

## SUBCHAPTER 59C - SMALL WATERSHED PROGRAM

### SECTION .0100 - WATERSHED LOANS

#### 02 NCAC 59C .0101 WATERSHED REVOLVING LOANS

(a) Eligibility. The commission may make loans to local sponsors of projects organized or in the process of organizing as:

- (1) a county watershed improvement program under G.S. 139-39:
  - (A) board of county commissioners; or
  - (B) watershed improvement commission appointed by county commissioners.
- (2) a drainage district under G.S. 156-54.

Loan eligibility accrues only after the applicant forms or begins the process of forming a legal organization, presents evidence of such formation or formation process to the commission and attains commission approval.

(b) Prior Approval. The governing body of the sponsoring district or districts may approve a loan application by adopting an appropriate resolution at a regular meeting attended by a majority of the members, by entering the resolution in the official minutes of the meeting, and by attaching a certified copy to the loan application.

(c) Application. The application for a loan shall be accompanied by:

- (1) a surety bond executed in favor of the commission in an amount equal to the face value of the loan;
- (2) a statement of assurance from the board or boards of county commissioners that the commission shall not suffer loss in the event the local sponsors fail to meet the terms of the loan;
- (3) a statement of assurance from other legal body, agency, or corporation, satisfactory to the commission, that the commission shall not suffer loss in the event the local sponsors fail to meet the terms of the loan.

(d) Use of Funds. Principal expenses for which borrowed funds may be used include:

- (1) land classification;
- (2) preparation of assessment rolls;
- (3) legal and engineering fees;
- (4) court costs;
- (5) securing easements or other interests in land; and
- (6) compensating landowners for damages caused by removal or by replacement of existing facilities.

(e) Loan Costs (To Borrower). The commission shall not make interest or loan charges for the term of the loan specified in the contract, but may assess a penalty charge for late payment, calculated from the contract repayment date to the actual repayment date, at a rate of 1 percent of the outstanding balance for each month or fraction of a month.

(f) Amount of Loan. The commission shall determine the amount of the loan and the length of the contract based on the merits of each individual application. In order to realize maximum benefits from the fifty thousand dollars (\$50,000) available for loan purposes, prospective borrowers shall give careful consideration to the following points as they prepare their loan applications:

- (1) the minimum amount necessary to meet the immediate needs of the district;
- (2) actual need; and
- (3) the shortest possible repayment schedule.

(g) Policy. The commission shall manage these funds, and the watershed sponsors shall cooperate in sharing these funds, in order to render the greatest possible benefit to the state conservation program.

*History Note: Authority G.S. 106-840; 139-4(d);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; December 5, 1980;  
Transferred from 15A NCAC 06C .0101 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

### SECTION .0200 - WATERSHED APPLICATIONS

#### 02 NCAC 59C .0201 APPLICATION PROCEDURE

The consideration of an application for planning assistance through P.L. 566 shall follow these steps:

- (1) Application received by the commission.
- (2) Field examination and study made by watershed planning staff and representatives of other agencies to determine feasibility of the project.
- (3) Representatives of the commission, and other agencies meet with local people in order to:
  - (a) outline local responsibilities in watershed program:
    - (i) inform local people of the project,
    - (ii) acquire necessary easement,
    - (iii) provide maintenance,
    - (iv) share cost on project;
  - (b) explain need for legal organization.
- (4) Commission representatives attending such meeting provide a written report to the commission regarding pertinent information secured during meeting.
- (5) Consideration of recommendations requested from the appropriate fish and wildlife agency, provided that the commission receives such recommendations within 30 days after the request.
- (6) The commission reviews the application, and either approves or disapproves it.
- (7) Application assigned high or low priority by the commission.

*History Note: Authority G.S. 106-840; 139-4(d);  
 Eff. February 1, 1976;  
 Temporary Amendment [(4)(a)] Eff. March 17, 1982 for a Period of 120 Days to Expire on July 14, 1982;  
 Amended Eff. August 1, 1982; July 14, 1982; December 5, 1980; November 1, 1978;  
 Transferred from 15A NCAC 06C .0201 Eff. May 1, 2012;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

## **SECTION .0300 - SMALL WATERSHED PLANS**

### **02 NCAC 59C .0301 PROJECTS INVOLVING CHANNELIZATION**

The commission will evaluate the necessity of channelization in watershed improvements or drainage projects after the completion of a preliminary report. The following process will be used:

- (1) The project sponsors shall notify the commission of the completed report.
- (2) The commission shall establish a date for a public hearing and designate a hearing officer(s) and a reporter in accordance with the requirements of G.S. 139-47(b).
- (3) A notice of the hearing shall be published.
- (4) During the hearing all parties will be provided an opportunity to present written or oral submissions. A complete record will be kept of the hearing. The parties have 30 days to submit their conclusions.
- (5) The hearing officer(s) reports to the commission and the channelization is approved or disapproved in accordance with the regulations of G.S. 139-47.

