

FFY 2018 IUP Responsiveness Amendment Summary:

1. Regarding WISPr, is there a minimum project dollar amount for a sponsored project?

No, there is no minimum project amount. The WISPr project should be at a 10:1 or greater ratio of the sponsoring project.

2. Does the WISPr project have to directly related to the sponsoring project, either functionally or geographically, or can it be completely independent? Can they be tied by basin?

The statute is silent on whether there needed to be a geographic or watershed connection. The WISPr project can be completely independent of the sponsoring project. They can be in different watersheds or parts of the state. The program intends to leave this question up to each individual municipality. In other states, there are successful sponsorship examples of upstream/downstream benefits and even sponsoring for a “PR” benefits. While this may not happen immediately, we wanted the municipality to have this opportunity.

3. On expanded project types, will the traditional PER, 30/60/90 review be required?

There are certain requirements that are statutorily required such as the approval of a preliminary engineering report (PER) or the equivalent. The program may create a template for non-construction natural resources projects that require the appropriate level of engineering documentation and oversight. We recognize that certain projects will require less engineering analysis than others and routinely scale it up or down based on project complexity. These determinations will be made on a case by case discussion with the SRF engineer for now.

4. The program should look for ways to reduce the review and approval process for projects with an acute public health impact such as contaminated sites.

In accordance with current practice, the program will prioritize the review of projects with an identified acute public health impact.

5. If a municipality wants to do a CSO project for \$1M and want to do tree planting for \$100k, they would get both projects for the same \$1M price? Would they only spend \$1M or \$1.1?

Sort of. They will still spend \$1.1M total, but they will save \$100k worth of administrative fees over the life of the loan. The annual payment (debt service) will be the same for a \$1M standard project and a \$1.1M WISPr project.

6. If a municipality does a bond vote, can the approval for a sponsorship agreement be completed after the bond vote?

That is correct. Bond counsel attorneys are aware of this exemption and would need to include this in the overall opinion prior to processing a WISPr loan agreement.

7. When does a municipality have to document that it chooses to enter into a sponsorship agreement?

The projects should be ranked together on the priority list and would need to be formally documented prior to processing a construction loan. As previously noted, a bond counsel opinion letter would be required.

8. Is there a cap on the amount of sponsorship projects that can be completed in a year?

In the upcoming Intended Use Plan for FFY19, there will be a cap on sponsorship amounts. The WISPr project should be at a 10:1 or greater ratio of the sponsoring project.

9. If there's no financial impact on the municipality, why wouldn't all projects have a WISPr component?

That is the goal, to make it just an easy, common sense process that benefits the municipality and water quality improvements statewide. It will be key to streamline coordination and administrative work.

10. There is a concern that there are many projects that we're working on now and they are too far along to identify a WISPr project.

There's no perfect time to start; there will always be existing projects in the queue. The WISPr intends to spend the first year meeting projects where they are, get them match ready, and follow through with implementation. WISPr natural resource projects can be identified until submission of the construction funding application.

11. Is there consideration to give additional priority points to WISPr projects?

Chapter 2 Environmental Protection Rule allows for multiple projects to be ranked together. As such, the WISPr project's points would be added to the main project and ranked accordingly. In this mechanism, WISPr projects do receive "extra" points, but no more than if an applicant submitted multiple projects at once.

12. What does the 4% rate charged to private entities have to do with WISPr?

It doesn't. It's important to keep in mind that direct loans to private entities are a different funding mechanism than WISPr.

13. If the additional administrative fee from private entity loans are supposed to support WISPr expenses that won't be returned to the fund, is there a concern of always having to balance funds in via private entities and WISPr requests?

In short, this is what the SRF programs already do. Each year during the drafting of the Intended Use plan when we propose additional subsidy via loan forgiveness, rates charged to applicants, and fund utilization, we are always balancing these initiatives against the overall health of the fund. Our primary prerogative is to maintain a healthy revolving fund and WISPr will be adjusted up or down according.

14. Can a municipality sponsor any private entity project via WISPr?

This question was debated pretty extensively in the legislature. In the end, the statute limits the WISPr financial arrangement to nonprofit entities

15. Regarding the "hopper" or planning list for WISPr projects, are there maximum time limits that a project can be on the list?

A project can remain on the list awaiting matching for up to 5 years.

16. If there is a brownfield project where there is a need for cleanup, in addition to a conservation easement, are the cleanup costs eligible under WISPr?

Brownfields projects alone are not an eligible natural resource project under WISPr. If an eligible project, for example, a wetlands easement, contained a brownfield site and that remediation is necessary for water quality benefits, it may be eligible. This would need to be reviewed by program staff on a case-by-case basis.

17. Has there been a review that the program doesn't put non-sponsoring municipalities at a disadvantage? There is a concern that natural resource projects will be prioritized over hard infrastructure projects that are needed to maintain wastewater and stormwater standards.

The priority ranking criteria in Chapter 2 EPR still places an emphasis on traditional hard infrastructure types. The program remains committed to sustainably funding these projects in addition to the expanded project types.

18. As archaeological reviews are becoming more and more expensive, if this is a requirement for natural resource projects, this could extend timelines and prevent program interest.

