Clean Water Initiative Program (CWIP)
State Fiscal Year (SFY) 2023 Funding Policy - Question and Answer

The following are questions and answers on the Vermont Clean Water Initiative Program (CWIP) State Fiscal Year (SFY) 2023 Funding Policy. The Funding Policy and Question and Answer document is available electronically at: dec.vermont.gov/water-investment/cwi/grants

Please submit additional questions – If not already addressed in this document – to ANR.CleanWaterVT@vermont.gov with "CWIP Funding Policy Q&A" as the subject line.

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Developed by the Clean Water Initiative Program

SFY 2023 Clean Water Initiative Funding Policy

Q1. Is there any support for Education and Outreach?

A1. The Clean Water Initiative Program Spending Plan highlights which items from the [Clean Water Budget](#) are CWIP-administered, their funding source, and the types of funding programs and initiatives available in the coming State Fiscal Year to support clean water projects. [The Spending Plan is available on the CWIP grants site page.](#) There is no CWIP funding program specifically dedicated to supporting general education and outreach.

The Enhancement Development Design and Implementation Block Grant (EDDIBG) funds priority water quality enhancement projects. One of the components of eligibility for this grant program is that "projects must meet at least one of the statutorily-defined purposes for Water Quality Enhancement Grants" ([Enhancement Grants Summary Document](#), 3).   One of the statutorily-defined purposes of water quality enhancement grants is to "support the public's use and enjoyment of the State's waters... Signage, condensed access, **and/or targeted outreach and education surrounding a specific project** are all considered eligible project components and primary project benefits to "support the public's use and enjoyment of the State's waters." This means targeted outreach and education surrounding a specific project is an eligible expense/activity under EDDIBG. The CWIP-administered Clean Water Workforce Capacity Development Initiative Block Grant also supports community relationship building as a means to increase organizational capacity and recognizes that relationship-building may include education and outreach activities.

Determination of Eligibility

Q2. Are current block grant holders updating their application materials to require these screenings or are they still under the previous funding policy?

A2. This depends on the block grant. Some block grant agreements are funded with SFY2023 dollars and are specifically required to follow the most recent Funding Policy. This includes the Enhancement Development, Design, and Implementation Block Grant (EDDIBG) and the Water Quality Restoration Formula Grants. Other block grant agreements make specific reference to the older SFY2021 Funding Policy and while we encourage Funding Program Administrators to use updated policy, we cannot require it based on grant terms. Of note for all implementers, however, is the much clearer guidance around when historic preservation review is required. Project implementers are strongly encouraged to include historic preservation review in their design workflow, even if not a standard milestone under the SFY2021 Funding Policy, as this is still a statutory requirement and will help set up projects successfully for implementation funding.

Eligibility Criteria #2: Project Types and Standards

Q3. What criteria do private roads and driveways need to meet to ensure responsibly constructed roads and driveways?

A3. Clean water projects on private roads and driveways should meet the Roads project type definition in the Appendix B: CWIP Project Types Table to be eligible. This includes requiring

that practices are located on hydrologically connected gravel/paved roads not or only partially meeting Municipal Road General Permit (MRGP) standards. Road projects should work to meet the MRGP standard, and this requirement sets a high bar which presumably narrows eligible projects to larger private road/driveway networks. There are reasonable equity concerns associated with public funding going towards the improvement of private transportation infrastructure. Many other CWIP-funded projects, however, are located on private property and some non-road project types can also provide property improvement benefits (for example, shoreline or riverbank stabilization projects). CWIP is opening eligibility of funding to private roads and driveways but setting high standards to ensure the focus is on larger networks and prioritized based on water quality impact. Funding Program Administrators will enlist review committees to evaluate and prioritize these projects against other proposed projects in a given project solicitation round. Also note that regular maintenance of private road infrastructure can be costly and, for the Water Quality Restoration Formula Grants, the cost of operation and maintenance should be considered in project prioritization. If private road owners are interested in making their project competitive, there may need to be additional negotiations regarding the maintenance terms and responsible party for funding on-going maintenance.

Note some driveways may meet the lake shoreland project type definition based on lakeshore proximity and proponents may design these practices to those lakes program standards instead. Clean Water Service Providers (CWSP) should take note that the DEC's road phosphorus accounting methods are directly tied to MRGP standards. In cases where lakeshore standards are applied to road/driveway work, phosphorus accounting methods are not in place to estimate reductions against CWSP targets at this time. Also note the definition and guidance for private roads is subject to change.

Q4. [Rephrased] The definition of Road Project implies that the project is on a segment that does not / partially does not meet the MRGP. However, Clean Water Service Providers are interested in investing in projects that exceed MRGP standards (and are thus non-regulatory) so that we could claim the P-reduction credit. How should we characterize these types of projects?
A4. Since private roads are not subject to the MRGP, full implementation of MRGP standards on private roads are considered non-regulatory, unless the private road is subject to the Three-Acre General Permit. Project-type categorization and phosphorus accounting for practices on or near private roads should follow the best fit based on the proposed suite of practices. If the project will install linear practices focused on improving sheet flow and reducing road surface erosion, then it should be categorized as a road project type and must be located on a hydrologically connected road segment. If the project is focusing on collecting and treating stormwater runoff from a drainage area and is a listed stormwater practice, it should be categorized as a stormwater project type and does not need to be located on a hydrologically connected road segment.