*History Note: Authority G.S. 106-840;  
 Eff. September 1, 1982;  
 Amended Eff. October 1, 1984;  
 Transferred from 15A NCAC 06C .0301 Eff. May 1, 2012;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

### **02 NCAC 59C .0302 APPROVAL OF WORKPLANS**

Approval of workplans shall be as follows:

- (1) The commission's review will be of completed workplans.
- (2) The division staff will determine if a workplan supplement constitutes changes necessary for the commission's review.
- (3) The commission may accept the operations and maintenance section of the workplan as the sponsors plan of operation or request a separate document.

*History Note: Authority G.S. 106-840; 139-4(d)(8);  
Eff. September 1, 1982;  
Transferred from 15A NCAC 06C .0302 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

## **02 NCAC 59C .0303 APPROVALS TO EXERCISE THE POWER OF EMINENT DOMAIN**

A county and a watershed district may apply to the commission for approvals to exercise the power of eminent domain. Before the commission will approve an applicant's request to condemn land for a proper purpose, that applicant shall provide the commission the following information at least 30 days prior to a commission hearing:

- (1) a written statement with copies to the division and to the landowners involved, stating the applicant's purpose;
- (2) a resolution adopted by the local Soil and Water Conservation District supporting the acquisition and identifying each parcel by landowner and by specific watershed development site;
- (3) a written statement describing efforts made to secure a property interest in each parcel and a copy of the appraisal;
- (4) a map of the land needed from each specific landowner that shows:
  - (a) the location of the needed land in relation to the specific project site;
  - (b) the location of the needed land in relation to the landowner's total tract;
  - (c) the location of that portion of the land devoted to:
    - (i) the permanent pool;
    - (ii) the flood pool;
    - (iii) other purposes of water storage; if applicable,
    - (iv) the borrow area;
    - (v) the construction work area; and
    - (vi) recreational facilities.

*History Note: Authority G.S. 106-840; 139-4(d);  
Eff. September 1, 1982;  
Transferred from 15A NCAC 06C .0303 Eff. May 1, 2012;  
Readopted Eff. November 1, 2017.*

## **SECTION .0400 - SMALL WATERSHED GRANTS**

### **02 NCAC 59C .0401 APPLICATIONS**

- (a) An applicant shall submit the application for a project grant on Form 001G, "Application for State Grant Funds and Instruction", and shall complete Form 002Q, "Questionnaire for Determining Review Criteria".
- (b) An applicant shall submit the application and supporting documents to the commission in such form and in such number as specified in the application instructions.
- (c) An applicant shall complete the application form in full.
- (d) Upon the commission's request an applicant shall furnish information in addition to the information contained in the application and supporting documentation.
- (e) An applicant may amend a pending application any time prior to the final determination of the priority assigned the application.

*History Note: Authority G.S. 106-840; 139-4(d); 139-53;  
Eff. September 1, 1982;  
Transferred from 15A NCAC 06C .0401 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

### **02 NCAC 59C .0402 LAND RIGHTS ACQUISITION COSTS**

(a) State grants pursuant to Article 4 Chapter 139 may cover up to fifty percent of land rights acquisition costs for water retarding structure sites which include flood prevention and/or water supply, and for recreation sites. Such costs include:

- (1) the actual costs of titles or easements for landrights for the following:

- (A) flood retarding structure sites, and impoundment areas;
- (B) water supply sites;
- (C) recreational sites;
- (D) access roads necessary for construction, operation, and maintenance of (A), (B), or (C) of this Paragraph; and
- (E) "uneconomic remnants" as defined in Public Law 91-646;
- (2) the following administration costs:
  - (A) cost of surveying; land rights taking lines;
  - (B) contract relocation advisory service and contract appraisal fees by qualified personnel;
  - (C) relocation assistance expenses;
- (3) the following modification costs:
  - (A) public utilities;
  - (B) public highways;
  - (C) private roads;
  - (D) floodproofing that would prevent additional land rights acquisition costs.
- (b) Such costs do not include the following:
  - (1) attorney fees;
  - (2) land costs for title or easements acquired for purposes other than those stated in this Rule;
  - (3) negotiator's or land rights agent's fees or salaries;
  - (4) watershed administrator's fees or salaries;
  - (5) watershed commissioner's or trustee's fees, salaries or expenses;
  - (6) any fees, salaries, or expenses of an employee of the local sponsor;
  - (7) any administrative costs not included in this Rule.