The program is currently reviewing the applicability of several federal crosscutters (federal requirements) for these expanded project types and intends to streamline where possible. With archaeological reviews specifically, this may still be required by Vermont state statute.

19. In terms of defining a project scope for a WISPr project, how are the boundaries determined? How far can you go and still count something as a single project?

WISPr would only limit the project to available funding and to portion of the project that would provide a water quality benefit.

20. Has there been any discussion about offering pollution reduction credit?

The Department has discussed this, but the mechanism to offer this, particular across sectors (stormwater vs. agriculture, for example) have not yet been worked out and are complicated. However, this may evolve in the future.

21. If you're a municipality with a project that you want to sponsor, it doesn't sound like it's necessary to apply prior by 11/13/18.

If your municipality is not interested in planning funds, it is not critical. However, the two projects would need to be on the priority list to receive construction funding.

22. Has there been consideration given to funding project development to work through the project's process? It would be ideal for the WISPr implementers to have a clear definition of what the line is between project development and project management.

The term "project development" can mean different things to different people, including non-capital eligible expenses such "door knocking". The program defines the beginning of project management to be when there are agreements from property owners and the proposed costs are related to management of a viable project through design and implementation. At that time, an application may be submitted with a detailed project cost summary and proposed project *management* costs. Project management refers to expenses in the planning or implementation stage for necessary project oversight. The policy has been updated to include eligible project management costs.

23. Is there a cap on the bonding exemption for WISPr projects?

No, similar to the language in statute that allows governing bodies to enter into planning loans without a bond vote, there is no maximum amount for this exemption. Act 185 was clearly worded to state that this exemption only applies if the debt service of the WISPr project never falls on the rate payer.

24. Are WISPr projects subject to NEPA review?

The program is in the process of revising the State Environmental Review Policy (SERP) and will contemplate the applicability of NEPA for natural resource projects as well as

other expanded project types. For now, it will be determined on a case by case basis. We want to be make sure we are doing all required reviews. It is likely that an archaeological review will be required as previously noted.

25. Regarding WISPr eligibility for municipally required projects:

Not all TMDLs are alike, and the proposed draft that states projects that address permit conditions, consent decrees, or mitigation are ineligible doesn't make sense. If the state gets a water quality benefit, then why does it care if it also serves a regulatory benefit. As long as there isn't double counting for phosphorous reduction, why can't a flood resiliency project also reduce hydraulic loading for a CSO or provide additional filtration for stormwater needs?

Conversely, the program received numerous letters in support of maintaining the proposed language that WISPr is only eligible for non-regulatory or non-mandated projects:

It is clear by the statutory language that the legislative intent was to fund natural resource project and not stormwater, wastewater, or other sectors. Natural resource projects are often the most cost-effective. The state should limit WISPr to non-regulatory projects in order to meet its legal obligations under the TMDL.

The Department has examined both sides of this issue and has compared other DEC funding opportunities to ensure there's a consistency amongst programs. The Department maintains that the primary objective of WISPr is to fund natural resources projects that provide a funding mechanism for pollutant reduction. The Department also recognizes that many natural resources projects will likely contain multiple co-benefits, including stormwater retention, nutrient infiltration, reduction in hydraulic loading, and thermal improvements. It should be noted that the Ecosystem Restoration Program (ERP) grants offer 100% grants on municipally sponsored natural resources projects.

In light of these evaluations, the Department will amend the current policy as follows:

- Adopted the ERP Application Manual's definition of natural resource project types. This will ensure the legislative intent of natural resources projects are funded, while also providing an incentive for municipalities to choose these cost-effective projects to address their water quality needs.
- Allowed 100% funding of municipally owned natural resources projects.

26. The draft policy states that sponsored projects must be municipally or nonprofit owned, however, statute only states that the financial arrangement must be municipal or nonprofit. Many dams in the state are privately owned, making them ineligible for sponsorship unless the nonprofit acquires the dam and land/land

rights necessary to gain access. This would effectively render most dam removal projects ineligible for funding through WISPr.

Statute speaks directly to the funding arrangement. The program recognizes that particularly dam removals would not benefit from a long-term easement on privately owned land. The policy has been updated to remove this language.

- 27. The draft policy references “priority dam removal” as an eligible activity. “Priority” is not defined as priority will be determined through the scoring/ranking process.**

The word “priority” has been deleted.

- 28. The draft policy states that the project must provide “complete protection, enhancement, or restoration”. This is a high bar that is difficult to certify and could eliminate worthy, smaller projects that will provide incremental improvements to water resources.**

The word “complete” has been deleted.

- 29. The draft policy allows only one year to develop a project through final design. Many projects, including dam removal projects typically take more than one year. A suggestion would be to allow longer.**

The policy has been updated to create two lists: the planning list and the “match ready” list. Projects may stay on each list for up to five years to allow time for development and matching with a municipal project.

- 30. Projects that aren’t using WISPr funds for planning should not be at a disadvantage for “matching” with a municipal project compared to those who develop through WISPr planning funds.**

All projects will receive equal consideration, visibility, and project development to promote them to construction and implementation, regardless of the source of planning funding.