From a phosphorus tracking perspective, there are no additional phosphorus credits that can be reported and "claimed" by a Clean Water Service Provider (CWSP) through the installation or

improvement of <u>linear road practices</u> on either a municipal or private road segment that already meets MRGP standards.

<u>Stormwater best management practices</u> adjacent to municipal or private roads, however, may provide additional water pollution control benefits by capturing and treating stormwater runoff from roads and other adjacent properties. If a funding initiative's eligibility is limited to non-regulatory projects, the Funding Program Administrator and/or project implementer would need to confirm the additional impervious surface treated through a stormwater best management practice is not subject to other stormwater permits.

Q5. Would septic system replacement along lakes ever become an eligible project type in future years?
A5. Partners have flagged septic system replacement as a potential future project type during discussions with the Enhancement Grant Program sub-group ([Enhancement Grants Summary Document](), 14). To ensure CWIP's limited funds result in the greatest impact, CWIP avoids establishing new eligible project types when [there are other funding programs that support such work]().

Eligibility Criteria #3: Watershed Projects Database
Q6. Since all projects identified during the project development phase are tracked in the Watershed Projects Database (WPD), how does a Funding Program Administrator (FPA) determine if a WPD project was found to be ineligible or infeasible?
A6. If the project has a WPD identification number (WPD-ID) it is technically eligible in terms of meeting the requirements for eligibility criteria #3 (regardless of whether or not it's feasible). Projects must meet *all* listed eligibility criteria, however, and it's highly unlikely that a project would be infeasible *and* meet all eligibility criteria. For example, permit-ability and landowner support tend to be some of the predominant reasons a project is found to be infeasible. If a project was determined to be infeasible for one of these reasons, even if it was eligible under criteria 3 (because it has a WPD-ID), it would not likely be eligible under criteria 4 or 5. Additionally, projects that have been found infeasible due to a fatal flaw may be updated to a status of "terminated" in WPD, indicating the project is not suitable to move forward. Project status may be updated to "terminated" via consultation with the relevant Watershed Planner. We encourage Funding Program Administrators to consult with the relevant Watershed Planner and/or CWIP staff if eligibility or feasibility questions arise when considering a project for funding.

Q7. [Re-phrased] CWSPs should be allowed to approve a subset of projects for entry into the WPD to avoid potential bottlenecks of relying on Watershed Planners.
A7. Watershed Planners are best suited and trained to provide this review of project suitability for entry into WPD which includes a range of projects that may or may not be well suited for Water Quality Restoration Formula Grant funding.

Q8. Please clarify what role DEC Programmatic staff should or should not play as gatekeepers.

A8. We encourage project proponents to engage with DEC Programmatic Staff (if applicable) as early as possible, to invite them to stakeholder meetings, and to integrate their feedback into the design or project plans as much as feasible. Applicable project types for DEC Programmatic Staff input include design or implementation for a stream/floodplain, lakeshore, wetlands, or dam removal project, as well as for stream geomorphic assessments or lake watershed action plans. Please see the SFY2023 Funding Policy Appendix C. DEC Programmatic Staff Engagement for the appropriate points of contact for DEC Programmatic Staff organized by project type. The Watershed Planner is responsible for reviewing and considering DEC Programmatic Staff comments when deciding whether to assign a new WPD-ID.   It is the Watershed Planner that makes this final decision regarding the WPD-ID.

Eligibility Criteria #4: Natural Resource Impacts

Q9. [Re-phrased] The Natural Resources Screening table should provide space for documentation of non-regulatory programmatic staff review requirements or stipulation. We need the project implementers to receive feedback to ensure that projects are as strong as possible and minimize any adverse natural resources impacts. We need the implementers and the Funding Program Administrators (FPAs) to have a record of technical staff recommendations and comments. Otherwise, it puts FPAs at too much risk to not know what was said / agreed to.

A9. We encourage project proponents to engage with DEC Programmatic Staff (if applicable) as early as possible, to invite them to stakeholder meetings, and to integrate their feedback into the design or project plans as much as feasible. Non-regulatory staff review of projects has been removed from the eligibility screening as a formal step and integrated into the standard milestones for specific project types. Preliminary and Final design phases now have "DEC programmatic staff comments on design" as required deliverables for applicable project types. There is not a formal form or template for capturing that feedback, but it is still required to be documented and can be available for implementers and FPAs to review. FPAs may choose to request those comments on design as part of their review of projects during a solicitation round, but it is not a formal <u>eligibility</u> requirement and is therefore not integrated into Table 4.

Q10. Please clarify when program staff should be consulted about permitting reviews and when it is required.

