

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07L .0101

DEADLINE FOR RECEIPT: Thursday, June 8, 2017

NOTE: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the use of this Rule? Why do you need it?

Assuming you need to keep this Rule, then I believe that you are mistaken on line 4 where you state that the Secretary of DEQ has promulgated the Rules in the Subchapter. G.S. 113A-124(c) grants authority for rulemaking to the Commission. And the Submission for Permanent Rule form states that the Commission was the body that promulgated this Rule. Please correct this within the Rule text.

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 24, 2017

1 **15A NCAC 07L .0101 IS AMENDED AS PUBLISHED IN 31:13 NCR 1284 AS FOLLOWS:**

2

3 **15A NCAC 07L .0101 AUTHORITY**

4 The rules in this Subchapter are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the
5 Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality in the Secretary's capacity as
6 executive head of the state agency designated by the Governor to administer state funds and to receive and administer
7 federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone
8 Management Act.

9

10 *History Note: Authority G.S. 113A-112; 113A-124;*

11 *Eff. September 1, 1978;*

12 *Amended Eff. July 1, 2017; August 1, 2002; October 1, 1991.*

13

1 **15A NCAC 07L .0102 IS REPEALED AS PUBLISHED IN 31:13 NCR 1284 AS FOLLOWS:**

2

3 **15A NCAC 07L .0102 PURPOSE**

4 ~~The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the Department of~~
5 ~~Environmental Quality program of grants for local land use plans or comprehensive plans, hereinafter referred to as~~
6 ~~“the plan”, and coastal planning and management projects within North Carolina's coastal area. These funds are made~~
7 ~~available to assist local governments in developing and implementing plans and management strategies for their~~
8 ~~coastal resources, as mandated by the CAMA. Funds shall be used in refining and carrying out local land use planning~~
9 ~~and management programs by local governments within the 20 counties defined by the Coastal Area Management Act~~
10 ~~in G.S. 113A-103.~~

11

12 *History Note: Authority G.S. 113A-112; 113A-124;*
13 *Eff. September 1, 1978;*
14 *Amended Eff. March 1, 2016; August 1, 2002; June 1, 1980;*
15 *Repealed July 1, 2017.*

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07L .0503

DEADLINE FOR RECEIPT: Thursday, June 8, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I'm clear – how does the local government apply to the Department for these funds? Is this addressed by another Rule?

In (a), lines 7-10, what is the use of this sentence? What are you trying to convey here? Can this be broken into two sentences? Alternatively, do you need this sentence?

If you do need to retain it, on line 9, by "Coastal Area Management Act" do you mean G.S. 113A, Article 7? Are you saying that this Article defines the 20 counties? If so, where?

On line 11, what do you mean by "need local attention"?

On line 12, this is not a Subparagraph. You either mean "Paragraph" or "Subparagraphs (a)(1) through (6) of this Rule."

On lines 12-13, what is the process and guidelines for how these topics be designated and by whom? These need to be stated in the Rule.

Line 13, delete "but are not limited to"

Line 13, what are "expanded" education and outreach efforts? Does your regulated public know?

Line 14, what are "special planning efforts"?

Line 15, targeted research or studies of what?

Line 15, define "directly"

On line 16, if you mean North Carolina, please capitalize "State" Also, what rules are you referring to?

Line 17, state "Projects selected... for the following designated topics:"

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Commission Counsel
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In (a)(1), Page 2, line 27, define “maximize”

In (a)(2), line 29, who will ensure this? Is it that the goal is for the local government to ensure?

On line 30, is “balance” the verb? You may want to modify the sentence to clarify this.

On line 30, I don’t think “avoids” should be plural, since you stated “Ensure” on line 29.

In (a)(3), line 32, insert a comma after “located”

On line 33, I take it that “quality and productivity of AECs and other fragile areas are protected or restored” is known to your regulated public, and within 15A NCAC 07H?

In (a)(4), I am sure your regulated public knows what “conserve and maintain” means but I don’t. What does it mean? And what does “for their natural storm protection” mean?

On line 35, what do you mean by “giving recognition”?

In (a)(5), Page 3, line 1, who will determine if it is “possible”?

On line 1, delete the semicolon after “habitats” and state “habitats, such as...”

In (a)(6), lines 3 and 4, I take it there is a difference between “urban waterfront revitalization” and “redevelopment and revitalization”?

On lines 4-5, I take it that “recreation and tourism” is different from lines 6-7, “parks and recreation”?

On line 6, what is “open space”?

On line 7, delete “historic and cultural resources” as you already have this phrase on line 5.

So that I’m clear – Paragraph (a) establishes topics, and Paragraph (b) establishes factors to determine priority among applicants that are addressing these topics?

I recommend beginning (b)(1) through (8) with articles, such as “the” or “a.”

