and performance report verifying eligible costs shall be submitted by the grant recipient(s) to the Department for approval prior to or at the time of the close-out inspection. The Department shall approve the accounting when the records are consistent with the project agreement and budget.

History Note: Authority G.S. 143B-135.66;

Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. April 1, 1995;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. April 4, 2000;

Amended Eff. June 1, 2006; April 1, 2003; April 1, 2001;

Transferred from 15A NCAC 12K .0106 Eff. April 1, 2017;

Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0107

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0107 is readopted as published in 34:14 NCR 1288 with changes as follows:"

Paragraphs (a) and (b) are mostly a recitation of G.S. 143B-135.66(b)(2). Do you need to recite it here?

In (d), line 7, and (f), line 11, consider replacing "is" with "shall be" and "shall not be"

In (g), line 12, why do they have to "receive a grant" and "sign the agreement"? Isn't the receipt of a grant implied if they sign the agreement? Or is to address the waiver in .0106(f)?

What is the purpose of Paragraph (h)?

In the History Note, line 16, insert the correct citation, G.S. 143B-135.56

On line 24, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0107 is readopted without changes as published in 34:14 NCR 1288 as follows:

07 NCAC 13K .0107 MATCHING REQUIREMENTS

- (a) The applicant shall match PARTF funds on a dollar-for-dollar basis.
- (b) The appraised value of land that will be donated to the applicant may be used to match the PARTF grant.
- (c) The donor of the land must be an individual or private organization.
- (d) If a landowner sells land to the applicant for less than the appraised value, the amount of the donation is the difference between the appraised value and the amount paid by the applicant.
- (e) The value of capital improvements that are located on the donated land and will be used for public recreation may be included in the value of the donation.
- (f) Land that is transferred to the applicant due to a statute or rule is not considered a donation.
- (g) The applicant must receive a grant and sign the grant agreement before taking title to donated land.
- (h) Rule .0106 of this Section, of the PARTF administrative rules titled "Grant Agreement" also applies to donated land used as matching funds.

History Note: Authority G.S. 143B-135.66;
Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1995;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. December 9, 2002;
Amended Eff. April 1, 2003;
Transferred from 15A NCAC 12K .0107 Eff. April 1, 2017;
Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0108

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0108 is readopted as published in 34:14 NCR 1288 – 1289 with changes as follows:"

As this Rule is more than one page, please insert page numbers. [See Rule 26 NCAC 02C .0108(1)(h)]

In (a), line 4, replace "are" after "PARTF grants" with "shall be"

In (a)(1)(A), line 8, I suggest inserting a "shall" before "up to"

In (a)(2)(A), line 14, insert a comma after "Primary facilities"

In (a)(2)(B), line 18, delete the comma after "infrastructure projects"

In (b)(3), line 24, what do you mean by "that are identified"? Where? By whom?

And please change the period after "identified" to a colon.

In (b)(3)(D), line 31, you struck "project." without showing it. As this was published correctly in the Register, please show the deletion of the word and the period after it without showing it as a change. Please note the same for (b)(3)(E), line 35 with the word and period of "costs."

In (b)(4), Page 2, line 1, what is "generally" here?

In the History Note, line 4, insert the correct citation, G.S. 143B-135.56

On line 10, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0108 is readopted with changes as published in 34:14 NCR 1288-1289 as follows:

07 NCAC 13K .0108 ELIGIBLE PROJECTS AND COSTS

(a) PARTF grants are awarded to grantees for projects that are for the sole purpose of providing local park and recreation opportunities to the public. Grantees may receive funds for the following types of projects:

(1) Acquisition. Fee simple acquisition of real property for future recreational development and to protect areas with natural or scenic resources.

(A) Grantees acquiring property for recreation development have up to five years from when the Authority and the applicant sign the grant agreement to begin developing recreation facilities.

(B) Grantees acquiring property to protect areas with natural or scenic resources must open these areas to the general public to the extent that the resources will not be impaired.

(2) Development. Projects for the construction, expansion, and renovation/repair of the following:

(A) Primary facilities including outdoor and indoor recreation facilities. Examples include camping facilities, picnic facilities, sports and playfields, trails, swimming facilities, boating/fishing facilities, spectator facilities, and gymnasiums.

(B) Support facilities and improvements such as roads, parking areas, accessibility features, utilities, landscaping, and other infrastructure projects, that would have little or no recreational value without the primary recreation facilities.