- 31. There is \$250,000 available to assist with project planning with a proposed cap of \$50,000 per project. Dam removal projects are often very expensive and there should not be a cap on these projects if funds remain. If the cap must remain, WISPr should allow to use the maximum planning amount in conjunction with other funding sources to make a “whole” planning project.**

There is flexibility on the planning amount, however the planning fund requests have exceeded the amount available. Co-funding with other funding sources, including an organization self-funding a portion of the planning work, is always allowed to make the project “whole”.

- 32. WISPr requires that all projects have an environmental review. Dam removal projects already include a stringent regulatory oversight and most require a Section 404 permit from US Army Corps of Engineers. Consultation with the State Historical Preservation Office (SHPO) is required for these reviews. This already ensures that environmental and cultural resource issues are addressed prior to construction. This should meet the requirement for environmental review.**

The program is revising its State Environmental Review Policy (SERP) to include the expanded project types. In the meantime, the program has a long history of honoring other agency or funding program's environmental reviews if they meet minimum requirements of our SERP. Until a formal revision of the SERP is completed, the program will evaluate these projects on a case-by-case scenario and waive the requirement or require addendums, as necessarily. CWSRF is committed to streamlining its funding process and will strive to eliminate duplicate requirements where possible.

- 33. For dam removal projects, three years is typically a reasonable period of time to catch and address any post-project problems. Operation and maintenance costs aren't eligible under WISPr, so the O&M requirements should be scaled on a project-by-project basis.**

This O&M requirement is consistent with what is required by other DEC funding programs, including the ERP program. This requirement will remain but will be scaled according to project type and complexity.

- 34. Annual report preparation is not funded by WISPr so this requirement should also have flexibility. If state or federal permits require monitoring and reporting, those reports could meet the needs of WISPr more efficiently.**

The policy has been updated to state that "the Implementer may substitute another required report if it meets the previously agreed upon annual reporting requirements."

- 35. Regarding WISPr project eligibility, this should be determined by reference to the tactical basin plan. These plans have been developed with hundreds of water quality projects.**

WISPr will not immediately restrict projects to inclusion in a Tactical Basin plan. The program intends to allow the sponsorship process to develop over the coming years and will reassess the value of this suggestion as funding becomes more competitive.

- 36. The draft policy contains an extensive list of property use restrictions. These are too broad and restrictive. Rather than include a long list of restrictions that likely will not apply, we suggest referencing standard land acquisition program easement models and adapt these conditions to each project.**

The policy has been updated to reference a standard easement model which will then be adapted on a project-by-project basis.

37. Regarding the Qualifications Based Selection (QBS) Process, will this be required when working with non-engineering consultants such as a surveyor?

QBS is required for all architectural or engineering services only. It would not be required for another consultant procurement.

38. The following priority list applications were received during this amendment period and ranked:

Applicant	Project Name	2019 Step I	2019 Step II	2019 Step III
Bridgewater	Grinder Pump Station		\$10,000	
Burlington	SW Outfall Repair (Outfalls 8, 9, 10)		\$90,000	\$1,200,000
Burlington	SW Outfall Repair		\$160,000	
Burlington	Citywide Gravity Pipe Assessment & Rehabilitation (Phase 1 Relining)		\$115,000	\$2,415,000
Burlington	Citywide Gravity Pipe Assessment & Rehabilitation		\$85,000	
Burlington	WWTP Process Upgrade (Phase I)	\$70,000	\$350,000	\$2,280,000
Burlington	WWTF Process Upgrade	\$930,000	\$1,750,000	
Montpelier	WRRF Upgrade			\$16,500,000 *This is for PC Grant request only, no CWSRF loan is requested at this time

The Nature Conservancy	Pelletier Dam Removal			\$400,000
Johnson Village	Johnson Powerhouse Building Emergency Demolition			\$100,000
White River Partnership	Gaysville River Corridor Easement Project			\$48,420



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November 13, 2018

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Sent via email: Terisa.Thomas@vermont.gov

Re: CLF Comments on proposed Vermont Water Infrastructure Sponsorship Program

Dear Ms. Thomas:

Conservation Law Foundation (CLF) appreciates the opportunity to comment on the proposed changes to the Clean Water State Revolving Fund program. In particular, CLF commends the Department of Environmental Conservation (DEC) for investing in the protection, conservation, and restoration of Vermont's natural resources through the Vermont Water Infrastructure Sponsorship Program (WISPR).

Natural resource protection is paramount to clean water, safe communities, and healthy ecosystems. Natural resources such as wetlands, floodplains, and river corridors play a critical role in filtering pollutants, controlling erosion, storing floodwater, recharging groundwater, and providing habitat for fish and wildlife.^{1,2} The co-benefits to public safety and economic stability are equally important, particularly in light of more extreme and frequent storms associated with climate change. Tropical Storm Irene alone caused more than \$733 million in damage to 800 buildings and 500 miles of roads.³

¹ Vermont Department of Environmental Conservation, *Vermont Wetlands Program's 2011-2015 Trend Report and Regulatory Update*, 2 (Dec 2017): http://dec.vermont.gov/sites/dec/files/documents/wl_2011to2015TrendReportAndRegulatoryUpdate_2017-12.pdf.