A10. ANR permitting staff should be consulted to determine the permit-ability of a project in advance of the project receiving a funding decision. Recommended times to perform these consultations include during an earlier funded project development or project design phase. If not then, project proponents must consult with the appropriate permitting staff as part of a funding application round. Eligibility criteria #4 states that "Projects are eligible for CWIP funds if they are reasonably considered permit-able by all applicable ANR permitting programs and/or if the project proposal demonstrates how permitting staff feedback will be integrated into designs to ensure final projects are permit-able" ([CWIP SFY2023 Funding Policy,](#) page 13). These consultations are required based on the location and scope of proposed project work.

Table 4 in the Eligibility Screening Form walks project proponents through all questions to determine which permitting staff consultations are required and how to connect with the appropriate staff.

Q11. What does "reasonably considered permit-able" mean in the context of Natural Resources screening?

A11. Permitting staff are not being asked to issue permits during the Natural Resource screening process. They are just being asked to provide their professional review and opinion as to whether the proposed scope of work may need a permit as well as any design considerations that may impact the project's success in securing a permit.

1. If the permit staff identify no problems with the project and determine it would meet any required permitting standards, then the project is reasonably considered permit-able.
2. If the permitting staff note a project component that needs to be changed to comply with permitting standards, and the project proponent adequately explains in Table 4 of the Project Eligibility Screening Form how this will be addressed during a design phase, then the project is also reasonably considered permit-able. It is up to the Funding Program Administrator to determine whether a provided explanation is adequate. Note that "Funding Program Administrators shall keep documentation of all communication with the state that relates to project technical assistance and approval. Should any project require additional conditions set by DEC permitting staff, Funding Program Administrators shall include those conditions in any resulting sub-agreement should that project be selected for funding. The Funding Program Administrator is then responsible for ensuring any resulting conditions are met prior to release of funding on the project's final invoice," (CWIP SFY2023 Funding Policy, page 21).
3. If the permitting staff note a project component that needs to be changed to comply with permitting standards and either the project proponent makes no mention of how this will be addressed or, that addressing it undermines the intent of the project and cannot be changed then the project is not reasonably considered permit-able and would not be eligible for funding.

Eligibility Criteria #5: Landowner and Operation and Maintenance Responsible Party Support

Q12. Is the Operation and Maintenance responsible party identification required for concept design, or only for final design?

A12. If a project proponent is seeking funding for preliminary (30%) design funding, then eligibility criteria #5 applies. A letter of support from a potential responsible party that indicates their tentative willingness is fine. The intent is to ensure that a responsible party has been identified and engaged with, but we understand any responsible party may want to see more finalized design plans before signing an actual O&M agreement.

Eligibility Criteria #6: Budget

Q13. Would designing a larger stormwater BMP (or a larger swale) to account for climate change (e.g., designing for a larger storm event) be considered "above and beyond" and therefore ineligible?

A13. Project components that are above and beyond those necessary to achieve the project's clean water purpose (as listed under eligibility screen #1) are ineligible budget expenses. Upsizing best management practices to account for climate change resilience will still have a clean water benefit and is not considered "above and beyond" meeting the project's clean water purpose. The SFY2023 Funding Policy also provides increased flexibility by including allowances for a project proponent to provide justification for additional expenses. There is space for this justification to be provided in the Eligibility Screening Form under the Budget Criteria section. Ineligible expenses may be included if reasonable justification is provided as determined by the Funding Program Administrator.

Q14. [Rephrased] "Eligibility Criteria #6: Budget Ineligible Expenses" should make clear who is making a judgment about when materials are higher cost or designs more complex. DEC should identify one or more points of contact for this type of issue.

A14. See answer 12 above. Ineligible expenses may be included if reasonable justification is provided as determined by the Funding Program Administrator. Funding Program Administrators may consult with their Technical Project Manager if more guidance is needed.

Q15. Can you provide any clarity on what type of expenses the De Minimis 10% Indirect Rate can be applied on?

A15. DEC maintains an internal policy on "Determination of Indirect Cost Rates for Grant Recipients." This policy states "If a grant recipient is receiving funding through the Department of Environmental Conservation (DEC) and wishes to be reimbursed for indirect costs, the grant recipient must provide DEC a federal approved negotiated indirect rate agreement (NICRA) or equivalent prior to entering into the agreement. DEC will accept Indirect Cost Rates negotiated by VTrans for the Regional Planning Commissions as equivalent to a NICRA that will be applicable to all DEC funded agreements. DEC does not negotiate indirect cost rate agreements. If an entity does not have a federally approved NICRA, they may elect to charge a de minimis rate of 10%... without submitting an indirect plan to DEC." **Both the approved NICRA and de minimis 10% may only be applied to the modified total direct costs (MTDC).** "*Modified Total Direct Costs* [include] all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000." This policy applies to grantees that hold direct agreements with DEC. DEC recommends Funding Program Administrators set up similar policies for their sub-grantees and we recommend that project implementers/sub-grantees consult with their specific Funding Program Administrator for further guidance on how to build a budget with accurately applied indirect rates.

Eligibility Criteria #8: Funding Program – Specific Eligibilities

Q16. In the description of Eligibility Criteria #8: Funding Program – Specific Eligibilities on page 17, there is the suggestion that Formula Funds are meant to be block grant. But the matter, which has been raised by DEC staff in the past, remains ambiguous. What is the bottom-line answer on this?