*History Note:* Authority G.S. 106-840; 139-4(d); 139-54(1);  
 Eff. September 1, 1982;  
 Amended Eff. October 1, 1984;  
 Transferred from 15A NCAC 06C .0403 Eff. May 1, 2012;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

**02 NCAC 59C .0403 ENGINEERING FEES**

- (a) State grants may cover up to fifty percent of the non-federal costs resulting from engineering fees and expenses, however, state grants may not cover any of the costs associated with Drainage District's engineers fees and expenses.
- (b) State grants may not cover feasibility studies or other planning work.
- (c) State grants may not cover construction inspection provided by the local sponsor when in addition to that provided by the Soil Conservation Service.

*History Note:* Authority G.S. 106-840; 139-4(d); 139-54(2); 156-61; 156-71;  
 Eff. September 1, 1982;  
 Amended Eff. March 1, 1987;  
 Transferred from 15A NCAC 06C .0404 Eff. May 1, 2012;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

**02 NCAC 59C .0404 WATER SUPPLY NEEDS**

- (a) State grants may cover up to fifty percent of non-federal project costs, incurred to fulfill future and present water supply needs in conjunction with watershed improvement works, as follows:
  - (1) land rights acquisition costs as described in Rule .0402 of this Section; and
  - (2) all structural construction costs related to the development of water supply.
- (b) State grants shall not cover nonstructural costs; for example, the costs of constructing pumps, pump stations, and pipe lines.

*History Note:* Authority G.S. 106-840; 139-4(d); 139-54(3);  
 Eff. September 1, 1982;

*Transferred from 15A NCAC 06C .0405 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0405 CONSTRUCTION COST FOR WATER MANAGEMENT PURPOSES**

- (a) State grants may cover up to 66 2/3 percent construction costs for water management (drainage and irrigation), excluding all land rights acquisition costs.
- (b) The following are considered construction costs for water management:
- (1) public utilities relocation or modification costs; and
  - (2) public and private road relocation or modification costs.
- (c) The following are not considered construction costs for water management:
- (1) administrative costs;
  - (2) construction inspection; and
  - (3) legal fees.

*History Note: Authority G.S. 106-840; 139-4(d); 139-54(5);  
Eff. September 1, 1982;  
Amended Eff. March 1, 1987;  
Transferred from 15A NCAC 06C .0407 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0406 ELIGIBLE PROJECTS**

- (a) Only projects developed under Public Law 83-566 that have a work plan published by the Soil Conservation Service, by cooperating governmental agencies, and by the local sponsors, and that have received approval from the federal government and from the commission, enjoy grant eligibility.
- (b) When other state funds are received by a project, the amount shared upon by the other state agency will be subtracted from the non-federal cost to determine the amount eligible for a commission grant. Only the portion of the other agency's funds used towards costs covered in Rules .0402, .0403, .0404, and .0405 in this Subchapter and other costs described in Article 4 Chapter 139 will be included in this computation.
- (c) If another state agency subsequently funds a project, the commission will make the necessary changes in its grant to ensure conformance with Paragraph (b) of this Rule.
- (d) The commission will take into consideration other private and public financial assistance sources such as a utility company, etc., when authorizing a grant. If additional funding occurs after the grant authorization, the commission may decrease its grant.

*History Note: Authority G.S. 106-840; 139-4(d); 139-53;  
Eff. September 1, 1982;  
Amended Eff. October 1, 1984  
Transferred from 15A NCAC 06C .0410 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0407 CONSIDERATIONS FOR REVIEWING APPLICATIONS**

In reviewing grant applications for Small Watershed projects, the commission shall consider the financial resources of the sponsoring organization, as follows:

- (1) "cash on hand" to cover local project costs after receipt of state grant funds; or
- (2) local county commissioners' resolution promising to include the local share of matching funds in annual budgets; or
- (3) proof of FHA loan, additional grant funds, or any other reliable source of funds.

*History Note: Authority G.S. 106-840; 139-4(d); 139-55;  
Eff. September 1, 1982;  
Amended Eff. October 1, 1984;  
Transferred from 15A NCAC 06C .0411 Eff. May 1, 2012;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0408 APPROVAL AND DISAPPROVAL OF APPLICATIONS**

- (a) The commission shall approve, approve in part, or disapprove each application received.
- (b) The commission shall notify each applicant of its decision within 90 days of receipt of the application.
- (c) Rejected applicants may reapply the following year.
- (d) The commission shall return rejected applications to the applicant.
- (e) The commission shall process approved applications according to the procedures set forth in this Section.