² Kline, Michael and Barry Cahoon, 2010. Protecting River Corridors in Vermont. *Journal of the American Water Resources Association* (JAWRA) 1-10: https://floodready.vermont.gov/sites/floodready/files/documents/Protecting_River_Corridors_in_VT.pdf.

³ Pierre-Louis, Kendra. "Five Years After Hurricane Irene, Vermont Still Striving for Resilience," Inside Climate News, September 1, 2016.



WISPR incentivizes the protection and conservation of these ecosystem services by providing funds to finance the implementation of voluntary, natural resource projects. CLF strongly supports limiting WISPR eligibility to non-regulatory, natural resource projects.

CLF concurs with the DEC's interpretation of legislative intent and the authorizing statute that sponsored projects are restricted to natural resource projects,⁴ and we encourage DEC to maintain the following language in its WISPR Policy Standard Operating Procedure:

All activities to be undertaken through WISPR must focus on biological habitat issues or restoration of floodplains, rivers/streams, lakeshore, wetlands, and forest lands to natural conditions that prevent and abate nutrient and sediment pollution and may range from the preservation and protection of stream, wetlands and other aquatic habitats for repair and recovery of such impaired habitats.

CLF commends DEC for further limiting WISPR to non-regulatory projects. This is particularly important in the Lake Champlain watershed because the regulatory programs in place to achieve the Total Maximum Daily Load (TMDL) are likely insufficient. For example, the 82.8 percent phosphorus reduction required in Missisquoi Bay from the agricultural nonpoint source sector is an unprecedented reduction target that will require drastic action beyond implementation of the Required Agricultural Practices.

While the State should continue to examine the adequacy of its regulatory programs to meet its legal obligations under the TMDL, CLF recognizes the important role WISPR can play in incentivizing water quality gains beyond regulatory minimums. It is crucial WISPR remain committed to supporting voluntary efforts to help fill in the gap between the reductions required by regulation and the reductions required by the TMDL.

We appreciate the opportunity to comment on WISPR, and look forward to continued engagement.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebekah Weber", is positioned above the typed name.

Rebekah Weber
Lake Champlain Lakekeeper
Conservation Law Foundation

⁴ 24 V.S.A. § 4752



CITY OF RUTLAND
Department of Public Works
RUTLAND, VERMONT
←————→

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Jeff Wennberg
Commissioner

Jim Rotondo, P.E.
City Engineer

November 13, 2018

Tom Brown
CWSRF Program Lead
Vermont Department of Environmental Conservation
Facilities Engineering Division
Main Building - 1st Floor
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BY EMAIL

RE: Proposed IUP Amendment

Dear Tom,

The following are the City of Rutland's comments on the proposed amendment to the Municipal Pollution Control Projects Priority List for State FY 2019.

The City of Rutland supports most of the changes proposed in this amendment, which support the program changes enacted through Act 185 of the last legislative session. The expansion of project types and eligible applicants should make possible a wider range of clean water benefits fundable through the CWSRF. At the same time the traditional municipal wastewater and stormwater project priorities should be preserved by more heavily weighting these projects through priority points and the limits placed upon the use of the funds by non-traditional applicants.

The proposed Sponsorship program is the subject of our remaining comments. The goal of the program is to identify and enable projects that can satisfy the Lake Champlain TMDL's targets for phosphorous reductions from the natural resources sector. Unlike treatment plants, stormwater, and agriculture there is no regulatory 'hook' within this sector to compel reductions. All of the needed progress must be achieved through voluntary actions, which the Agency seeks to promote through the sponsorship program. Unfortunately the program as currently designed contains features that will prove to be self-defeating.

It is our view that the program will not develop in the manner hoped for by the staff and reflected in its design. Staff expects that natural resource project sponsors will primarily come from the non-profit sector. They have attempted to create a clearing house system

to marry municipal CWSRF projects with independently developed natural resource projects. It is our view that if this happens it will be infrequent at best.

Only a few NGOs have the capacity to navigate through the requirements of the CWSRF, nearly all of which will be imposed upon the natural resource projects. Most NGOs will decline to invest that level of time, effort and resources toward the development of a speculative project. Instead, NGOs will seek municipal partners before becoming involved in this program, and rely upon the municipality to navigate the administrative requirements. In addition, we expect a significant number of projects could be brought forward by the same municipality seeking CWSRF funding. Towns will have little difficulty identifying qualifying projects of their own to sponsor, with or without third party partners.

In addition most or all of these projects will impose ongoing operation and maintenance obligations on the sponsor. We are reminded of the old saying, “I was given a free car once. I’ve been paying for it ever since.” If the NGO does not have the capacity to guarantee this cost they will not pursue the project. If the municipality is not otherwise committed to shouldering these costs they will not pursue the project. Clearly, the only projects that will be pursued are those where there is an underlying requirement or strong commitment to bring it about.

While the program design allows these projects to come forward from the NGO or the municipality itself, the program design contains restrictions that discourage municipalities from accessing the funds to pursue qualifying projects that are also local priorities. In short, the program design discourages projects with strong local support in favor of projects nobody is committed to doing.