A16. CWIP uses the term block grant to describe a funding structure that utilizes a Funding Program Administrator to operate on behalf of DEC to make project funding decisions following our guidance. Per footnote on page 63 of this Funding Policy, "Funding Program Administrators may also be called block grantees, block grant administrators, or pass-through entities. For the purposes of this Funding Policy the term "Funding Program Administrator" also applies to Clean Water Service Providers unless clearly distinguished from them."

Q17. Are there guidelines on funding co-benefits - what counts, what doesn't, the amount, etc.? For instance, do those co-benefits need to be water quality and watershed health related, not say co-benefits for economic growth or recreation, etc.?

A17. The SFY2023 Funding Policy removed co-benefits from the list of ineligible budget expenses. Guidance on funding co-benefits is now specific to funding program. Please see the Clean Water Service Provider Guidance Chapter 6 on recommendations for what to consider as co-benefits under the Water Quality Restoration Formula Grants. The Enhancement Grants Summary Document clarifies that any project components that help the project meet its statutorily-defined purpose are considered primary and not co-benefits. Specifically, creating resilient watersheds and communities, and supporting the public's use and enjoyment "have historically been considered co-benefits on CWIP's legacy Ecosystem Restoration Grants and therefore were historically ineligible for CWIP funds under older budget eligibility guidance. Project components critical towards achieving any of the Enhancement Grant statutory goals are now considered primary (not co-) benefits and are eligible for CWIP funds within a proposed project's budget if they are completed within the timeframe of the project sub-agreement." (Enhancement Grant Summary Document, page 3). There are no other restrictions on what can or cannot be considered a co-benefit under the Enhancement Grant program from an eligibility perspective. However, all funding decisions must be in alignment with the statutory purpose of the Clean Water Fund. If a project's costs are inflated to cover a wide range of tangential co-benefits, it will likely not rank as a high priority in competitive granting rounds.

Q18. What is a regulatory project?

A18. Projects funded through the Water Quality Restoration Formula Grants and Water Quality Enhancement Development, Design, and Implementation Block Grant must be non-regulatory.[1] Regulatory projects are those required/compelled by water quality-related federal or state regulatory programs.[2] Some example water quality-related regulatory programs include the

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[1] Barring some exceptions for projects that go above and beyond regulatory requirements.

[2] Projects to meet local ordinances or zoning requirements are considered non-regulatory.

Three-Acre General Permit, Municipal Separate Storm Sewer System (MS4) Permit, Agency of Transportation's (VTrans) Transportation Separate Storm Sewer System (TS4) Permit, Municipal Roads General Permit (MRGP), Required Agricultural Practices (RAPs), Lakeshore Protection Act, Wetland Rules, and wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) program. This list is not all inclusive. Project implementers and Funding Program Administrators should refer to funding program specific guidance for more details on what defines a regulatory project and consult with their Technical Project Manager for more guidance as needed.

Regulatory project examples:
- A stormwater retrofit project on a private property that has more than three acres of impervious surface and is subject to the stormwater General Permit 3-9050.
- A landowner is compelled to plant a woody riparian buffer as a permit condition to proceed with a non-clean water-related project (e.g. a subdivision under Act 250) or to mitigate natural resources damage in response to a permit or legal violation.
- A wetland enhancement project or in lieu fee payment that is required compensation as part of a wetland permit or restoration of a wetland violation.
- An MS4/TS4 permit project that contributes to MS4 community(ies) and/or VTrans meeting MS4/TS4 permit flow and/or phosphorus reduction targets, including projects identified by the MS4 community in a flow restoration plan (FRP) and/or phosphorus control plan (PCP).

There may be cases where a project can achieve both regulatory and non-regulatory goals. Project implementers and Funding Program Administrators operating under non-regulatory programs should refer to funding program specific guidance for details on how to approach co-funding and parsing credit (if applicable) for the non-regulatory component of the project.

Note: non-regulatory projects (i.e., projects performed voluntarily) may still be subject to regulatory oversight and may require review for jurisdictional determinations, including the potential need for state permits. They are still considered non-regulatory if they are being completed voluntarily (i.e. are not compelled to happen by a water-quality-related regulatory program).

Eligibility by Project Phase
Q19. The funding policy applies to funding at all levels, correct? Do those applying for project development funds still need to do the permit review (e.g., historic preservation review)?
A19. Historic preservation review steps are specific milestones integrated into preliminary and final design phases of a project. This is not an eligibility factor and does not need to be completed when an entity is applying for funding. Similarly, project development scope of work includes "consulting with DEC staff and determining budget and permit needs." In other words, permit review is not an eligibility criterion for project development, it is part of the expected milestones and deliverables. Page 18 of the Funding Policy outlines what eligibility

criteria apply to entities seeking funding to perform assessments, project identification or project development. This includes criteria 2, 3, 6, and 8 if applicable. Note individual projects under an assessment or development effort do not need to have a WPD-ID for the assessment/development to be eligible for funding. Projects that need development may already have a WPD-ID, or if identified through development efforts may be assigned a WPD-ID at completion of project development. [Please see the CWIP Project Types Table](#) for the definition of project development and expected performance measures, milestones, and deliverables.

