

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.  
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

**Notice** is hereby given in accordance with G.S. 150B-21.1(a3) that the Department of Environmental Quality intends to adopt the rules cited as 15A NCAC 01T .0101-.0107, .0201-.0206, and .0301-.0306.

**Codifier of Rules** received for publication the following notice and proposed temporary rule(s) on: November 1, 2022.

### Public Hearing:

**Date:** November 14, 2022

**Time:** 3:30 p.m.

**Location:** Green Square Building, First Floor Training Room, 217 West Jones Street, Raleigh, NC 27603 and virtually via Webex at <https://ncdenrits.webex.com/ncdenrits/j.php?MTID=m77a9cd00cceb4952d0bf81580f1a06f>

**Reason for Proposed Temporary Action:** The effective date of a recent act of the General Assembly or of the U.S. Congress, S.L. 2022-74, Section 12.1, effective, July 11, 2022. Session Law 2022-74 (An Act to Modify the Current Operations Appropriations Act of 2021 and to Make Other Changes in the Budget Operations of the State), Section 12.1, requires the Department of Environmental Quality to adopt temporary rules to implement the policies or guidelines for the administration of funds from G.S. 143-215.73F(b1) and G.S. 143-215.73M(b1). These temporary rules are being proposed to satisfy this requirement by specifying how to apply for funds, what information is necessary to apply, and the Department's procedure for deciding fund allocation.

Funds appropriated in G.S. 143-215.73F(b1) are allocated to two programs- the Shallow Draft Navigation Channel Dredging Fund for dredging projects designed to keep shallow draft navigation channels located in State waters or waters of the State located within lakes navigable and safe; and the Aquatic Weed Control Fund, which provides grants for local units of government and other entities looking to control, eradicate, and regulate noxious aquatic weeds so as to protect and preserve human health, safety, and beneficial uses of State waters. Funds appropriated in G.S. 143-215.73M(b1) are allocated for the Coastal Storm Damage Mitigation Fund, which provides grants to units of local government for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State.

**Comment Procedures:** Comments from the public shall be directed to: Kevin Hart, Division of Water Resources, Archdale Building, 1617 Mail Service Center, Raleigh, NC 27699-1617; phone (919) 707-3607; email kevin.hart@ncdenr.gov. The comment period begins November 8, 2022 and ends December 2, 2022.

## CHAPTER 01 - DEPARTMENTAL RULES

### SUBCHAPTER 01T - WATER RESOURCES GRANT PROGRAMS

#### SECTION .0100 - AQUATIC WEED FUND

##### 15A NCAC 01T .0101 APPLICABILITY

The rules in this Section apply to the Aquatic Weed Fund in G.S. 143-215.73F.

Authority G.S. 113A-223; 113A-227; 143-215.73F.

##### 15A NCAC 01T .0102 DEFINITIONS

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality;
- (2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
- (3) "Council" means the North Carolina Aquatic Weed Control Council.

Authority G.S. 113A-223; 113A-227; 143-215.73F.

##### 15A NCAC 01T .0103 PROJECT ELIGIBILITY

An aquatic weed control project proposed by a unit of local, state, or federal government; academic institution; public utility; or other entity may be eligible for grant funds from the Aquatic Weed Fund provided that:

- (1) the project targets one or more aquatic weed species included on the Noxious Aquatic Weed List in 15A NCAC 02G .0602;
- (2) the cost share requirements of G.S. 143-215.73F(c)(3) are met; and
- (3) the project provides at least one of the following benefits:
  - (a) protects and preserves human health;
  - (b) protects public safety;

- (c) protects the beneficial use of the water(s) of the State;
- (d) prevents injury to property; or
- (e) prevents injury to beneficial plant and animal life.

*Authority G.S. 113A-223; 113A-227; 143-215.73F.*

#### **15A NCAC 01T .0104 AQUATIC WEED CONTROL GRANT APPLICATIONS**

(a) To request state cost share funding for an eligible aquatic weed control project, an application shall be sent to the Division of Water Resources Aquatic Weeds Control Program, at 1611 Mail Service Center, Raleigh, NC 27699-1611 or electronically to [aquaticweeds@ncdenr.gov](mailto:aquaticweeds@ncdenr.gov). The application shall be made on a form provided by the Division, available electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-planning/water-supply-planning/aquatic-weed-control-program>. The application form can also be obtained by emailing a request to [aquaticweeds@ncdenr.gov](mailto:aquaticweeds@ncdenr.gov); by contacting the Division of Water Resources Aquatic Weeds Control Program, 1611 Mail Service Center, Raleigh, NC, 27699-1611; or by calling 919-707-9000. The application shall include the following:

- (1) the date of application;
- (2) the name, address and phone number of the applicant;
- (3) the project name and location;
- (4) if applicable, the specific waterbody or waterbodies in which the proposed project will occur;
- (5) the aquatic weed or weeds to be targeted by the project;
- (6) acknowledgement that the applicant will fund no less than fifty percent of the project cost and that full obligation for project cost share will be assumed;
- (7) the anticipated benefit or benefits the project will provide as outlined in Rule .0102(3) of this Section; and
- (8) a signature by the applicant.