The program design excludes projects that are required as part of a consent decree, permit condition or for projects required as mitigation through the Clean Water Act’s 404/401 program. We are unaware of any basis in law supporting this exclusion. The Department must avoid double counting phosphorous reductions, such as where the State claims credit for the natural resource sector reduction under the Lake Champlain TMDL and a town also counts the same reduction against their developed lands target. But the draft exclusion goes dramatically farther, and in our view to the detriment of the program itself.

When the first MS4 general permit was issued a similar restriction was applied. MS4s were prohibited from using Ecosystem Restoration Grant funds for projects required to meet flow targets. There was no rational basis for the exclusion except possibly the belief by program staff that since communities could be forced to complete projects on their own, the ERG funds were not needed and could be used elsewhere. After a few years this flawed logic was exposed as defeating both the ability of MS4 communities to comply and the goals of the Ecosystem Restoration Program. Belatedly, the restriction was lifted.

The Department is now poised to repeat the same error with the sponsorship program.

In lieu of the blanket exclusion of any regulatory benefit accruing to the community, we propose a prohibition against double counting phosphorous reductions.

An eligible WISPr project must not:

1. *Provide the sponsoring community any phosphorous reduction credit against any regulatory requirement. In the event a sponsored project could be claimed for phosphorous reduction credits the municipality must affirm in writing on a form approved by the Commissioner that it agrees not to claim such credit upon project completion or any time thereafter.*

Here is an example from the City of Rutland.

Under the Moon Brook temperature TMDL we are required to reduce solar flux on two ponds and the stream. We have been working with property owners and DEC to develop a plan that achieves the required temperature reductions and is acceptable to the property owners and neighbors. The final draft of that plan is nearly completed. In part the plan involves modifications to the ponds and establishment of a riparian buffer with selected plantings to shade the water. This will improve the habitat within the stream for the species that are currently insufficient to meet VWQS. The creation of this buffer will also provide phosphorous benefits, but the stream is not impaired (or stressed) for phosphorous, so the City views this as an ancillary benefit.

The blanket exclusion of natural resource sponsorship projects that are part of a permit condition could exclude this project from eligibility because the TMDL Implementation Plan will ultimately be part of the MS4 individual permit. And while this project might qualify because the permit does not yet exist, it begs the question, why? As long as the City does not take credit for ancillary phosphorous reductions what benefit is there in denying access to sponsorship funding? The project type is specifically listed as an eligible activity and the City is highly motivated to proceed. Given that Rutland expects to proceed in 2019 with about \$5- \$7 million in CWSRF projects there would be no faster mechanism for the City to assemble the necessary funds. If access is denied it could take years to raise the necessary funds.

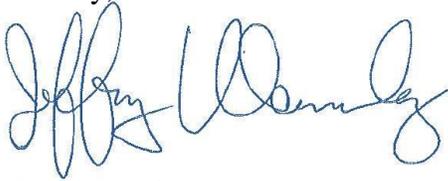
In response to this it has been argued that ERG funding could be used for this work. This is 35% funding for what would be a 100% municipal project. The preliminary budget estimate for the Moon Brook project is \$1,110,000. ERG might be able to support \$388,000 leaving \$722,000 to be funded locally. There is no possibility that this could be funded through the City's operating budget. Rutland has the 4th lowest median household income of the 50 largest Vermont communities and has either the highest or second highest tax rate in the state.

Rutland hopes to apply for between \$5 and \$7 million in CWSRF funds pursuant to a bond vote to be held in March. If approved by the voters, this loan could support between \$500,000 and \$700,000 in natural resource projects. It is inconceivable that we would be

denied the priority use of these funds for the Moon Brook project simply because of the IUP exclusion. And given the incentive of the temperature TMDL and resulting implementation plan, the City will always be on the hook for ongoing O&M funding.

If the exclusion remains in effect Rutland will either choose not to sponsor a natural resources project or sponsor something that we have little or no interest in bringing about. Failing to use \$5 to \$7 million in available bonding defeats the State's purpose in creating the program. This is exactly the flaw in the MS4 GP exclusion which was ultimately reversed. We urge the Department not to repeat this mistake.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey Wennberg". The signature is fluid and cursive, with a large initial "J" and "W".

Jeffrey Wennberg
Commissioner of Public Works

C: Mayor Allaire
Jim Rotondo
Matt Bloomer



Protecting nature. Preserving life.

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November 13, 2018

Ms. Terisa Thomas
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Dear Ms. Thomas

The undersigned organizations enthusiastically support the DEC's development of the Water Infrastructure Sponsorship Program (WISPR). As an organization involved with dam removal projects, The Nature Conservancy (TNC) has also signed onto written comments provided by the Vermont Dam Task Force (VDTF). While the comments submitted by the VDTF address many several concerns shared by TNC, they did not address all of TNC's concerns. For this reason, TNC has signed on to the comments contained herein.

Implementation of the program will provide desperately needed funding for the restoration of water quality throughout Vermont. The program will also result in partnerships between municipalities and non-governmental organizations that could yield results far beyond what has been contemplated. We recognize and greatly appreciate the flexibility and creativity that DEC has applied in developing the program to stay true to the rules that must be followed under the Clean Water drinking program while accommodating the real-world restraints faced by NGOs and municipalities.