Q20. How does a [Funding Program Administrator] FPA determine if an area is eligible or a priority for a [Stream Geomorphic Assessment] SGA? Who determines this priority/eligibility and how will they be prioritized in the context of [Clean Water Service Provider] CWSP funding?

A20. Project eligibility and priority are two distinct steps involving different stakeholders depending on the funding program. A Stream Geomorphic Assessment (SGA) is <u>eligible</u> for funding through the Water Quality Restoration Formula Grant Program if it meets the required eligibility criteria for assessment work (criteria 2, 3, 6, and 8). Note that if the SGA doesn't already have a WPD-ID, it is very likely the Watershed Planner will consult with the Rivers Program to determine whether the proposed assessment work should be added. Regarding <u>priority</u>, Clean Water Service Providers must advance project funding in accordance with Water Quality Restoration Formula Grant Guidance documents. Specifically, guidance notes the role of the Basin Water Quality Councils (BWQC) in setting priorities and determining which of a suite of potential/proposed projects, are a priority for any given basin to fund with Water Quality Restoration Formula Grant funds. Tactical Basin Plans developed by the Watershed Planners also have a list of priority SGAs which may be a useful resource for BWQCs. Importantly, CWSP guidance on how *assessment* project types like SGAs should proceed through the Formula Grant system is still pending and will likely include additional touchpoints with the DEC Rivers Program as their staff play an important technical support role for this project type and they must have the available capacity to support the proposed work regardless of whether or not it's eligible and a BWQC priority for funding.

Q21. Who determines if a Stormwater Master Plan is eligible for funding and conducts the screening?

A21. Entities proposing to manage a stormwater master planning process would conduct the eligibility screening. Previous stormwater master planning has been managed by a range of different entities including private for-profit consultants, watershed organizations, or even the CWSP host entities. A stormwater master plan is eligible if it meets the required eligibility criteria for assessment work (criteria 2, 3, 6, and 8).

Grant Recipient Responsibilities and Guidance

Q22. Under expectations for FPAs, please clarify requirements around debarment, including the subcontract / subgrant language? What guidance is there on when and how often to do debarment checks and to what level of sub-contractors must do debarment checks on.

A22. The debarment requirement is typically outlined in the block grant agreement under Attachment B. Payment Provisions and Attachment C: Standard State Provisions for Contracts and Grants. The language usually says something like "Grantee is conferred blanket approval from the State to execute any subcontracts associated with this Agreement and related amendments according to attachment C, #19. **As part of the procurement process**, the grantee must verify and document that none of its subgrantees/subcontractors are listed on the federal debarment list located at https://sam.gov/content/home or the State debarment list maintained by the Vermont Buildings and General Services (BGS) and located at: https://bgs.vermont.gov/purchasingcontracting/debarment. Both the name of the entity and name of the primary point of contact must be checked." Frequency is recommended "as part of the procurement process," or in the case of subgrating rounds for Funding Program Administrators at the point of executing a new sub-award or amending a current sub-award. There are also specific items in Attachment C that must be included in sub-agreements including "certification regarding debarment." [Further debarment guidance is provided by the DEC Administration and Innovation Division](#) under the subcontract approval process links.

Budget Definitions and Guidance

Q23. Please clarify and/or provide examples of technical assistance provider enhancing the capacity of individual project implementers to advance clean water projects.

A23. An example might be a Funding Program Administrator for the Dam Removal Design and Implementation Block Grant who chooses to contract with a dam removal technical expert who can consult as needed with individual project implementers statewide on developing and advancing dam removal projects. This might be a type of on-retainer programmatic service that is above and beyond the administrative workload of the Funding Program Administrator.

Q24. Do FPAs have to report on voluntary leverage?

A24. If leverage is documented in the terms of a grant agreement, whether or not it was required as part of the funding program, it is now considered required and should be reported. Usually, this leveraging requirement is met through the individual project reporting. Individual project close-out forms require leveraging to be reported. If FPAs have secured additional leveraging to perform their administrative duties, for example, it also can be reported if needed to meet any leveraging requirements documented in the grant agreement.

Q25. If Funding Program Administrators may design their sub-agreements as deliverables-based with subgrantees as opposed to cost reimbursable, how would an FPA receive the funds from DEC to make this happen?

A25. If the grant agreement with DEC is cost-reimbursable, the FPA would submit invoice information from their sub-grantees that demonstrates the FPA has incurred an expense or debt. Sub-grantee invoices can be structured as cost-reimbursable, or fixed cost but, either way, the FPA has incurred a cost they must pay and, as such, it is a cost-reimbursable payment to the FPA from DEC.

State Historic Preservation Review

Q26. When is the historic preservation review webinar?

A26. [The training webinar on VDHP review of CWIP Clean Water Projects](#) was hosted on March 8th, 2023 and a recording is available at the above link.

Q27. What about smaller natural resources projects like a lakeshore restoration rain garden? From the CWIP funding policy, it seems like these types of smaller natural resources restoration projects would not be exempt from review, but they are akin to a buffer planting in impact. And the time and cost of a VDHP review may be out of scale in cost and time for the project.