In (b)(1), line 13, that is not a Subparagraph. You either mean “Paragraph (a)” or “Subparagraphs (a)(1) through (6)”

In (b)(2), line 14, insert “the” before “Areas”

In (b)(3), is this going to be addressed by the application?

In (b)(4), is this “if any”?

In (b)(5), how is this feasibility determined?

In (b)(6), line 19, the past experience of who? And isn’t the term “past experience” redundant?

Also, how will present management and administrative capabilities be determined?

On line 19, insert a comma after “projects”

In (b)(7), what is “potential applicability”? How is this determined?

In (c), line 24, delete “Lee Act.”

Further, G.S. 105-129.3 was repealed effective for business activities occurring on or after January 1, 2007. What standards are you relying upon now?

Generally, the term “at least” is not favored in rules, as rules set minimum requirements. But I assume you need this term as used throughout Paragraph (c)?

On line 25, I recommend ending the sentence after “municipalities” and then stating “However, for Tier 1 ... municipalities shall have ...”

In (d), line 28, how the plan “certified”? By whom?

On line 29, where is the “Required Periodic Implementation Status Report” in 15A NCAC 07B? I see that Rule 07B .0804 refers to an “Implementation Status Report.” Is this the same thing? If so, should they have the same name?

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 24, 2017

1 15A NCAC 07L .0503 IS AMENDED **WITH CHANGES** AS PUBLISHED IN 31:13 NCR 1285-1286 AS
2 FOLLOWS:

3
4 15A NCAC 07L .0503 PRIORITIES FOR FUNDING LAND-USE PLANS AND IMPLEMENTATION
5 PLANNING AND MANAGEMENT PROJECTS

6 (a) ~~In funding local planning and management grants, the Department of Environmental Quality (DEQ) shall follow~~
7 ~~these general priorities for local planning and management grants: The Department of Environmental Quality (DEQ)~~
8 ~~program of grants for coastal planning and management projects provides funding to assist local governments in the~~
9 ~~20 counties as defined by the Coastal Area Management Act in the refining and implementing of plans and~~
10 ~~management strategies for their coastal resources. In funding local planning and management grants, DEQ shall select~~
11 ~~projects that need local attention in order to meet Coastal Resources Commission (CRC) management goals pursuant~~
12 ~~to 15A NCAC 07B .0702(d)(2) or contained within this Subparagraph. Priority management topics shall be designated~~
13 ~~on an annual basis following consultation with the CRC and may include, but are not limited to, expanded education~~
14 ~~and outreach efforts, special planning efforts focused on coastal resources or issues, improvements in~~
15 ~~intergovernmental coordination, targeted research or studies, and the development of local ordinances directly related~~
16 ~~to coastal concerns and not in contradiction with state rules. Projects selected for funding shall further the CRC's goals~~
17 ~~for the designated topics outlined below:~~

18 (1) ~~— The highest priority, Category I, includes projects mandated by statute, including initial and updated~~
19 ~~or amended land use plans or comprehensive plans, hereinafter referred to as the plan, local~~
20 ~~participation in projects initiated by DEQ, and projects DEQ indicates urgently need local attention~~
21 ~~in order to meet Coastal Resources Commission (CRC) management topics pursuant to 15A NCAC~~
22 ~~07B .0702(d)(2). Examples of eligible projects and their associated priority category include:~~

23 (A) ~~— Those activities designated by DEQ on an annual basis, following consultation with the~~
24 ~~CRC and local governments, to be necessary to bring local plans into compliance with state~~
25 ~~rules for land use planning; or~~

26 (B) ~~— Adopting, amending, or updating plans to reflect changed conditions which may include~~
27 ~~necessary data collection, public participation, and policy development.~~

28 (2) ~~— The second priority, Category II, includes projects related to carrying out the explicit goals of the~~
29 ~~Coastal Area Management Act (CAMA), for which DEQ indicates there is a high priority for local~~
30 ~~actions or projects which are coastally dependent (water related) or projects to implement the plan~~
31 ~~such as public facilities planning or land use regulations preparation. Examples of eligible projects~~
32 ~~and their associated priority category include:~~

33 (A) ~~— Adopting or amending ordinances to further secure compliance with state rules in AECs~~
34 ~~pursuant to 15A NCAC 07H;~~

35 (B) ~~— Beach access plans and studies which may include inventory and identification of sites,~~
36 ~~design of access improvements, acquisition plans and studies, and legal studies necessary~~
37 ~~to determine the extent of public use rights;~~