With the goal of strengthening the program and maximizing the likelihood of its long-term success we offer the following comments on the draft "Attachment B" of the proposed VT DEC WISPR Policy Standard Operating Procedure that was distributed on October 1, 2018. The headings reflect those used in the draft policy.

WISPR Project Types (Project Ownership Requirements)

We are concerned that the requirement that projects be owned by the municipality or the implementor will eliminate many otherwise potentially eligible projects. For example, it is very uncommon for an NGO to purchase a conservation easement or fee title to property from which it has removed a dam.

Eligibility Determination for WISPR Projects (Eligibility Criterion Number 3)

The eligibility criteria which states that “a natural resources project must provide..... to meet or protect the designated uses of the benefitted waters” raises some potential concern. We suspect it will be difficult to assess a project’s ability to meet this criterion?

WISPR Eligible Costs

We recognize that our previously stated concerns over appropriate categorization of administrative fees, project management costs and project design and implementation costs may largely be moot at this point due to the elimination of the previously envisioned cap on administration and project management fees. Nonetheless we are submitting the following list of water quality restoration project design and implementation activities as we suspect it will help us all to come to a common understanding and facilitate further development of programmatic details.

- Activities associated with acquisition (fee simple or easement) of the property, if applicable:
 - Appraisal
 - Landowner negotiations (purchase price and easement conditions)
 - P&S drafting and execution
 - Easement drafting
 - Final survey
 - Title search
 - Environmental Assessments
 - Baseline documentation report
 - Fee simple or easement
 - Closing
 - Deed or Easement filing
 - Stewardship
- Activities associated with planning or final design preparation and implementation of restoration projects (including revegetation)
 - Bidding and contracting
 - Professional contract management
 - Baseline conditions assessment
 - Alternatives analysis
 - Preliminary design plans
 - Permitting
 - Final Design
 - Materials acquisition
 - Implementation (initial site prep. through final site stabilization)
 - Implementation oversight and inspection
 - Restoration Activities and materials (post construction)
 - Monitoring

Property Use Restrictions

Rather than including a list of property use restrictions for easement purchase projects, the use of standard easement templates and the restrictions contained therein and that have been vetted by various government agencies and have a history of successful use should be required. That list should include but not be limited to the following:

- Vermont Housing and Conservation Board Standard Easement Template
- USDA Agricultural Land Easement Template
- Vermont River Corridor Easement Template

Federal Cross-Cutter Requirements

We are concerned about the interpretation of statute that finds natural resources projects will need to go through NEPA review. We suspect that the types of projects that are contemplated would typically not trigger NEPA review. More commonly, natural resources projects are reviewed by the US Army Corps of Engineers and State regulatory programs and NEPA compliance is assured under that review.

Project Planning and Design Process

The Revolving Loan Fund planning, preliminary engineering and design process is a bit more complex and arduous than the processes NGOs typically encounter when undertaking natural resource projects. We encourage DEC to explore ways to simplify the process to more accurately reflect the level of scale and complexity of typical natural resources projects. We support use of The Ecosystem Restoration Program’s process as a good model.

Sincerely,



Shayne Jaquith

The Nature Conservancy
Vermont Field Office
Watershed Restoration Manager

on behalf of:

The Nature Conservancy
Vermont Land Trust
Vermont River Conservancy
Watersheds United Vermont
White River Partnership



November 12, 2018

Ms. Terisa Thomas
Water Infrastructure Finance Supervisor
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Via Email

Dear Ms. Thomas:

The undersigned groups of the Vermont Dam Task Force offer comments on the Vermont Water Infrastructure Sponsorship Program (WISPR), authorized earlier this year by Act 185. The Task Force, founded in 2000, includes private, nonprofit, non-governmental organizations (NGOs) and state and federal agencies working to restore the natural form and function of Vermont's rivers through dam removal. The organizations signing this letter are listed at the end. Our comments are on WISPR as it specifically relates to dam removal.

We thank the Department of Environmental Conservation (DEC) for establishing WISPR as a much-needed funding mechanism for natural resource projects to benefit ecological restoration. While the program is modeled on successful programs in other states, we greatly appreciate the flexibility and creativity that DEC has applied in developing the program that will work for Vermont municipalities and NGOs while complying with existing statutory and regulatory requirements.

Natural resource projects are often the most cost-effective ways to restore clean water, when compared to stormwater or wastewater projects. Here, WISPR proposes to fund natural resource projects that are not required by regulation or permit, meaning they are likely voluntary and generally underfunded. Act 185 will fund projects that not only will improve water quality, but have the cross-benefits of restoring aquatic habitat and aquatic organism passage, and improving flood resiliency and public safety.

The stated goal of WISPR is "to counter the loss of ecological function and biological diversity that jeopardize the health of Vermont's water resources." Dam removal is well established as an eligible natural resources restoration approach that can demonstrate water quality benefits. In Vermont, 33 dams have been removed since 1996, and 26 projects are currently in the feasibility and design/permitting phases. Miles of river habitat are restored, enhancing fish habitat, restoring the natural flood mitigation ability of floodplains, allowing for the natural downstream transport of sediment and organic debris, and enabling the natural movement of rivers. In some cases, dam removal enhances public safety by protecting inhabitants and property downstream from catastrophic

failure, making removal projects attractive to municipalities. Dam removal projects have been approved for capital-eligible funds in the past, as well as traditional Environmental Restoration Program grants, but like many other natural resource projects, funding is insufficient to meet the need.