A27. According to the current SFY2023 Funding Policy these project types would not be exempt from VDHP review although review may be as simple as submitting preliminary and final review forms to VDHP with no additional cultural resource work needed. CWIP plans to revisit this pilot process with VDHP and refine the project exempt list as VDHP gains experience with these project types.

Q28. What is the time required for a typical review?

A28. VDHP will respond in thirty (30) days of receipt of a completed submittal package. There is no cost or fee for the review process. It is possible response times may vary based on project complexity and VDHP capacity. CWIP recommends that project proponents speak with VDHP representatives when submitting their VDHP review forms to confirm likely timeframe for a response.

Q29. How will CWSPs and their partners budget for these review steps when qualification and need for resources assessment is not known when projects are initially defined?

A29. The Funding Policy provides guidance on this on pages 24 and 33 as follows: "CWIP recognizes that the exploratory and iterative nature of historic and archaeological assessment consultation, if required by VDHP, can be difficult to predict and budget for within the 100% Final Design Phase. CWIP encourages Funding Program Administrators to be flexible in granting additional cultural resource funds as the iterative process progresses as long as the project remains cost-competitive (in terms of ecological and community benefits gained per dollar spent)." (Page 33). "All grant recipients are responsible for ensuring projects do not run over budget. This may include proactive approaches such as building in contingencies and allowances or soliciting real quotes when budgeting. Funding Program Administrators are expected to use best professional judgement when deciding how to deal with an over-budget project. Funding Program Administrators are granted full decision-making authority on this matter for their sub-agreements and do not need to confer with the TPM for input but may choose to reconvene their project selection committees or consult with DEC staff as needed. The following options are provided merely for consideration:

    a. Funding Program Administrators may choose to completely terminate the project.

b. Funding Program Administrators may choose to add more funds to the project if they have remaining project completion funds within their "block grant" agreement with DEC. Note that DEC will not have additional funds available to make any over-budgeted projects whole.

c. Funding Program Administrators may choose to work with the project proponent to downsize or restructure the project's scope and expected deliverables or identify alternative sources of funds to cover the new budget gap. " (Page 24)

Note there may be additional guidance for Clean Water Service Providers in relation to Basin Water Quality Council review of project cost-effectiveness changes that should be followed. Refer to Clean Water Service Provider Guidance documents.

Q30. How do these new milestones and deliverables affect projects for which an organization has an active grant agreement?

A30. Grant agreements outline required milestones and deliverables from a CWIP programmatic perspective. These updated milestones and deliverables are intended to align our programmatic requirements with statutory requirements. While pre-existing projects do not have VDHP review as a programmatic requirement in their older milestones and deliverables, project implementers are strongly encouraged to include VDHP project review as soon as feasible to comply with statutory requirements.

Q31. What metrics will DEC and VDHP be tracking to evaluate the effectiveness of this pilot year?

A31. No specific metrics have been identified or mutually agreed upon to evaluate this pilot year. This may evolve as this program requirement matures.

Q32. Is there any guidance on how to determine if VDHP costs make a project non-cost competitive? In smaller projects, the addition of a VDHP review may constitute 25-50% of the project cost (small lakeshore projects, small river restoration projects).

A32. There is no existing programmatic definition for a cost-competitive project. DEC defers to the Funding Program Administrators to perform a comparative review of projects within a given granting round. The intent is to consider whether the project would still be ranked highly and funded had the VDHP costs been known. It is an analysis that depends on the other projects that were considered, and which might have been rejected for funding. There is no expectation to consider cost-competitiveness of projects across granting rounds.

Q33. Can cost associated with VDHP Project Review fall into other categories of spending like technical assistance or program delivery?

A33. On a case-by-case basis this might be possible depending on the nature of the VDHP project review expenses. Funding Program Administrators should consult with their DEC Technical Project Manager for case specific invoicing and budget instructions.

Q34. Is "ground disturbance" defined somewhere? If so, where, and how?

A34. Ground disturbance is not defined in the SFY2023 Funding Policy. VDHP defines ground disturbance or soil disturbance as a natural or man-made alteration of the soil that alters or destroys the integrity of the landform. Note that stream bank regrading *is* considered ground disturbance and this is highlighted in the [VDHP Project Review Form available on the CWIP Applicant and Recipient Resources page](#). Below is a summary of how this term has been defined by other agencies, if helpful.