(b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

*Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73F.*

#### **15A NCAC 01T .0105 GRANT APPLICATION REVIEW AND APPROVAL**

(a) To be eligible for funding from the Aquatic Weed Fund, applications shall be received before October 16 of the year prior to when the project will occur.

(b) All applications shall be reviewed by the Council. Following review by the Council, the Council shall provide a list of recommended projects proposed for cost share funding to the Director of the Division, with total funding by the Department for all cost shared projects not to exceed the amount in G.S. 143-215.73F(b)(2).

(c) Recommendations from the Council and project selection by the Director of the Division shall be based on the extent to which the project meets the criteria listed in G.S. 143-215.72(b).

*Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73; 143-215.73F.*

#### **15A NCAC 01T .0106 INSTRUMENT OF AGREEMENT**

(a) For a project sponsored by a unit of local government, the applicant shall provide a resolution from the local government's governing board and, pursuant to G.S. 143-6-23(b), a copy of their conflict of interest policy prior to the Department beginning any approved cost share project or fund disbursement. The resolution shall include:

- (1) the specific waterbody or location in which the proposed project will occur;
- (2) the aquatic weed(s) to be targeted by the project;
- (3) a statement of assumption for the full obligation for payment of the balance of project costs, to be no less than fifty percent of the total cost of the project;
- (4) a statement of agreement to assist the Department in determining the full scope of the aquatic weed control project.
- (5) when applicable, assurance that the public will have access to the waters that are included in the proposed project;
- (6) a statement that the Department will be held harmless from any damages that may result from the implementation of the project.
- (7) when applicable, a statement that the applicant will be responsible for notifying all landowners with property adjacent to the waterbody on which the project will be located, providing details of the project to those landowners, and for sponsoring any necessary public information meetings and outreach; and
- (8) when applicable, an agreement to notify the public of any temporary water-use restrictions associated with the project.

(b) For a project sponsored by an entity that is not a unit of local government, the applicant shall sign a binding written agreement with the Department prior to the Department beginning any approved cost share project or fund disbursement. The cost sharing agreement shall include the items listed in Paragraph (a) of this Rule.

*Authority G.S. 113A-223; 143-215.73; 143-215.73F; 143-6-23.*

#### **15A NCAC 01T .0107 NORTH CAROLINA AQUATIC WEED CONTROL COUNCIL**

The Council shall serve as an advisory group for the Division regarding the control, eradication, and regulation of noxious weeds. The Division shall invite each of the following agencies to designate one representative to serve on the Council:

- (1) Department of Agriculture and Consumer Services – Plant Industry Division;

- (2) Department of Agriculture and Consumer Services – Structural Pest Control & Pesticides Division;
- (3) Department of Environmental Quality – Division of Coastal Management;
- (4) Department of Environmental Quality – Division of Marine Fisheries;
- (5) Department of Environmental Quality – Division of Water Resources – Water Sciences Section;
- (6) Department of Environmental Quality – Division of Water Resources – Water Planning Section;
- (7) Department of Natural and Cultural Resources – Division of Parks and Recreation;
- (8) Department of Natural and Cultural Resources – Natural Heritage Program;
- (9) Department of Transportation;
- (10) North Carolina State University – Crop and Soil Science Department;
- (11) North Carolina State University – North Carolina Agricultural Research Service;
- (12) U.S. Fish and Wildlife Service; and
- (13) Wildlife Resources Commission.

Authority G.S. 113A-223.

## **SECTION .0200 - SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND**

### **15A NCAC 01T .0201 APPLICABILITY**

- (a) The rules in this Section apply to the Shallow Draft Navigation Channel Dredging Fund in G.S. 143-215.73F.
- (b) The rules in this Section do not apply to projects funded by the Shallow Draft Navigation Channel Dredging Fund that are related to dredging federally authorized channels where the work is performed by the United States Army Corps of Engineers.

Authority G.S. 143-215.73F.

### **15A NCAC 01T .0202 DEFINITIONS**

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality;
- (2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
- (3) "Shallow draft navigation channel" has the same meaning as set forth in G.S. 143-215.73F(e).

Authority G.S. 143-215.73F.

### **15A NCAC 01T .0203 PROJECT ELIGIBILITY**

(a) A shallow draft navigation channel dredging project proposed by a local government may be eligible for grant funds from the Shallow Draft Navigation Channel Dredging Fund provided that:

- (1) the project is designed to keep shallow draft navigation channels located in State waters or waters of the state located within lakes navigable and safe or the project is for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the state and the federal government; and
- (2) the cost share requirements of G.S. 143-215.73F(c) are met.

(b) The following are ineligible costs that may not be reimbursed from the Shallow Draft Navigation Channel Dredging Fund:

- (1) dredging underneath or immediately adjacent to privately owned ship berths, piers, docks, or similar facilities or businesses;
- (2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);
- (3) costs incurred outside of the term of the grant contract between the Department and the local government;
- (4) purchase of equipment (including but not limited to barges and excavators);
- (5) indirect or overhead costs of the municipality, such as rent, telephone service, and general administrative support; or
- (6) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

Authority G.S. 143-215.73F.