We offer the following comments on the draft "Attachment B" of the proposed VT DEC WISPR Policy Standard Operating Procedure that was distributed on October 1, 2018. Headings follow those in the draft policy.

WISPR Project Types

The policy states that sponsored projects "must be either owned by a municipality or nonprofit organization." Many of the dams in the state are privately owned, making them ineligible for sponsorship unless the nonprofit acquires the dam and land or land rights necessary to gain access. This requirement would effectively render most dam removal projects ineligible for funding through WISPR.

Typically, the nonprofit organization assumes full responsibility for completing the project once the dam owner commits to move forward. Since the objective of a dam removal project is to eliminate the structure, the dam will be gone when the project is complete. Requiring the nonprofit to acquire the dam to be eligible for funding would add needless expense and time to the project.

We strongly support the requirement that the sponsorship be between a municipality and a nonprofit, with the latter taking the lead responsibility for completing the green project. For-profit entities should be excluded from the WISPR program. Statewide, the number of beneficial water resource projects identified by nonprofit entities typically is much greater than the number that can be completed, due to a lack of funding. It is likely that the real difficulty will be finding municipalities with which to partner, not that there will not be enough natural resource projects to fund.

Later in this section, the policy states that "priority dam removal" is an eligible activity. "Priority" is not defined, and we suggest deleting it so that it is clear that all dam removal projects are eligible. Their priority will be determined through the scoring/ranking process.

Eligibility Determination for WISPR Projects

When Act 185 was drafted as H.777, the intent was to create a funding source for natural resource projects only, not to create another general funding source for stormwater, wastewater or similar projects. We support the clear intent of WISPR detailed in the draft Attachment B:

All activities to be undertaken through WISPR must focus on biological habitat issues or restoration of floodplains, rivers/streams, lakeshore, wetlands, and forest lands to natural conditions that prevent and abate nutrient and sediment pollution and may range from the preservation and protection of stream, wetlands and other aquatic habitats for repair and recovery of such impaired habitats.

This clearly indicates that the program focus is on natural resource projects and not stormwater, wastewater or other sectors. Natural resource projects are often some of the most cost-effective

environmental projects to reduce nutrient pollution and have significant cross-benefits, but are often underfunded when compared to other pollution reduction projects.

Item 1 states that an eligible project must not “[b]e required, as part of a consent decree, permit condition, or for projects required as mitigation ...” We strongly support this provision and feel strongly that it must be included in the final policy. Any project that is mandated and required as part of a clean water regulation or permit should be excluded from this program. We ask that DEC rigidly adhere to this intent. This could be further clarified by noting that projects cannot be part of a regulatory requirement. Otherwise, projects mandated by a clean water regulation or permit will consume most or all of available WISPR funds, negating the program goal to fund natural resource projects that will provide water quality benefits but lack funding.

However, we have a concern with an eligibility criterion that states:

That the project will provide, either by itself or in conjunction with other projects that are committed to be undertaken, complete protection, enhancement, or restoration of water quality sufficient to meet or protect the designated uses of the benefited water resource.

The requirement to provide “complete” protection, enhancement or restoration is a very high bar that will be difficult to certify. It could effectively eliminate worthy, smaller projects that will provide incremental improvements to water resources. It is likely that the more “complete” a project, the higher environmental benefit it will have, therefore it will warrant higher scoring/ranking and a higher likelihood of funding. We ask that “complete” be removed or re-worded to reflect these concerns.

WISPR Eligible Costs

There has been considerable discussion regarding NGO concerns about a possible cap, or limit, on administration and project management costs. We now understand that a cap may not be included in the final policy. Capping administrative costs at 10-15 percent of the total project is certainly reasonable, but there are many project management costs that are an integral part of the project and are critical to its success. Those costs, which should not be capped, include:

- RFP preparation, bidding and contracting
- Contract management (consultants and contractors)
- Preliminary and final design development
- Permitting
- Public outreach, including neighbors, partners and media
- Construction oversight and inspection
- Post-construction restoration activities

We understand one of DEC’s concerns is to ensure WISPR funds are not used for project development, for example, contacting dam owners to determine if they are interested in pursuing dam removal. We believe that issue can be addressed by requiring a written commitment to the project from the dam owner be in place before WISPR funds can be used.

Implementer’s Project Development Two-Year Funding Cycle

We understand the funding cycle for WISPR-eligible projects to have two phases: planning/permitting and “match-ready,” i.e., projects that are ready for sponsorship and implementation. Attachment B

currently provides one year to complete the planning/permitting phase. Dam removal projects typically take more than one year to advance from owner buy-in, through completing any necessary studies and engineering, to final permitting, the point when construction bids can be solicited to complete the removal. This timeframe may be longer than that for other types of natural resource projects, such as easements, riparian plantings, or wetlands restoration. Allowing at least two years for dam removal projects to complete design and permitting will be important for WISPR to be a viable source of planning funds, and we encourage changing the draft policy to allow additional time.