- Ground disturbance is defined as any activity that compacts or disturbs the ground within a project area. ...Ground disturbance can also be caused by the use of hand tools (shovels, pickaxe, posthole digger, etc.), heavy equipment (excavators, backhoes, bulldozers, trenching and earthmoving equipment, etc.), and heavy trucks (large four-wheel drive trucks, dump trucks and tractor trailers, etc.). Trenching, bulldozing, excavating, scraping, and plowing are typical examples of ground disturbance activities. Project types that usually involve ground disturbance include acquisition/demolition/relocation of structures; vegetation management; landslide stabilization; and infrastructure projects such as utilities, storm water management, and flood control. However, any projects that include the installation of utilities, culverts, temporary roads or structures, permanent roads, foundations, and footers all typically involve ground disturbance activities. [3]
- Ground disturbance is anything that breaks ground or changes the condition of the ground's surface. Common examples include installation of a concrete pad, construction of a guard shack, installation of fence posts or bollards, and trenching for utility lines.[4]
- The type of control measures that are presumptively expected to cause subsurface ground disturbance include: ◎ Dikes ◎ Berms ◎ Catch basins, drainage inlets ◎ Ponds, bioretention areas ◎ Ditches, trenches, channels, swales ◎ Culverts, pipes ◎ Land manipulation; contouring, sloping, and grading ◎ Perimeter Drains ◎ Installation of manufactured treatment devices…This list is non-inclusive.[5]

Appendix C. Project Types Table Explanation of Items

Q35. In the section of Final Performance Report or ANR Online Clean Water Project – Project Closeout Form (once available) …. will these duplicate the forms CWSPs will be using to track projects?
A35. CWIP has coordinated with the Agency of Digital Services (ADS) to ensure there is functionality in the Watersheds Project Database (WPD) for CWSPs to be able to query their portfolio of funded projects and quality control the available data. The Final Performance Report/Project Closeout Form helps capture and enter into the WPD all necessary project information including location, performance measures, best management practice specifications, and pre/post implementation photos. The Water Quality Restoration Formula Grant Project Data Tracking Tool is an optional tool designed to capture project level data that

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[3] https://www.fema.gov/pdf/plan/ehp/Final_B_PDF.pdf

[4] https://dps.sd.gov/application/files/9615/0653/0392/GPD_EHP_Screening_Form_Instructions_003.pdf

[5] https://www3.epa.gov/region1/npdes/stormwater/ma/2014AppendixD.pdf

will be required to enter into the ANR Online Clean Water Project – Project Closeout Form (once available). Until the Project Closeout Form is available, CWSPs may submit project data for closeout via the Project Data Tracking Tool. Clean Water Service Providers have separate quarterly financial reporting forms that capture separate data for purposes unrelated to maintenance of the WPD.

Q36. Will the current Operations and Maintenance form (approved by DEC) which does not require landowner signature but instead the agreed responsible party still be allowed?
A36. Allowable templates are found on the CWIP Applicant and Recipient Resources site page. Applicable templates for operation and maintenance also depend on the funding program. Access license or easement agreements, for example, must replace the O&M template for projects funded through the Water Quality Restoration Formula Grant program. Please see Appendix C of the Funding Policy for more information on access agreements.

Q37. DEC created a photo log template word document for previous rounds of funding. Is this document still acceptable or does DEC want individual jpegs to be submitted?
A37. Once the ANR Online Clean Water Project – Project Closeout Form is available, photos can be submitted directly through that system. In the meantime, the photo log template word document is fine to use to provide labeling of what the photos are showing (as opposed to a photo log excel file as suggested in the Funding Policy). Please make sure the images can be extracted from the word document and saved as a photo (as opposed to requiring a screenshot of a PDF document) to be able to preserve image quality in the transfer and upload to the Watershed Projects Database (WPD).

Q38. Do social media posts about CWIP funded projects require DEC review/ preapproval?
A38. No. Please refer to grant agreement language on required content for media announcements.

Appendix D. Other Information
Q39. [Rephrased] Please clarify what is meant by "contractors and subcontractors, in contrast to grant recipients, are generally not responsible for compliance with CWIP program requirements beyond those included in the contracting language." We think what this is saying is that contractors should be given all this information to them through their subcontract (rather than having them interpret the information). Could DEC make this clearer that work happening under contracts is not exempt from this policy?
A39. Contracts are normally used to acquire specific, clearly defined services and/or products from entities or individuals other than State Agencies or employees of the State. Grants are commonly issued for the direct support of persons and are also issued to organizations that perform public benefit activities with a high degree of independence. Grantees often adhere to programmatic requirements of a State or Federal program under which the Grant is issued and may be required to submit financial and programmatic reports to the granting Agency. CWIP sees the Funding Policy as a programmatic requirement that grantees must adhere to.

Contractors may also be required to follow the CWIP Funding Policy, but they don't hold any responsibility or leeway to interpret and apply the policy. Any clauses they are expected to comply with should be explicitly stated in their contract agreement language. The Vermont Agency of Administration's Bulletin 3.5 provides more information on this distinction: https://aoa.vermont.gov/sites/aoa/files/Bulletins/3point5/3.5Rewrite121619FINAL.pdf.

Q40. Please define design professional in the context of development of 10% designs.
A40. The Clean Water Initiative Program Project Phase Terminology and Design Guidance (which references 10% designs) provides basic information on what tasks generally fall into these phases which can be used for project planning but does not dictate what must fall in these phases. Given the complexity of certain projects, specific permitting programs may require conceptual designs developed by an individual with a certain level of professional certification. CWIP defers to the relevant permitting programs if or when that's a requirement and sets no further standards on what it means to be a "design professional" from a funding program policy perspective.

Q41. Please define the term "Site Surveys". This term can mean different things to different people even within the realm of natural resource management.
A41. Please see page 59 of Funding Policy for description.

