

## NOTICE OF INTENT

Department of Natural Resources  
Office of Coastal Management

### Rules for Local Coastal Management Programs (LAC 43:I.725)

Under the authority of La. R.S. 49:214.21-49:214.41 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., notice is hereby given that the Department of Natural Resources, Office of Coastal Management proposes to amend LAC 43:725 relative to the rules and procedures for local coastal management programs. Amendments include updates to requirements for program development such as policy applicable to approved; and reduction in the hardcopy requirements. In addition, other changes include the timeline for program review has been updated, language regarding program development funding and the assignment of program implementation funding. These updates largely reflect the updates to technology, policy and practice since the promulgation of the original rules in order to create a more efficient process for the development and implementation of a local coastal program.

### **Title 43** **NATURAL RESOURCES** **Part I. Office of the Secretary**

#### **Subpart 1. General**

#### **Subchapter D. Local Coastal Management Programs**

#### **§725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs**

A. Letter of Intent. Parishes intending to prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

B. Program Development

1. The process for developing a local program will consist of:

a. a division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units;

b. an analysis of the projected social and economic growth for the parish. This analysis should include projected population growth, economic analysis of coastal dependent industries, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole;

c. an identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible;

d. an identification of special management areas, if any, within the parish requiring special management needs as a result of their unique natural resource or development potentials;

e. the development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subparagraph D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, the state guidelines, and Louisiana's Comprehensive Master Plan for a Sustainable Coast;

f. the development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program;

g. the development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern;

h. the development of special procedures and methods for considering uses within special management areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special management areas;

i. the development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

### C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

a. a summary of the local program;

b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, and lands more than 5 feet above mean sea level;

c. the results of the social and economic analysis carried out pursuant to Subparagraph B.1.b, above;

d. a description of those existing and future resource-use conflicts identified pursuant to Subparagraph B.1.c, above;

e. an identification of those particular areas, if any, requiring special management as described in Subparagraph B.1.d above, as well as the special policies and/or procedures to be applied to these areas;

i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subparagraph B.1.e.;

ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, the state guidelines, and Louisiana's Comprehensive Master Plan for a Sustainable Coast; and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;

f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:

- i. a concise explanation of how the local program's coastal management process is to work;
- ii. a description and listing of those areas and uses that will require local coastal use permits;
- iii. an illustrative list of particular activities which occur on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;
- iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA, as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), the policies of the coastal use guidelines, and Louisiana's Comprehensive Master Plan for a Sustainable Coast;
- v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:
  - (a). local program implementation, including copies of any interagency or intergovernmental agreements;
  - (b). multiparish environmental considerations;
  - (c). consideration by the parish of regional, state, or national interests; and
  - (d). regional, state, or national plans affecting the parish coastal zone and other projects affecting more than one parish;
- vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;
- vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;
- g. documentation that the parish has provided a full opportunity for governmental and general public involvement and coordination in the development of the local program. It must be shown that:
  - i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;
  - ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at the parish library and the parish government offices.
  - iii. full consideration was given to comments received during program development and the public hearings.

#### D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply.
  - a. Three hard copies and two electronic copies of the complete proposed local program shall be submitted to the secretary. The local government shall be prepared to provide additional copies

available for distribution upon request of the secretary. The secretary shall, within 15 days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date, time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.

b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.

c. In order to approve the local program, the secretary must find that:

i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;

ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;

iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines, and Louisiana's Comprehensive Master Plan for a Sustainable Coast;

iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subparagraph C.1.g above;

v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary may make reasonable interpretations of the state guidelines, insofar as they affect that particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretary finds that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the Act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

#### E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

- a. a detailed description of the proposed change;
- b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed;
- c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;
- d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;
- e. all parish ordinances relevant to the proposed modification;
- f. any comments from governmental units that may be affected by the proposed modification;
- g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and
- h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

#### F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

- a. the number, type, and characteristics of applications for coastal use and other permits;
- b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn;
- c. the number, type, and characteristics of permits appealed to the courts;
- d. results of any appeals;
- e. a record of all variances granted;
- f. a record of any enforcement actions taken;
- g. a description of any problem areas within the state or local program and proposed solutions to any such problems;
- h. proposed changes in the state or local program.

2. The administrator shall from time to time review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the

objectives of the state and local programs. Each program shall be reviewed at least once every five years, but may be reviewed more frequently as determined by the secretary.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

#### G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall be subject to the following.

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

2. Program development assistance funding shall be subject to the following.

a. Funding for program development of local programs may be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding may be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for use by other parishes at the discretion of the administrator for program development.

b. To be eligible to continue receiving program development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Program development funds may only be used for costs incurred in applying for approval from the department, including printing and advertising, holding required public hearings, and making copies of the proposed local program available to governmental bodies and the public.

d. Program development assistance may be provided by the department for a maximum of two years or until a parish receives an approved local program, whichever is sooner.

3. Implementation assistance funding shall be subject to the following.

a. Funding for implementation of a local program shall be available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish.

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.

H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### **Family Impact Statement**

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972

#### **Poverty Impact Statement**

This proposed Rule has no known impact on poverty as described in R.S. 49:973

#### **Small Business Statement**

In accordance with R.S. 49:965.6, the Department of Natural Resources Office of Coastal Management has conducted a Regulatory Flexibility Analysis and found that the proposed amendment of this Rule will have negligible impact on small businesses.

#### **Public Comment**

All interested persons are invited to submit written comments on the proposed regulation amendment. Persons commenting should reference this proposed regulation by *Rules for Local Coastal Management Programs*. Such comments must be received no later than February 10, 2021 at 4:30 p.m., and should be sent to Sara Krupa, Manager, Office of Coastal Management P.O. Box 44487, Baton Rouge, LA 70804-4487. Copies of this proposed regulation can be purchased by contacting OCM at (225) 342-7360, and is available for viewing and copying on the internet at:

<http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5>

#### **Public Hearing**

Requests for a public hearing must be received by February 10, 2021 at 4:30 p.m.. If determined a public hearing is warranted, the public hearing will be held on February 25, 2021 from 8:00 a.m. to 11:00 a.m. in the Griffon Room of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802, so that interested persons may submit oral comments on the proposed amendments.

Keith Lovell  
Assistant Secretary