In addition, we ask that dam removal projects that have completed design and permitting using other funding sources and are “match-ready” be eligible to apply for sponsorship, and that their eligibility will not be affected by the use of other funding sources for design and permitting. In other words, projects that have not used WISPR planning funds and are ready for construction should be eligible for WISPR construction funding.

It is our understanding that \$250,000 will be available to assist with project planning that will be incorporated as part of the cost of the project, with a proposed cap at \$50,000 per project but that there will be some flexibility in this cap. As dam removal planning/design is often expensive, we would ask that there be no cap on how much of this could be dedicated to one project if it is available and has not been requested by other implementers. In short, if it is not going to be used on other projects, there should be no cap so the full amount could be utilized. Similarly, for projects that the planning phase cost will exceed this cap, we ask that this funding could be used in conjunction with other funding sources outside of the WISPR to make up the total.

Federal Crosscutter Requirement for Sponsored Projects

One of the crosscutter requirements is “environmental review.” We strongly urge that the final policy allow this requirement to be met through current federal, state and local permitting. Dam removal projects are rigorously vetted in the regulatory process. Most require a Section 404 permit from the U.S. Army Corps of Engineers. At least one, and often several, state authorizations are required and may include permitting for stream alteration, dam safety, wetlands, and floodplains. Consultation with the Dept. of Fish and Wildlife and the Vt. Division of Historic Preservation is required by DEC during these reviews. The issues considered during these reviews include water quality (temperature, dissolved oxygen, etc.), stream geomorphology, flooding and floodplains, wetlands, fish and wildlife, endangered species, quality (i.e., contamination) and quantity of impounded sediment, archaeological and historic resources and infrastructure.

These reviews ensure that environmental and cultural resource issues are addressed prior to construction. Adding an additional requirement, such as NEPA compliance, would complicate and increase the cost of dam removal for no added benefit.

Operation and Maintenance Commitment

Operation and maintenance commitments are often required for dam removal projects by funding programs and regulatory programs (e.g., U.S. Army Corps of Engineers), but they are a bit different from “constructed” projects. The principal issues that need to be addressed are monitoring for changes in the river or stream that may threaten adjacent infrastructure or result in undue erosion, monitoring for invasive plant species and revegetation of the dam site and disturbed riparian corridor. Typically, three years is a reasonable period of time to catch and address any post-project problems.

Since operation and maintenance costs cannot be covered by WISPR, we ask that the monitoring and maintenance requirements be scaled to what is appropriate for the specific project, rather than follow those on a prescriptive list. Further, if monitoring or O&M provisions are included in state or federal permits, we recommend they be accepted by WISPR, rather than developing new or different requirements.

Annual Reports

Similar to our comments on O&M, preparation of annual reports is not funded by WISPR. We encourage flexibility in this requirement, based on the location and scale of the project. Again, if state or federal permits require monitoring and reporting, it seems those reports could meet the needs of WISPR in an efficient manner. In those cases where regulatory requirements are absent, it seems reasonable to require initial reports as the project is completed and a check-in after three years as indicated in the above section. For dam removal, it is most likely post-project problems will manifest and be addressed by this time.

Conclusion

We again thank you and your colleagues at DEC for the opportunity to offer comments and suggestions for the WISPR program, and we look forward to working with you on its implementation and operation.

Very truly yours,



Brian T. Fitzgerald,
Chair, Vermont Dam Task Force

on behalf of:

Connecticut River Conservancy
Friends of the Winooski River
The Nature Conservancy – Vermont Chapter
Trout Unlimited – Vermont Council
Vermont Natural Resources Council
Vermont River Conservancy

WISPR Comments:

Steve Libby, Vermont River Conservancy (VRC)

November 13, 2018

The following notes are supplemental to the group of non-profits who have collectively submitted comprehensive comments. These comments are specifically from the perspective of the Vermont River Conservancy, but likely capture the sentiments of the other “Implementor” organizations.

These comments will be organized to correspond to the headings of “Attachment B”:

WISPR Project Types: / Eligibility Determination for WISPR Projects:

VRC strongly recommends the eligibility of a specific project be determined by reference to the TACTICAL BASIN PLAN for the watershed location of the prospective natural resource project.

Tactical Basin Plans have been developed for each of Vermont’s major watersheds by the Watershed Management Division of DEC. These plans list hundreds of water quality improvement projects that have been vetted by DEC staff with public input and are prioritized based on DEC staff recommendations.

It would make sense to use these Tactical Basin Plans as a well established and field tested approach to determining if a proposed natural resource project meets WISPR eligibility requirements. The Watershed Coordinators (DEC staff) for each of the Tactical Basin Plan watersheds are well versed in the water quality issues in their respective watersheds and can be effective “gatekeepers” for determining whether a proposed project would be appropriate for WISPR.

Property Use Restrictions:

For river corridor easement acquisition projects VRC recommends the use of the standard easement models that have been developed over the past ten years – models which vary slightly according to a particular organization’s experience, but which generally meet a consistent set of conservation goals and use restrictions. These standard easement models could be reviewed at the outset of the WISPR program and, if approved, become the default set of property use restrictions unless site specific circumstances call for modification of the standard easement (rare situation).