(b) Other criteria for determining eligible projects and costs include:

(1) Only development on or acquisition of a single project site or a contiguous trail corridor is eligible for PARTF assistance.

(2) Utility lines developed with PARTF assistance shall be placed underground.

(3) The following costs are eligible within the limits that are identified.

(A) Land acquisition costs such as appraisals, surveys, title work, and attorney fees.

(B) Construction costs such as site planning, design drawings, construction drawings, preparing cost estimates, architectural and engineering fees, permits, construction management, and project inspection.

(C) The cost of preparing an application.

(D) The costs in Parts (A) through (C) of this Subparagraph shall not exceed 20 percent of the total cost of the project or 20 percent of the maximum grant amount, whichever is less. These costs may be incurred within two years of the application deadline as well as during the project period.

(E) A contingency may be included in the development cost estimates, but shall not exceed five percent of total development costs or five percent of the maximum grant amount, whichever is less.

1 (4) PARTF-assisted facilities on school property shall not be recreational facilities generally provided by
2 the school for the use of their students.

3
4 *History Note:* *Authority G.S. 143B-135.66;*
5 *Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule*
6 *becomes effective, whichever is sooner;*
7 *Eff. April 1, 1995;*
8 *Amended Eff. June 1, 2006; April 1, 2003; August 1, 1998;*
9 *Transferred from 15A NCAC 12K .0108 Eff. April 1, 2017;*
10 *Eff. May 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0109

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the Submission for Permanent Rule form, Box 2, please put the new name of the Rule. Do not strike the old name – just insert the new name.

In the Rule:

The Introductory Statement will be “07 NCAC 13K .0109 is readopted as published in 34:14 NCR 1289 with changes as follows.”

As this Rule is more than one page, please insert page numbers. [See Rule 26 NCAC 02C .0108(1)(h)]

In (b), line 7, consider deleting the parenthesis and stating, “controlled, such as through fee simple...lease,”

How does this control occur if the applicant hasn’t gotten a waiver pursuant to Rule .0106(f)? And you are saying the entity must control the property before the application period even closes?

On line 9, please capitalize “State” assuming you mean NC.

Also on line 9, please replace “which” with “that”

In (c), line 11, “PARTF-assisted” should be hyphenated as it is in the rest of the Rule.

In (d)(1), line 15, why not simplify this to state “A grant recipient shall request approval from the Department before any conversion occurs.”

In (d)(2), line 17, what are “issues of local concern”?

In (d)(3), what are “reasonable alternatives”? And upon what basis will the Department make this determination?

In (d)(4), who will determine these measures in the first place? The entity? Then the Department (with advice from the Authority) will approve them?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

In (d)(5), what does this mean? Is this establishing a mitigation measure that must occur, that will be part of (d)(4)?

How is "recreational usefulness" determined? By whom?

Consider breaking the language on lines 26-28 further in a list, like so:

"Replacement areas shall also:

(A) be within... area;

(B) provide... area; and

(C) be... application."

On line 27, what is a "service area"?

On line 27, what is a "viable" recreation area?

On line 27, who determines what is "to the maximum extent possible"?

On line 28, what do you mean by "current" application requirements? These rules?

In (d)(6), line 30, what rules do you mean? The rules of this Section?

In (d)(7), line 31, define "reasonably"

Should (d)(8) be in or at least mentioned in Rule .0106?

Why do you need (e)? It mostly recites (d), line 13.

In (f), Page 2, line 2, replace "indicate" with "state"

In (g), line 3, just to be clear – you mean all of the rules in Section .0100, and not all of the provisions of this Rule?

On line 4, why is this being declared on behalf of the Department? Since the Authority issues all grants, shouldn't it just declare that for itself?

In the History Note, line 7, insert the correct citation, G.S. 143B-135.56

On line 13, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

07 NCAC 13K .0109 is readopted with changes as published in 34:14 NCR 1289 as follows:

07 NCAC 13K .0109 SITE CONTROL AND ~~DEDICATION~~ RESTRICTION

(a) Land acquired with PARTF assistance shall be ~~dedicated-restricted~~ in perpetuity for local park and recreation purposes for the use and benefit of the general public. The ~~dedication-restriction~~ shall be recorded in the public property records by the grantee.

(b) The site of a PARTF project for development shall be controlled (e.g. fee simple ownership or long-term lease) by the grantee by the closing date of the application submission period. Any lease agreement shall extend for a minimum of 25 years unless the property is the subject of a federal, state, or local leasing arrangement which provides assurance that 25 years of public recreational use will be maintained.