### **15A NCAC 01T .0204 GRANT APPLICATIONS FOR THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND**

(a) To apply for grant funds from the Shallow Draft Navigation Channel Dredging Fund, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at <https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program>. The application shall include the following:

- (1) the applicant's primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;
- (2) the contact and address to which the Department should send grant reimbursements and grant/project correspondence;
- (3) project title, description, scope and location;

- (4) description of existing conditions and land use within the project area;
- (5) anticipated contract start and end dates;
- (6) address the criteria in 15A NCAC 01T .0205;
- (7) description of the location and method of dredge spoil disposal;
- (8) itemized project budget;
- (9) project plans and location maps;
- (10) official resolution in accordance with 15A NCAC 02G .0104; and
- (11) the local government's conflict of interest policy.

(b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

Authority G.S. 143-215.73F; 143C-6-23.

#### **15A NCAC 01T .0205 GRANT APPLICATION REVIEW AND APPROVAL**

(a) The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

- (1) the economic, social, and environmental benefits to be provided by the projects;
- (2) regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
- (3) the financial resources of the local sponsoring entity;
- (4) the environmental impact of the project; and
- (5) any direct benefit to the State-owned lands.

(b) Notwithstanding the criteria set forth in this Rule, the Division shall prioritize funding those projects that improve shallow draft navigation channels that are accessible by and used by the general boating public.

Authority G.S. 143-215.73F.

#### **15A NCAC 01T .0206 POST FUNDING AWARD**

(a) If the Division awards a grant from the Shallow Draft Navigation Channel Dredging Fund and the local government accepts the grant award, then a grant contract must be executed prior to any grant reimbursements are made.

(b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.

(c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:

- (1) justification for the extension request;
- (2) summary of the current project status; and
- (3) anticipated project schedule moving forward.

(d) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73F and shall return unspent grant funds.

Authority G.S. 143-215.73F.

### **SECTION .0300 - COASTAL STORM DAMAGE MITIGATION FUND**

#### **15A NCAC 01T .0301 APPLICABILITY**

The rules in this Section apply to the Coastal Storm Damage Mitigation Fund in G.S. 143-215.73M.

Authority G.S. 143-215.73M.

#### **15A NCAC 01T .0302 DEFINITIONS**

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality; and
- (2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality.

Authority G.S. 143-215.73M.

#### **15A NCAC 01T .0303 PROJECT ELIGIBILITY**

(a) A coastal storm damage mitigation project proposed by a local government may be eligible for grant funds from the Coastal Storm Damage Mitigation Fund provided that:

- (1) the project is for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State; and
- (2) the cost share requirements of G.S. 143-215.73M(c) are met.

(b) The following are ineligible costs that may not be funded from the Coastal Storm Damage Mitigation Fund:

- (1) indirect or overhead costs of the local government, such as rent, telephone service, and general administrative support;
- (2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);

- (3) any activities related to a terminal groin and its accompanying beach fill project permitted pursuant to G.S. 113A-115.1; or
- (4) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

*Authority G.S. 143-215.73M.*

#### **15A NCAC 01T .0304 COASTAL STORM DAMAGE MITIGATION FUND APPLICATION**

(a) To apply for grant funds from the Coastal Storm Damage Mitigation Fund, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at <https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program>.

(b) The application shall include the following:

- (1) primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;
- (2) the contact and address to which the Department should sent grant funds and grant/project correspondence;
- (3) project title, description, scope and location;
- (4) description of existing conditions and land use within project area;
- (5) anticipated contract start and end dates;
- (6) address the criteria in 15A NCAC 01T .0305;
- (7) itemized project budget;
- (8) project plans and locations maps;
- (9) official resolution in accordance with 15A NCAC 02G .0104; and
- (10) the local government's conflict of interest policy.

(c) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

*Authority G.S. 143-215.73M; 143C-6-23.*

#### **15A NCAC 01T .0305 GRANT APPLICATION REVIEW AND APPROVAL**

The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

- (1) the economic, social, and environmental benefits to be provided by the project;
- (2) mitigation measures to be implemented to avoid and minimize detrimental environmental impacts;
- (3) expected useful life of the project;
- (4) the source and availability of other funding sources for the project; and
- (5) viability and efficiencies of the project, including but not limited to regional planning, beneficial use of clean, beach quality dredged material from navigation channels within the nearshore, beach or inlet shoal system, and readiness to process based on the project phase, permitting status, property access, and construction schedule.

*Authority G.S. 143-215.73M.*

#### **15A NCAC 01T .0306 POST FUNDING AWARD**

(a) If the Division awards a grant from the Coastal Storm Damage Mitigation Fund and the local government accepts the grant award, then a grant contract shall be executed prior to any grant funds being dispersed.

(b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.

(c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:

- (1) justification for the extension request;
- (2) summary of the current project status; and
- (3) anticipated project schedule moving forward.

(d) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73M and shall return unspent grant funds.

*Authority G.S. 143-215.73M.*