- 1 ~~(C) — Erosion control plans and studies which may include mapping, erosion rate measurement,~~
2 ~~design of protection strategies for public lands, cost benefit analysis, and relocation plans~~
3 ~~and strategies;~~
- 4 ~~(D) — Studies and planning leading to the nomination of new AECs as described in 15A NCAC~~
5 ~~07H .0503, or locally significant environmental areas;~~
- 6 ~~(E) — Waterfront redevelopment and renewal plans and studies including feasibility studies, site~~
7 ~~design studies, and plans and studies for improving or enhancing waterfront parks and~~
8 ~~public areas which may include site design, use studies, and cost analysis;~~
- 9 ~~(F) — Preparing, adopting, or amending ordinances necessary to carry out CRC certified plans,~~
10 ~~state rules, and the state coastal zone management plan which may include regulations~~
11 ~~related to zoning, subdivision, stormwater management, dune protection beyond AEC~~
12 ~~standards, sanitation, building, mobile homes, historic preservation, signs, natural area~~
13 ~~protection, and environmental impact statements.~~
- 14 ~~(3) — The third priority, Category III, includes projects related to improving local coastal management~~
15 ~~and land use management capabilities. Examples of eligible projects and their associated priority~~
16 ~~category include:~~
- 17 ~~(A) — Initial water and sewer plans and studies;~~
- 18 ~~(B) — Land use related capital facilities programming;~~
- 19 ~~(C) — Base mapping as a management tool;~~
- 20 ~~(D) — Other planning, studies, and data acquisition supportive of coastal planning and~~
21 ~~management which may include public education or involvement on coastal issues; solid~~
22 ~~waste planning; port planning; and sport and commercial fishing studies;~~
- 23 ~~(E) — Enforcement of ordinances adopted to carry out certified plans;~~
- 24 ~~(F) — Coordination of local coastal management activities with other local management~~
25 ~~activities which may include internal coordination, and city county coordination; or~~
- 26 ~~(G) — Other coastally related management projects.~~
- 27 (1) Public Access: Maximize public access to the beaches and the public trust waters of the
28 coastal region.
- 29 (2) Land Use Compatibility: Ensure that development and use of resources or preservation of land
30 balance protection of natural resources and fragile areas with economic development, avoids risks
31 to public health, safety, and welfare.
- 32 (3) Infrastructure Carrying Capacity: Ensure that public infrastructure systems are sized, located and
33 managed so the quality and productivity of AECs and other fragile areas are protected or restored.
- 34 (4) Natural Hazards: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal
35 features for their natural storm protection function and their natural resources giving recognition to
36 public health, safety, and welfare issues.

1 (5) Habitat Enhancement: Maintain, protect, and where possible enhance coastal habitats; for example,
2 marsh restoration.

3 (6) Other Topics or Special Issues: developed areas and working waterfronts, urban waterfront
4 revitalization, economic growth and development, redevelopment and revitalization, recreation and
5 tourism, historic and cultural resources, public trust rights, water use and water quality, stormwater
6 management, erosion control, shoreline protection and management, open space, parks and
7 recreation, storm recovery, farmland preservation and management, historic and cultural resources,
8 stakeholder and citizen participation, and transportation.

9 (b) ~~In addition,~~ DEQ shall take into consideration the following factors listed in order of importance to establish
10 priorities for individual ~~projects within the general priority categories:~~ projects:

11 (1) project's contribution towards meeting ~~CRC~~ CRC's prioritized management topics ~~in 15A NCAC~~
12 ~~07B .0702(d)(2);~~ and associated management goals pursuant to 15A NCAC 07B .0702(d)(2) or
13 contained in Subparagraph ~~(a)(1);~~ (a):

14 (2) the extent to which the project includes measures of environmental protection beyond Areas of
15 Environmental Concern (AEC) standards of Subchapter 15A NCAC 07H;

16 (3) applicant's urgency of need;

17 (4) past history of applicant's implementation of planning and management grant program activities;

18 (5) feasibility of completion of project by the applicant;

19 (6) past experience with land use planning and implementation projects as well as present management
20 and administrative capabilities;

21 (7) potential applicability of the project to other coastal area municipalities and counties; and

22 (8) geographic distribution of applicants.

23 (c) Matching fund requirements are based on the North Carolina Department of Commerce's Tier designations, as
24 outlined by the Lee Act (G.S. 105-129.3). Local government contributions for ~~land use planning and implementation~~
25 management projects shall be at least 25 percent of the project costs except for Tier 1 designated counties and their
26 respective municipalities which shall have a local government contribution of at least 10 percent of the project costs.
27 At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

28 (d) Any local government whose plan is not certified due to failure to meet the criteria listed in 15A NCAC 07B or
29 that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC
30 07B, shall not receive further funding under this program until these inconsistencies are corrected.

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32 *History Note:* *Authority G.S. 113A-112; 113A-124;*
33 *Eff. August 1, 2002;*
34 *Amended Eff. July 1, 2017; March 1, 2016.*