*History Note: Authority G.S. 106-840; 139-4(d); 139-55;  
Eff. September 1, 1982;  
Transferred from 15A NCAC 06C .0412 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0409 PRIORITY CRITERIA**

The commission shall determine the order in which approved applications shall receive state grant funds by evaluating the following criteria:

- (1) financial resources of the local sponsoring organizations: preference will be given to projects which offer the greatest assurance of the availability of funds for the local cost share;
- (2) nonstructural measures: projects which include non-structural measures in the work plan will be given preference for grant funds;
- (3) regional benefits: projects which provide benefits to an area greater than the project area or the area of jurisdiction of the approved applicant are preferred;
- (4) state-owned lands and properties: preference will be given to projects which include direct benefit to state-owned lands and properties;
- (5) geographic regions: it is the preference of the commission to balance grant awards across the regions of the state; to that end the geographic location of the current project and the location of projects with previous grants will be considered;
- (6) multipurpose uses: projects which include multiple purposes such as, flood prevention, water supply and recreation, will be given preference;
- (7) land treatment: preference will be given to projects which include land treatment in the project work plan;
- (8) authorization date: project work plans with the earliest authorization dates will be given preference;
- (9) EDA area: if the applicant's area is designated by the U.S. Department of Commerce, Economic Development Agency, as an Economic Development Area, the project will be shown preference;
- (10) engineering work: preference will be given to projects which have the engineering work completed or underway; and
- (11) other special considerations as determined by the commission.

*History Note: Authority G.S. 106-840; 139-4(d); 139-56;  
Eff. September 1, 1982;  
Amended Eff. October 1, 1984;  
Transferred from 15A NCAC 06C .0414 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0410 PREREQUISITE FOR DISBURSEMENT OF GRANT FUNDS**

(a) Land Rights. The grant recipient shall acquire all land rights involved in water retarding structure sites (including flood prevention, water supply or recreation) and recreation sites prior to disbursement of grant funds; however, the commission has the discretion to approve disbursement in the following situations:

- (1) The acquiring agency has not obtained all land rights, but has options to purchase those remaining, or has initiated eminent domain proceedings and will have funds on hand to complete the land rights acquisitions after disbursement.

- (2) The acquiring agency has reached a written agreement with a utility company or the Department of Transportation concerning the subsequent relocation of a public utility or a state road.
  - (3) When a grant is from a time-limited reversionary fund, and upon evidence satisfactory to the Commission that the grant recipient will cover at least 50 percent of land rights acquisition costs. The Commission may make partial funds available as the grant recipient evidences financial ability to cover land rights acquisition costs at specific phases of development including but not limited to surveying, appraisal and purchase of individual parcels.
- (b) Construction and Engineering:
- (1) The commission has the discretion to approve either lump sum or progressive grant disbursement payments for construction and engineering purposes. The commission shall evaluate the applicant's financial needs and other pertinent data to determine the manner of payment. However, the commission shall withhold at least 10 percent of the disbursement to insure satisfactory completion of construction/engineering works.
  - (2) Prior to any disbursement for construction, the grant recipient shall certify on Form 004LR that it has acquired all necessary land rights in compliance with all applicable laws, rules, and regulations. The commission may accept an executed SCS-AS-78 Form in lieu of the commission's own form.
  - (3) The commission may withhold any payments of state grant funds pending the completion of any required audits or inspections.

*History Note: Authority G.S. 106-840; 139-4(d); 139-56; Eff. September 1, 1982; Temporary Amendment Eff. April 5, 1993 for a Period of 180 Days or until the Permanent Rule becomes Effective, Whichever is Sooner; Amended Eff. March 1, 1995; October 1, 1993; January 1, 1985; October 1, 1984; Transferred from 15A NCAC 06C .0417 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

#### **02 NCAC 59C .0411 AUDIT OF PROJECTS**

- (a) The Commission shall require periodic audits for each grant project.
- (b) The Commission shall require the applicant to have the audit prepared by a qualified independent auditor.
- (c) In lieu of such audit, the Commission may accept any applicable audit by any other governmental unit.

*History Note: Authority G.S. 106-840; 139-4(d); 139-56; Eff. September 1, 1982; Transferred from 15A NCAC 06C .0421 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*