(c) Grantees shall assure that PARTF assisted development facilities are maintained and managed for public recreation use for a minimum period of 25 years after the completion date set forth in the grant agreement.

(d) PARTF-assisted land and facilities shall not be converted to uses that are other than public recreation without approval by ~~DENR-the Department~~, in the following manner:

(1) A grant recipient shall notify ~~DENR-the Department~~ and request approval before any conversion occurs.

(2) The grant recipient shall address issues of local concern prior to forwarding a conversion request to ~~DENR-the Department~~.

(3) ~~DENR-The Department~~ shall deny the request if it determines that the grantee has reasonable alternatives available to avoid the conversion.

(4) All conversions shall be mitigated with measures approved by ~~DENR-the Department~~ with advice from the Parks and Recreation Authority.

(5) The primary mitigation for a conversion is to have the grantee replace, at its own expense, land acquired with PARTF assistance with land of equal current fair market value and recreational usefulness. Facilities built with PARTF assistance shall be replaced with facilities of equal current replacement value, and recreational usefulness. Replacement areas shall also be within the grantee's service area; provide or be part of a viable recreation area; and be to the maximum extent possible, consistent with all current application requirements for a new PARTF application.

(6) Replacement property and facilities shall be encumbered by the same obligations as specified in the project agreement and rules for the converted property or facility.

(7) If ~~DENR-the Department~~ determines that the local government cannot reasonably replace the land or facilities, ~~DENR-the Department~~ may mitigate the conversion by the grantee repaying PARTF with funds equal to the current value of the land or facilities.

(8) ~~DENR-The Department~~ shall include provisions on conversions in all grant agreements.

(e) A conversion is defined as the use of PARTF-assisted land or facilities for a purpose other than public recreation.

(f) If PARTF-assisted facilities are built on public school property, the applicant(s) shall submit an agreement with the application describing that the facilities will be available to the general public during non-school hours. Projects on land

owned by a school shall have sign(s) installed informing the public that the facilities are open to the general public. These signs shall also indicate the times when the facilities are reserved exclusively for school use.

(g) Failure by the grantee(s) to comply with the provisions of this Section or the project agreement may result, in addition to any other legal remedies, in the Authority on behalf of the Department declaring the grantee(s) ineligible for further participation in the PARTF until such time as compliance has been obtained.

History Note: Authority G.S. 143B-135.66;
Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1995;
Amended Eff. October 1, 2007; August 1, 1998;
Transferred from 15A NCAC 12K .0109 Eff. April 1, 2017;
Eff. May 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Parks and Recreation Authority

RULE CITATION: 07 NCAC 13K .0110

DEADLINE FOR RECEIPT: Friday, May 15, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The Introductory Statement will be "07 NCAC 13K .0110 is readopted as published in 34:14 NCR 1289 with changes as follows:"

In (a), line 4, who will be the designee?

On line 4, do you need to retain "at least" here? I ask because rules set the minimum standards, so "at least" and "at a minimum" is usually not favored in rule language. However, if you need to retain it, it's fine.

In (b), line 7, replace "will" with "shall"

On line 7, remove the parenthesis here. State "periodic inspections, occurring at least once every five years, to ensure..." This is because parenthetical language is used as an aside, and this is a binding requirement.

On line 8, what parts of Rule .0109? Is it Paragraphs (c) and (f)?

Also on line 8, what are the contents of this "inspection form"? Where in rule or law are they set out?

In (c), line 10, consider replacing "will" with "shall"

In the History Note, line 12, insert the correct citation, G.S. 143B-135.56

On line 18, please change the History Note to "Readopted Eff. June 1, 2020."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 4, 2020

07 NCAC 13K .0110 is readopted without changes as published in 34:14 NCR 1289 as follows:

07 NCAC 13K .0110 INSPECTIONS

(a) The Department or its designee shall perform at least one progress inspection and a close-out inspection of the project site to ensure compliance with the grant agreement and eligibility of the grantee(s) for future program participation.

(b) Grantees will be responsible for conducting periodic inspections (at least one every five years) to ensure compliance with the grant agreement and 07 NCAC 13K .0109 and submitting an inspection form with an affidavit verifying its content to the PARTF program office.

(c) The Department or its designee will conduct random inspections to verify program compliance.

History Note: Authority G.S. 143B-135.66;

Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. April 1, 1995;

Amended Eff. August 1, 1998;

Transferred from 15A NCAC 12K .0110 Eff. April 1, 2017;

Eff. May 1, 2020.