Q42. What if permitting programs change the designs during implementation? It's not really 100%, right?
A42. CWIP has previously used the terms Final Design and 100% Design interchangeably. For some project types, CWIP also previously required all permits to be secured prior to the close of the Final Design phase as such making the final deliverables a truly 100% design. More recently CWIP has allowed more flexibility in the timing of when permits are secured, and we have moved the "required permits secured" milestone from Final Design phases to the Implementation phases (except individual wetlands permits). This milestone was moved to increase flexibility, but project implementers can still secure all permits earlier/during their Final Design phase if desired. For example, significant design changes in response to permitting staff requests may require re-review from the Vermont Division for Historic Preservation (VDHP) where applicable. Since a signed VDHP Project Review Form is a required Final Design Phase deliverable, it makes sense for those projects to complete permitting reviews and finalize designs to 100% *during* Final Design such that VDHP sees complete 100% design plans. For projects that don't need this review, however, CWIP agrees that additional design adjustments may happen during permitting review and, if that happens during the implementation phase of a project then 90% design plans are an acceptable deliverable at the close of a Final Design Phase. Indeed, Appendix D of the Funding Policy states, "A clear and complete final (100%) design should have sufficient detail for permitting authority reviews," essentially acknowledging "100% designs" may change through permitting review. Given the range of project conditions and needs, any design plans somewhere between 90-100% is an acceptable deliverable for Final Design Phase projects. CWIP will be making changes across our materials

to account for this increased flexibility to be reflected in future updates to our Funding Policy and accompanying materials.

DEC's Equipment Purchase Policy

Q43. Is there an upper limit on equipment costs? Are there any guidelines or restrictions on the cost of the equipment compared to its value for clean water projects or the potential of that equipment being used for other purposes?

A43. There is no guidance on cost of equipment compared to its value or a cap on equipment expenses although standalone equipment purchases are not an eligible project type for subgrantees/subcontractors and the entire project budget needs to meet any grant-program specific project cost considerations. For example, projects submitted to the Clean Water Service Providers must be evaluated for cost-effectiveness for phosphorus reduction potential, and Enhancement Development, Design, and Implementation Block Grant Funding Program Administrators "are encouraged to fund a large number of strong projects and to, therefore, be critical when reviewing both the quality and the cost competitiveness of project proposals" (Enhancement Grants Summary Document, page 6). This is likely to limit the inclusion of large-scale equipment expenses into project budgets. Regarding the use of the equipment, tool or equipment expenses are ineligible expenses in a project budget "unless intent of tool or equipment is to assist with implementation of clean water projects or to assist with operation and maintenance of clean water projects (in cases where operation and maintenance is eligible). Eligible tool or equipment purchases must have an expected useful life of more than one year… Items with a per unit cost of equal to or greater than $5,000 are defined as "equipment" and subject to DEC's Equipment Purchase Policy" (CWIP SFY2023 Funding Policy, page 15). "Any eligible equipment purchased or furnished with CWIP funds under a direct grant agreement from the state is provided on a loan basis only and remains the property of the state. Grant recipients must submit an Equipment Ownership Request / Approval Form, which will be attached to applicable Grant Agreements, to retain the equipment at no later than the end of the agreement term" (CWIP SFY2023 Funding Policy, page 65). DEC's Equipment Ownership Request / Approval Form requires grantees to certify that they accept ownership of the purchased equipment "**for the same use and intended purpose as outlined in the original agreement**." Please find the form available on the CWIP Applicant and Recipient Resources site page.

Q44. Can equipment be shared across sub-grantees?

A44. Funding Program Administrators may purchase operation and maintenance equipment for the shared use of subgrantees and subcontractors if their grant agreements hold them responsible for performing maintenance activities on clean water projects. These expenses should come out of the project completion budget. Funding Program Administrators may separately purchase tools or equipment to assist with implementation of clean water projects for the shared used of subgrantees and subcontractors. These expenses should come out of the project completion budget. "Eligible tool or equipment purchases must have an expected useful life of more than one year… Items with a per unit cost of equal to or greater than $5,000 are

defined as "equipment" and subject to DEC's Equipment Purchase Policy" ([CWIP SFY2023 Funding Policy](#), 15).

Recommendations for Future Funding Policy Editions

CWIP also received a range of suggestions for improvement we will take into consideration when the Funding Policy is next updated. CWIP thanks everyone for their time providing these suggestions which included:

1. Providing an explanation for why introductory text was shortened or adjusted,
2. Emphasizing the role of the document as both policy and communication,
3. Soliciting more public participation in policy updates[6],
4. Differing preferences on verbiage, emphasis, order, simplification, and citation formats,
5. Request for examples and/or clarification in supporting appendices,
6. Considering additional eligible project types,
7. Expanding review and eligibility exemptions based on project scale, and
8. Edits to project type definitions for private roads.

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[6] Note that while the CWIP Funding Policy is not subject to a formal public comment period, many of the changes to the Funding Policy are to address questions and challenges raised by our partners through on-going open communication between grantees, contractors, the Technical Project Managers, and CWIP program staff.